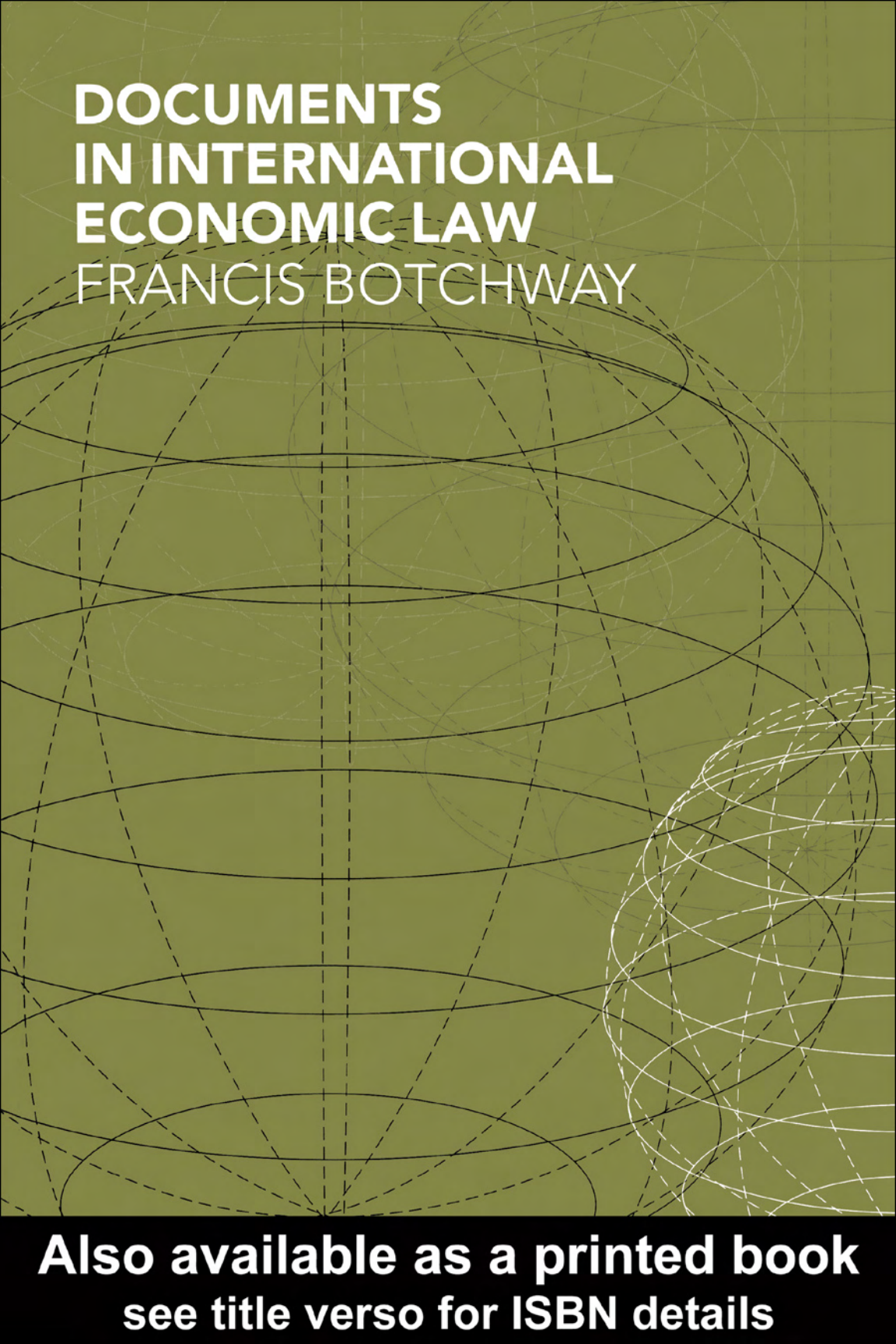


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DOCUMENTS IN INTERNATIONAL ECONOMIC LAW

FRANCIS BOTCHWAY

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FRANCIS BOTCHWAY

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PREFACE

That the world economy is globalised cannot be gainsaid. There is hardly any discussion of economics or international relations that is distanced from consideration of their transnational implications. When difficulties are encountered or differences emerge, the normal recourse would be to international law, but national laws are still referred to where appropriate. Historically, perceptions of classical or public international law and the wider understanding of human rights dominated international discourse in the period up to the end of the Cold War. Since the 1990s the economy, and to some extent the environment, have come to the fore more forcefully. This was clearly typified by the conclusion of the Uruguay Round of trade negotiations in 1994, which had revolutionary and far-reaching imperatives. It not only dealt with subjects like Trade-related Intellectual Property Rights, Trade-related Investment Measures, and Public Procurement, but also dispute resolution instruments were made efficacious for the first time.

To be sure, international economy had not been a neglected area in the history of international relations and law. On the contrary, it was an integral part of the efforts at formulating the rules of international engagement. For example, the participants of the conference in 1688 who produced the Treaty of Westphalia made provisions for reparations, settlement, treatment of aliens, navigation and trade. Interestingly, the Finance Ministers of the relevant states also participated. If the treaty laid the foundation for the contemporary conception of international law, it follows then that it also laid the basis for the economic architecture that came after the political and peace map. The occasional disturbance of the peace dividend from Westphalia, and the desire to avert such, motivated the numerous Friendship, Commerce and Navigation (FCN) treaties that were entered into by various countries from the eighteenth century. The FCN treaties also contributed to the removal of the economic causes of conflicts between various sovereigns in Europe. It is from these treaties that principles such as Most Favoured Nation and Nationality emerged. Today, these principles serve as the pillars of international trade and investment.

The desire to remove the causes of conflicts was also responsible for the settlement of the possessions of European countries in Africa in 1884, as well as the agreements on instruments that were to become the cornerstone of the European Union and other regional blocs. These regional organisations have taken on distinctly economic outlooks that make their political foundations pale into comparative insignificance. It is not entirely possible to get away from the politics of economic treaties, as they are negotiated by politicians and agreed to at the political level. But there are treaties that are purely economic in motivation and provision. The treaties on Aviation, Monetary Policy, Taxation and specific infrastructure agreements like the European and Arab Maghreb Railway agreements are instructive on this. There are also those treaties which were a direct reaction to political developments, but which are economic in content and outlook.

The Covenant on Economic and Social Rights, and The Convention on the Suppression of the Financing of Terrorism are examples.

The objective of this work is to provide a comprehensive 'one-stop-shop' for the location of any international agreement or instrument relating to economic activity. The documents cover issues ranging from development plans, such as the Marshall Plan to rebuild post-war Europe, to the management of commodities and products. Some of the documents are primarily of historical import. The Treaty of Westphalia, the Berlin Act on Africa and the Marshall Plan fall into that category. However, apart from having economic relevance in themselves, they are also important in adumbrating our understanding of contemporary and future international economic relations. Others such as the African Union, the European Union, MERCOSUR and NAFTA are much more important regionally, but it is often the regional institutions that develop into major players on the global stage, paving the way for various of their initiatives to be replicated at the international level.

In some cases the commonalities evoked by treaties between countries on regional matters, or on specific sectors or issues, coalesce to form the basis or evidence of customary international law. The regional or sectoral then becomes the global law or policy. This is one justification for the collection of Bilateral Investment Treaties and other bilateral agreements such as those on Competition or Antitrust. Even where a national measure of external importance is not objected to, but rather applied with tacit understanding of its implications by other relevant countries, that national measure could be the initiation of customary law. The Australian-led Generalised System of Preferences, the US-Africa Growth and Opportunity Act, the Helms-Burton, or Cuban LIBERTAD Act, and the Foreign Corrupt Practices Act, are pointers to this position.

There have been various attempts to provide the researcher, the practitioner and all who are interested in international economic issues with a collection of ready primary material. Most of these efforts were limited to basic materials, or were tied to textbooks as supplements. Their selection is therefore significantly influenced by the exigencies of the authors. Most of the existing collections do not place sufficient emphasis on history, and are further limited in terms of their geographical breadth and contemporariness. It is this lacuna that motivates *Documents in International Economic Law*. The goal is to be the first port of call to aid anyone searching for international economic instruments.

Each chapter within Section One opens with a commentary for the document (or very occasionally documents) which follows. Section Two consists of an extensive series of tables recording the history of membership, ratification and accession for each treaty. For ease of reference, in Section Three, the work is indexed in three different ways: chronologically, by economic sector and geographically. Whilst the law is as stated at 31 March 2005, it is intended that there should be regular updates to this edition to maintain the currency of material.

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Depository countries and organizations responsible for the texts of the documents appearing in this work were approached for permission and advice on their reproduction, and to them we offer grateful thanks. Individual acknowledgements relevant to the various documents are to be found in an accompanying note at the foot of the commencing page of each.

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SECTION ONE

Documents

CHAPTER ONE

Peace of Westphalia

Münster, 24 October 1648

INTRODUCTION

This Peace, consisting of separate treaties, is acclaimed as the founding accord of international law. It was agreed principally to end internecine wars and other conflicts that had afflicted most of Europe, particularly in the Germanic Holy Roman Empire. It also set precedent in post-war restitution and restoration, by providing for compensation for material damage, the restoration of movable and immovable property and contributions for rebuilding specific parts of the region. The agreement also addressed issues such as the treatment and exchange of prisoners and the neutrality of the Swiss cantons. Most of the developments in international law in these areas have departed little from these founding principles.

Although the political imperatives of the war and how they were to be dealt with continue to receive widespread attention from publicists and others, the Treaty was substantially economic. First, it ended the internecine wars that sapped energies otherwise needed for economic development. It then provided the secured conditions necessary for economic activity. The conference leading to the promulgation of the Treaty was attended by, among others, ‘Super-intendents of Finance’, to help deal with the financial implications of the settlement.

In more specific terms, Upper Austria was allowed to repudiate a debt of 13 m. rix-dollars owed to the Elector of Bavaria. Pension payable by the Lower Marquisate of Baden to the Upper Marquisate, based on an age-old custom, was stopped. Contracts, exchange, obligations and other transactions entered into on pain of violence or extortion, especially those from Weisenburg (Weissenberg) on the Rhine, Landau and Hailbron (Heilbronn), were annulled and pursuit of them was prohibited. Debtors who exacted bonds by force from their creditors were asked to restore the same, albeit with due regard to their rights. If debtors averred and proved that they made full payment of the debts, the creditors were to refrain from further prosecution of the debt. The exception to these stoppages of debt collection and money transactions was money collected in good faith as contributions to forestall further mayhem.

Apart from financial settlements, the Treaty stressed that, ‘since it much concerns the public that upon the conclusion of the Peace commerce be re-established’, and ‘for that end it has been agreed that the tolls, customs’ and ‘the abuses of the Bull of Brabant, and the reprisals and arrests which proceeded from thence, together with foreign certifications, exactions, detentions’ and ‘the immoderate expenses and charges of posts, and other obstacles to commerce and navigation introduced to its prejudice, contrary to

the public benefit, here and there in the Empire on occasion of the war shall be fully removed' (article LXIX). Full liberty of commerce, with secure passage by sea or land, was guaranteed. No less important was the provision for the equal treatment of traders foreign to a particular jurisdiction, using the treatment of national traders as standard. Herein lies the genesis of the contemporary principles of national treatment and, by extension, most favoured nation status in international economic relations.

The Peace of Westphalia was actually a series of treaties, produced in 1648 and concluding the Thirty Years War. In January, in the city of Münster, Spain and the Netherlands signed a treaty that recognized Dutch independence. In October the final texts providing for peace in Germany were signed, between the Empire and Sweden in another city of Westphalia, Osnabrück, and between the Empire and France in Münster. The traditional English translation (from the original Latin) of the last agreement is what is generally known in the English-speaking world as the Treaty of Westphalia. A version of that text (with some of the archaisms removed) is reproduced below, for reference, but even the original translation was in no way an official document—there were some errors and some significant divergences from the Latin, including article numbering—nor is it a complete one, as it does not include the accord with Sweden. However, its significance in the development of international economic law is still clear.

PEACE TREATY BETWEEN THE HOLY ROMAN EMPEROR AND THE KING OF FRANCE AND THEIR RESPECTIVE ALLIES

IN THE NAME OF THE MOST HOLY AND INDIVIDUAL TRINITY:

Be it known to all, and to everyone whom it may concern, or to whom in any manner it may belong,

That for many years past, discords and civil divisions being stirred up in the Roman Empire, which increased to such a degree, that not only all Germany, but also the neighbouring Kingdoms, and France particularly, have been involved in the disorders of a long and cruel war:

And in the first place, between the most Serene and most Puissant Prince and Lord, Ferdinand the Second, of famous Memory, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Archduke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquis of Moravia, Duke of Luxembourg, Upper and Lower Silesia, of Wirtemberg [Württemberg] and Teck, Prince of Swabia, Count of Habsburg, Tyrol, Kyburg and Goritia [Görz—now Gorizia, Italy], Marquis of the Holy Roman Empire, Lord of Burgovia [Burgau], of Upper and Lower Lusatia [Lusace], of the Marquisate of Slavonia, of Port Naon [Portenau] and Salines, with his allies and adherents on one side; and the most Serene and the most Puissant Prince, Lewis the Thirteenth, most Christian King of France and Navarre, with his allies and adherents on the other side.

And after their Decease, between the most Serene and Puissant Prince and Lord, Ferdinand the Third, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Archduke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquis of Moravia, Duke of Luxembourg, of Upper and Lower Silesia, of Wirtemberg and Teck, Prince of Swabia,

Count of Habsburg, Tyrol, Kyburg and Goritia, Marquis of the Holy Roman Empire, Burgovia, Upper and Lower Lusatia, Lord of the Marquisate of Slavonia, of Port Naon and Salines, with his allies and adherents on the one side; and the most Serene and most Puissant Prince and Lord, Lewis the Fourteenth, most Christian King of France and Navarre, with his allies and adherents on the other side: From whence ensued great effusion of Christian blood, and the desolation of several provinces.

It has at last happened, by the effect of Divine Goodness, seconded by the endeavours of the most Serene Republic of Venice, who in this sad time, when all Christendom is embroiled, has not ceased to contribute its counsels for public welfare and tranquillity; so that on the one side, and the other, they have formed thoughts of a universal Peace.

And for this purpose, by a mutual agreement and covenant of both parties, in the year of Our Lord 1641, the 25th of December NS [New Style—Gregorian calendar], or the 15th OS [Old Style—Julian calendar], it was resolved at Hamburg, to hold an Assembly of Plenipotentiary Ambassadors, who should render themselves at Minister and Osnabrück in Westphalia on the 11th of July NS, or the 1st of the said month OS, in the year 1643.

The Plenipotentiary Ambassadors on the one side, and the other, duly established, appearing at the prefixed time, and on the behalf of his Imperial Majesty, the most illustrious and most excellent Lord, Maximilian Count of Trautmansdorf and Weinsberg, Baron of Gleichenberg, Neustadt, Negan, Burgau, and Torzenbach, Lord of Teinitz, Knight of the Golden Fleece, Privy Counsellor and Chamberlain to his Imperial Holy Majesty, and Steward of his Household; the Lord John Lewis, Count of Nassau, Catzenellebogen, Vianden, and Dietz, Lord of Bilstein, Privy Counsellor to the Emperor, and Knight of the Golden Fleece; Monsieur Isaac Volmamarus, Doctor of Law, Counsellor, and President in the Chamber of the most Serene Lord Archduke Ferdinand Charles.

And on the behalf of the most Christian King, the most eminent Prince and Lord, Henry of Orleans, Duke of Longueville, and Estouteville, Prince and Sovereign Count of Neuschaftel, Count of Dunois and Tancerville, Hereditary Constable of Normandy, Governor and Lieutenant-General of the same Province, Captain of the Hundred Men-at-Arms, and Knight of the King's Orders, etc., as also the most illustrious and most excellent Lords, Claude de Mesmes, Count d'Avaux, Commander of the said King's Orders, one of the Superintendents of Finances, and Minister of the Kingdom of France, etc., and Abel Servien, Count la Roche of Aubiers, also one of the Ministers of the Kingdom of France.

And by the Mediation and Interposition of the most illustrious and most excellent Ambassador and Senator of Venice, Aloysius Contarini, Knight, who for the space of five years, or thereabouts, with great diligence, and an entirely impartial spirit, has been inclined to be a mediator in these affairs.

After having implored Divine Assistance, and received a reciprocal communication of Letters, Commissions and full Powers, the copies of which are inserted at the end of this Treaty [but not reproduced here], in the presence and with the consent of the Electors of the Holy Roman Empire, the other Princes and States, to the Glory of God and the benefit of the Christian world, the following Articles have been agreed on and consented to, and the same run thus:

I

That there shall be a Christian and universal Peace, and a perpetual, true and sincere amity, between his Holy Imperial Majesty and his most Christian Majesty; as also between all and each of the Allies and Adherents of his said Imperial Majesty, the House of Austria, and its heirs and successors; but chiefly between the Electors, Princes and States of the Empire, on the one side; and all and each of the Allies of his said Christian Majesty, and all their heirs and successors, chiefly between the most Serene Queen and Kingdom of Sweden, the Electors respectively, the Princes and States of the Empire, on the other part. That this Peace and amity be observed and cultivated with such a sincerity and zeal, that each Party shall endeavour to procure the benefit, honour and advantage of the other; that thus on all sides they may see this Peace and friendship in the Roman Empire and the Kingdom of France flourish, by entertaining a good and faithful neighbourhood.

II

That there shall be on the one side and the other a perpetual oblivion, amnesty or pardon of all that has been committed since the beginning of these troubles, in what place or what manner soever the hostilities have been practised, in such a manner that nobody, under any pretext whatsoever, shall practice any acts of hostility, entertain any enmity or cause any trouble to each other; neither as to persons, effects and securities, neither of themselves or by others, neither privately nor openly, neither directly nor indirectly, neither under the colour of right, nor by the way of deed, either within or without the extent of the Empire, notwithstanding all covenants made before to the contrary: That they shall not act, or permit to be acted, any wrong or injury to any whatsoever; but that all that has passed on the one side, and the other, as well before as during the war, in words, writings and outrageous actions, in violence, hostilities, damages and expenses, without any respect to persons or things, shall be entirely abolished in such a manner that all that might be demanded of, or pretended to, by each other on that behalf, shall be buried in eternal oblivion.

III

And that a reciprocal amity between the Emperor and the most Christian King, and the Electors, Princes and States of the Empire, may be maintained so much the more firm and sincere (to say nothing at present of the Article of Security, which will be mentioned hereafter) the one shall never assist the present or future enemies of the other under any title or pretence whatsoever, either with arms, money, soldiers or any sort of ammunition; nor no one, who is a member of this pacification, shall suffer any enemy troops to retire through or sojourn in his country.

IV

That the Circle of Burgundy shall be and continue a Member of the Empire, after the disputes between France and Spain shall be terminated and Spain comprehended in this Treaty. That, nevertheless, neither the Emperor nor any of the States of the Empire shall

meddle with the wars which are now afoot between them. That if for the future any dispute arises between these two Kingdoms, the abovesaid reciprocal obligation of not aiding each other's enemies shall always continue firm between the Empire and the Kingdom of France, but yet so as that it shall be free for the States to succour; without the bounds of the Empire, such or such Kingdoms, but still according to the Constitutions of the Empire.

V

That the controversy touching Lorraine [Lothringen] shall be referred to Arbitrators nominated by both sides, or it shall be terminated by a Treaty between France and Spain, or by some other friendly means; and it shall be free as well for the Emperor, as Electors, Princes and States of the Empire, to aid and advance this agreement by an amicable interposition, and other offices of pacification, with out using force of arms.

VI

According to this foundation of reciprocal amity, and a General Amnesty, all and every one of the Electors of the Holy Roman Empire, the Princes and States (therein comprehending the nobility, which depend immediately on the Empire), their vassals, subjects, citizens and inhabitants (to whom on the account of the Bohemian or German troubles or alliances, contracted here and there, might have been done by the one Party or the other, any prejudice or damage in any manner, or under what pretence soever, as well in their Lordships, their fiefs, underfiefs and allodia, as in their dignities, immunities, rights and privileges) shall be fully re-established on the one side and the other, in the Ecclesiastical or Laic State, which they enjoyed, or could lawfully enjoy, notwithstanding any alterations which have been made in the mean time to the contrary.

VII

If the possessors of estates which are to be restored think they have lawful exceptions, yet it shall not hinder the restitution; which done, their reasons and exceptions may be examined before competent judges, who are to determine the same.

VIII

And though by the precedent general rule it may be easily judged who those are, and how far the restitution extends; nevertheless, it has been thought fit to make a particular mention of the following cases of importance, but yet so that those which are not in express terms named, are not to be taken as if they were excluded or forgot.

IX

Since the arrest the Emperor has formerly caused to be made in the Provincial Assembly, against the moveable effects of the Prince Elector of Trier [Treves], which were transported into the Duchy of Luxembourg, though released and abolished, yet at the

instance of some has been renewed; to which has been added a sequestration, which the said Assembly has made of the Jurisdiction of Burch, belonging to the Archbishopric, and of the Moiety of the Lordship of St John, belonging to John Reinbard of Soeteren, which is contrary to the Concordats drawn up at Augsburg in the year 1548 by the public interposition of the Empire, between the Elector of Trier, and the Duchy of Burgundy: It has been agreed, that the abovesaid arrest and sequestration shall be taken away with all speed from the Assembly of Luxembourg, that the said jurisdiction, lordship, and electoral and patrimonial effects, with the sequestered revenues, shall be released and restored to the Elector; and if by accident some things should be embezzled, they shall be fully restored to him; the petitioners being referred, for the obtaining of a determination of their rights, to the judge of the Prince Elector, who is competent in the Empire.

X

As for what concerns the Castles of Ehrenbreitstein and Homestein, the Emperor shall withdraw, or cause the Garrisons to be withdrawn in the time and manner limited hereafter in the Article of Execution, and shall restore those Castles to the Elector of Trier, and to his Metropolitan Chapter, to be in the protection of the Empire, and the Electorate; for which end the Captain and the new Garrison which shall be put therein by the Elector, shall also take the Oaths of Fidelity to him and his Chapter.

XI

The Congress of Münster and Osnabrück having brought the Palatinate cause to that pass, that the dispute which has lasted for so long time, has been at length terminated; the terms are these:

XII

In the first place, as to what concerns the House of Bavaria, the Electoral Dignity which the Electors Palatine have hitherto had, with all their regalia, offices, precedence, arms and rights, whatever they be, belonging to this dignity, without excepting any, as also all the Upper Palatinate and the County of Cham, shall remain, as for the time past, so also for the future, with all their appurtenances, regalia and rights, in the possession of the Lord Maximilian, Count Palatine of the Rhine, Duke of Bavaria, and of his children and all the Wilhelmine Line, whilst there shall be any male children in being.

XIII

Reciprocally the Elector of Bavaria renounces entirely for himself and his heirs and successors the debt of thirteen million, as also all his pretensions in Upper Austria; and shall deliver to his Imperial Majesty immediately after the publication of the Peace, all acts and arrests obtained for that end, in order to be made void and null.

XIV

As for what regards the House of Palatine, the Emperor and the Empire, for the benefit of the public tranquillity, consent, that by virtue of this present agreement, there be established an eighth Electorate; which the Lord Charles Lewis, Count Palatine of the Rhine, shall enjoy for the future, and his heirs, and the descendants of the Rudolphine Line, pursuant to the Order of Succession, set forth in the Golden Bull; and that by this investiture, neither the Lord Charles Lewis nor his successors shall have any right to that which has been given with the Electoral Dignity to the Elector of Bavaria, and all the Branch of William.

XV

Secondly, that all the Lower Palatinate, with all and every ecclesiastical and secular lands, rights and appurtenances, which the Electors and Princes Palatine enjoyed before the troubles of Bohemia, shall be fully restored to him; as also all the documents, registers and papers belonging thereto; annulling all that hath been done to the contrary. And the Emperor engages that neither the Catholic King nor any other who possess anything thereof shall in any way oppose this restitution.

XVI

Forasmuch as that certain jurisdictions of the Bergstraet, belonging anciently to the Elector of Mainz [Mayence], were in the year 1463 mortgaged to the House Palatine for a certain sum of money: Upon condition of perpetual redemption, it has been agreed that the same jurisdictions shall be restored to the present Elector of Mainz, and his successors in the Archbishopric of Mainz, provided the mortgage be paid in ready money, within the time limited by the Peace to be concluded; and that he satisfies the other conditions, which he is bound to by the tenor of the mortgage deeds.

XVII

It shall also be free for the Elector of Trier, as well in the quality of Bishop of Speyer [Spire] as Bishop of Worms, to sue before competent judges for the rights he pretends to certain ecclesiastical lands situated in the territories of the Lower Palatinate, if it be so that those Princes make not a friendly agreement among themselves.

XVIII

That if it should happen that the male Branch of William should be entirely extinct, and the Palatine Branch still subsist, not only the Upper Palatinate, but also the Electoral Dignity of the Dukes of Bavaria, shall revert to the said surviving Palatine, who in the mean time enjoys investiture: But then the eighth Electorate shall be entirely suppressed. Yet in such case, nevertheless, of the return of the Upper Palatinate to the surviving Palatines, the heirs of any allodian lands of the Bavarian Electors shall remain in possession of the rights and benefices which may lawfully appertain to them.

XIX

That the Family Contracts made between the Electoral House of Heidelberg and that of Nieuburg [Nieuwbург] touching the succession to the Electorate, confirmed by former Emperors; as also all the rights of the Rudolphine Branch, forasmuch as they are not contrary to this disposition, shall be conserved and maintained entire.

XX

Moreover, if any fiefs in Juliers [Jülich] shall be found open by lawful process, the question shall be decided in favour of the House Palatine.

XXI

Further, to ease the Lord Charles Lewis in some measure of the trouble of providing his brothers with appenages, his Imperial Majesty will give order that four hundred thousand Rix-dollars shall be paid to the said brothers in the four ensuing years, the first commencing with the year 1649. Payment is to be made of one hundred thousand Rix-dollars yearly, with five percent interest.

XXII

Further, that all the Palatine House, with all and each of them, who are, or have in any manner adhered to it, and above all, the Ministers who have served in this Assembly or have formerly served this House, as also all those who are banished out of the Palatinate, shall enjoy the General Amnesty here above promised, with the same rights as those who are comprehended therein, or of whom a more particular and ampler mention has been made in the Article of Grievance.

XXIII

Reciprocally the Lord Charles Lewis and his brothers shall render obedience and be faithful to his Imperial Majesty, like the other Electors and Princes of the Empire; and shall renounce their pretensions to the Upper Palatinate, as well for themselves as their heirs, whilst any Male and lawful heir of the Branch of William shall continue alive.

XXIV

And upon the mention which has been made, to give a dowry and a pension to the Mother Dowager of the said Prince, and to his sisters; his Holy Imperial Majesty (according to the affection he has for the Palatine House) has promised to the said Dowager, for her maintenance and subsistence, to pay once for all twenty thousand Rix-dollars; and to each of the Sisters of the said Lord Charles Lewis, when they shall marry, ten thousand Rix-dollars, the said Prince Charles Lewis being bound to disburse the surplus.

XXV

That the said Lord Charles Lewis shall give no trouble to the Counts of Leiningen and of Daxburg, nor to their successors in the Lower Palatinate; but he shall let them peaceably enjoy the rights obtained many ages ago and confirmed by the Emperors.

XXVI

That he shall inviolably leave the Free Nobility of the Empire, which are in Franconia, Swabia, and all along the Rhine, and the districts thereof, in the state they are at present.

XXVII

That the fiefs conferred by the Emperor on the Baron Gerard of Waldenburg, called Schenck-Heeren, on Nicholas George Reygersberg, Chancellor of Mainz, and on Henry Brombsen, Baron of Rudeheim, item, by the Elector of Bavaria on Baron John Adolph Wolff, called Metternich, shall remain firm and stable: That nevertheless these vassals shall be bound to take an oath of fidelity to the Lord Charles Lewis, and to his successors, as their direct Lords, and to demand of him the renewing of their fiefs.

XXVIII

That those of the Confession of Augsburg, and particularly the inhabitants of Oppenheim, shall be put in possession again of their churches, and ecclesiastical estates, as they were in the year 1624, as also that all others of the said Confession of Augsburg who shall demand it shall have the free exercise of their religion, as well in public churches at the appointed hours, as in private in their own houses, or in others chosen for this purpose by their ministers or by those of their neighbours preaching the Word of God.

XXIX

That the Paragraphs, PRINCE LEWIS PHILIP, ETC., PRINCE FREDERICK, ETC., and PRINCE LEOPOLD LEWIS, ETC., be understood as here inserted, after the same manner they are contained in the Instrument, or Treaty of the Empire, with Sweden.

XXX

That the dispute depending between the Bishops of Bamberg and Wirtzburg [Würzburg] on the one, and the Marquis of Brandenburg, Kulmbach and Onalzbach, on the other side, touching the castle, town, jurisdiction and monastery of Kitzingen in Franconia, on the Main, shall be amicably composed; or, in a judicial manner, within two years time, upon pain of the person losing his pretensions, that shall delay it: And that, in the mean time, the Fort of Wirtzburg shall be surrendered to the said Lords Marquises, in the same state it was taken, according to how it has been agreed and stipulated.

XXXI

That the agreement made, touching the entertainment of the Lord Christian William, Marquis of Brandenburg, shall be kept as if recited in this place, as it is put down in the Fourteenth Article of the Treaty between the Empire and Sweden.

XXXII

The most Christian King shall restore to the Duke of Wirtemberg [Württemberg], after the manner hereafter related, where we shall mention the withdrawing of garrisons, the towns and forts of Hohenwiel, Schorendorff, Turbingen and all other places, without reserve, where he keeps garrisons in the Duchy of Wirtemberg. As for the rest, the Paragraph, the HOUSE OF WIRTEMBERG, ETC., shall be understood as inserted in this place, after the same manner it is contained in the Treaty between the Empire and Sweden.

XXXIII

That the Princes of Wirtemberg, of the Branches of Montbeillard, shall be re-established in all their domains in Alsace [Alsatia], and wheresoever they be situated, but particularly in the three Fiefs of Burgundy, Clerval, and Passavant: And both Parties shall re-establish them in the state, rights and prerogatives that they enjoyed before the beginning of these wars.

XXXIV

That Frederick, Marquis of Baden and of Hachberg, and his sons and heirs, with all those who have served them in any manner whatsoever, and who serve them still, of what degree they may be, shall enjoy the Amnesty mentioned above in the Second and Third Articles, with all Clauses and Benefices; and by virtue thereof, they shall be fully re-established in the state ecclesiastical or secular, in the same manner as the Lord George Frederick, Marquis of Baden and of Hachberg, possessed, before the beginning of the troubles of Bohemia; whatever concerned the Lower Marquisate of Baden, called vulgarly Baden Durlach, as also what concerned the Marquisate of Hachberg and the Lordships of Rottelen, Badenweiller, and Sausenberg, notwithstanding, and annulling, all the changes made to the contrary. After which shall be restored to Marquis Frederick, the jurisdictions of Stein and Renchingen, without being charged with debts which the Marquis William has contracted during that time, by reason of the revenues, interests and charges, put down in the Transaction passed at Etlingen in the year 1629, and transferred to the said William, Marquis of Baden, with all the rights, documents, writings and other things appertaining; so that all the plea concerning the charges and revenues, as well received as to receive, with their damages and interests, to reckon from the time of the first possession, shall be entirely taken away and abolished.

XXXV

That the annual pension of the Lower Marquisate, payable to the Upper Marquisate, according to former custom, shall by virtue of the present Treaty be entirely taken away and annihilated; and that for the future nothing shall be pretended or demanded on that account, either for the time past or to come.

XXXVI

That for the future, the Precedence and Session, in the States and Circle of Swabia, or other general or particular Assemblies of the Empire, and any others whatsoever, shall be alternative in the two Branches of Baden; viz. in that of the Upper and that of the Lower Marquisate of Baden: But nevertheless this Precedence shall remain in the Marquis Frederick during his life. It has been agreed, touching the Barony of Hohengerolt Zegk that if Madam, the Princess of Baden, verifies the rights of her pretension upon the said Barony by authentic documents, restitution shall be made her, according to the rights and contents of the said documents, as soon as sentence shall be pronounced. That the cognizance of this cause shall be terminated within two years after the publication of the Peace: And lastly, no actions, transaction or exceptions, either general or particular, nor Clauses comprehended in this Treaty of Peace, and whereby they would derogate from the vigour of this Article, shall be at any time alleged by any of the Parties against this special agreement. The Paragraphs, the DUKE OF CROY, ETC., as for the CONTROVERSY OF NASSAU-SIEGEN, ETC., to the COUNTS OF NASSAU, SARRE-PONT, ETC., the HOUSE OF HANAU, ETC., JOHN ALBERT COUNT OF SOLMS, ETC., as also, SHALL BE RE-ESTABLISHED THE HOUSE OF SOLMS, HOHENSOLMS, etc., the COUNTS OF ISEMBURG, ETC., the RHINEGRAVES, ETC., the WIDOW OF COUNT ERNEST OF SAINEN, ETC., the CASTLE AND THE COUNTY OF FLACKENSTEIN, ETC., LET ALSO THE HOUSE OF WALDECK BE RE-ESTABLISHED, ETC., JOACHIM ERNEST COUNT OF OTTINGEN, ETC., Item, the HOUSE OF HOHENLO, ETC., FREDERICK LEWIS, ETC., the WIDOW AND HEIRS OF THE COUNT OF BRANDENSTEIN, ETC., the BARON PAUL KEVENHULLER, ETC., shall be understood to be inserted in this place, word by word, as they are put down in the Instrument or Treaty between the Empire and Sweden.

XXXVII

That the contracts, exchanges, transactions, obligations and treaties made by constraint or threats, and extorted illegally from states or subjects (as in particular, those of Speyer complain, and those of Weisenburg [Weissenberg] on the Rhine, those of Landau, Reitlingen, Hailbron [Heilbronn], and others), shall be so annulled and abolished, that no more enquiry shall be made after them.

XXXVIII

That if debtors have by force got some bonds from their creditors, the same shall be restored, but not with prejudice to their rights.

XXXIX

That the debts either by purchase, sale, revenues or by what other name they may be called, if they have been violently extorted by one of the parties in war, and if the debtors allege and prove that there has been real violence against them and a real payment, they shall be no more prosecuted before these exceptions be first adjusted. That the debtors shall be obliged to produce their exceptions within the term of two years after the publication of the Peace, upon pain of being afterwards condemned to perpetual silence.

XL

That processes which have been hitherto entered on this account, together with the transactions and promises made for the restitution of debts, shall be looked upon as void; and yet the sums of money, which during the war have been exacted bona fide and with a good intent, by way of contributions, to prevent greater evils by the contributors, are not comprehended herein.

XLI

That sentences pronounced during the war about purely secular matters, if the defect in the proceedings be not fully manifest, or cannot be immediately demonstrated, shall not be esteemed wholly void; but that the effect shall be suspended until the acts of justice (if one of the parties demand the space of six months after the publication of the Peace, for the reviewing of his process) be reviewed and weighed in a proper court, and according to the ordinary or extraordinary forms used in the Empire: To the end that the former judgments may be confirmed, amended or quite erased, in case of nullity.

XLII

In the like manner, if any royal or particular fiefs have not been renewed since the year 1618, nor homage paid to whom it belongs; the same shall bring no prejudice, and the investiture shall be renewed the day the Peace shall be concluded.

XLIII

Finally, that all and each of the officials, military men as well as counsellors, and gownmen and ecclesiastics of what degree they may be, who have served the one or other Party among the Allies, or among their Adherents, let it be in the gown or with the sword, from the highest to the lowest, without any distinction or exception, with their wives, children, heirs, successors, servants, as well concerning their lives as estates, shall be restored by all Parties in the state of life, honour, renown, liberty of conscience, rights and privileges which they enjoyed before the abovesaid disorders; that no prejudice shall be done to their effects and persons, that no action or accusation shall be entered against them; and that further, no punishment be inflicted on them, or they to bear any damage under what pretence soever: And all this shall have its full effect in respect to those who are not subjects or vassals of his Imperial Majesty or of the House of Austria.

XLIV

But for those who are subjects and hereditary vassals of the Emperor and of the House of Austria, they shall really have the benefit of the Amnesty, as for their persons, life, reputation and honours: And they may return with safety to their former country; but they shall be obliged to conform and submit themselves to the laws of the realms or particular provinces they shall belong to.

XLV

As to their estates that have been lost by confiscation or other ways, before they took the part of the Crown of France or of Sweden, notwithstanding the Plenipotentiaries of Sweden have made long instances, they may be also restored. Nevertheless his Imperial Majesty being to receive law from none, and the Imperialists sticking close thereto, it has not been thought convenient by the States of the Empire that for such a subject the war should be continued: And that thus those who have lost their effects as aforesaid, cannot recover them to the prejudice of their last masters and possessors. But the estates which have been taken away by reason of arms taken for France or Sweden against the Emperor and the House of Austria, they shall be restored in the state they are found, and that without any compensation for profit or damage.

XLVI

As for the rest, law and justice shall be administered in Bohemia and in all the other hereditary provinces of the Emperor, without any respect—as to the Catholics, so also to the subjects, creditors, heirs or private persons who shall be of the Confession of Augsburg—if they have any pretensions and enter or prosecute any actions to obtain justice.

XLVII

But from this general restitution shall be exempted things which cannot be restored, as things movable and moving, fruits gathered, things alienated by the authority of the chiefs of the party, things destroyed, ruined and converted to other uses for public security, as public and particular buildings, whether sacred or profane, public or private gages which have been, by surprise of the enemy, pillaged, confiscated, lawfully sold or voluntarily bestowed.

XLVIII

And as to the affair of the succession of Juliers, if a course be not taken, those concerned may one day cause great troubles in the Empire about it; so it has been agreed: That the Peace being concluded it shall be terminated without any Delay, either by ordinary means before his Imperial Majesty, or by a friendly composition or some other lawful way.

XLIX

And since for the greater tranquillity of the Empire, in its general Assemblies of Peace, a certain Agreement has been made between the Emperor, Princes and States of the Empire which has been inserted in the Instrument and Treaty of Peace concluded with the Plenipotentiaries of the Queen and Crown of Sweden, touching the differences about ecclesiastical lands, and the liberty of the exercise of religion; it has been found expedient to confirm and ratify it by this present Treaty, in the same manner as the abovesaid Agreement has been made with the said Crown of Sweden; also with those called the Reformed, in the same manner, as if the words of the abovesaid Instrument were reported here verbatim.

L

Touching the Affair of Hesse-Kassel [Cassel], it has been agreed as follows: In the first place, The House of Hesse-Kassel, and all its Princes, chiefly Madam Amelia Elizabeth, Landgravine of Hesse, and her son, Monsieur William, and his heirs, his ministers, officers, vassals, subjects, soldiers and others who follow his service in any manner soever, without any exception, notwithstanding contracts to the contrary, processes, proscriptions, declarations, sentences, executions and transactions; as also notwithstanding any actions and pretensions for damages and injuries from neutrals, as well as from those who were in arms, annulled by the General Amnesty here before established, and to take place from the beginning of the war in Bohemia, with a full restitution (except the vassals and hereditary subjects of his Imperial Majesty and the House of Austria, as is laid down in the Paragraph, TANDEM OMNES, ETC. [Article XLIII]) shall partake of all the advantages redounding from this Peace, with the same rights other States enjoy, as is set forth in the Article which commences, UNANIMI, ETC. [XLIV].

LI

In the second place, the House of Hesse-Kassel and its successors shall retain—for this purpose shall demand at any time and when it shall be expired—the investiture of his Imperial Majesty, and shall take the oath of fidelity for the Abbey of Hitsfield, with all its dependencies, secular as well as ecclesiastical, situated within or without his territories (as the Deanery of Gellingen), saving nevertheless the rights possessed by the House of Saxony time out of mind.

LII

In the third place, the right of a direct seigniorship over the jurisdictions and Bailiwick of Schaumburg, Buckenburg, Saxenhagen and Stattenhagen, given heretofore and adjudged to the Bishopric of Minden [Mindau], shall for the future belong unto Monsieur William, the present Landgrave of Hesse, and his successors in full possession, and for ever, so as that the said Bishop and no other shall be capable of molesting him; saving nevertheless the Agreement made between Christian Lewis, Duke of Brunswick and Lunenburg, and

the Landgravine of Hesse, and Philip, Count of Lippe, as also the Agreement made between the said Landgravine, and the said Count.

LIII

It has been further agreed, That for the restitution of places possessed during this war, and for the indemnity of Madam, the Landgravine of Hesse, who is the Guardian, the sum of six hundred thousand Rix-dollars shall be given to her and her son, or his successor Princes of Hesse, to be had from the Archbishops of Mainz and Cologne [Köln], from the Bishops of Paderborn and Münster, and the Abbey of Fulden; which sum shall be paid at Kassel within the term of eight months, to reckon from the day of the ratification of the Peace, at the peril and charge of the solvent: And no exception shall be used to evade this promised payment, on any pretence; much less shall any seizure be made of the sum agreed on.

LIV

And to the end that Madam the Landgravine may be so much the more assured of the payment, she shall retain, on the conditions following, Nuys, Cuesfeldt and Newhaus, and shall keep garrisons in those places which shall depend on her alone; but with this limitation, That besides the officers and other necessary persons in the garrisons, those of the three above-named places shall not exceed the number of twelve hundred foot soldiers, and one hundred horsemen; leaving to Madam the Landgravine the disposition of the number of horse and foot she shall be pleased to put in each of these places and whom she will constitute Governor.

LV

The garrisons shall be maintained according to the Order, which has been hitherto usually practised, for the Maintenance of the Hessian Soldiers and Officers; and the things necessary for the keeping of the forts shall be furnished by the Archbishops and Bishops, in which the said fortresses are situated, without any diminution of the sum above-mentioned. The Garrisons shall be allowed to exact the money of those who shall retard payment too long, or who shall be refractory, but not any more than what is due. The rights of superiority and jurisdiction, ecclesiastical as well as secular, and the revenues of the said castles and towns, shall remain in the Archbishop of Cologne.

LVI

As soon after the ratification of Peace as the three-hundred thousand Rix-dollars shall be paid to Madam the Landgravine, she shall give up Nuys, and shall only retain Cuesfeldt and Newhaus; but yet, so as that the garrison of Nuys shall not be thrown into the other two places nor nothing demanded on that account, the garrisons of Cuesfeldt and Newhaus shall not exceed the number of six hundred foot and fifty horse. That, if within the term of nine months, the whole sum be not paid to Madam the Landgravine, not only shall Cuesfeldt and Newhaus remain in her hands till the full payment, but also, on the

remainder, she shall be paid interest at five percent, and the treasurers and collectors of the Bailiwicks appertaining to the abovesaid Archbishoprics, Bishoprics and Abbey bordering on the Principality of Hesse, shall oblige themselves by oath to Madam the Landgravine that, out of the annual revenues, they shall yearly pay the interest of the remaining sum, notwithstanding the prohibitions of their masters. If the treasurers and collectors delay the payment or alienate the revenues, Madam the Landgravine shall have liberty to constrain them to pay, by all sorts of means, always saving the right of the Lord Proprietor of the territory.

LVII

But as soon as Madam the Landgravine has received the full sum, with all the interest, she shall surrender the said places which she retained for her security; the payments shall cease and the treasurers and collectors, of which mention has been made, shall be freed from their oath: As for the Bailiwicks, the revenues of which shall be assigned for the payment of the sum, that shall be adjusted before the ratification of the Peace; and that convention shall be of no less force than this present Treaty of Peace.

LVIII

Besides the places of surety, which shall be left, as aforesaid, to Madam the Landgravine, which she shall restore after the payment, she shall restore after the ratification of the Peace, all the provinces and bishoprics, as also all their cities, bailiwicks, boroughs, fortresses and forts; simply, all immoveable goods and all rights seized by her during this war. So, nevertheless, that as well in the three places she shall retain as cautionary, as the others to be restored, the said Lady Landgravine not only shall cause to be conveyed away all the provisions and ammunitions of war she has put therein (for as to those she has not sent thither, what was found there at the taking and are there still, they shall continue), but also the fortifications and ramparts raised during the possession of the places shall be destroyed and demolished, as much as possible without exposing the towns, boroughs, castles and fortresses to invasion and robberies.

LIX

And though Madam the Landgravine has only demanded restitution and reparation of the Archbishoprics of Mainz and Cologne, the Bishoprics of Paderborn and Münster, and the Abbey of Fulden; and has not insisted that any besides should contribute anything for this purpose: Nevertheless the Assembly have thought fit, according to the equity and circumstances of affairs (without prejudice to the contents of the preceding Paragraph, which begins, *CONVENTUM PRATEREA EST, ETC.*): IT HAS BEEN FURTHER AGREED, the other States also on this and the other side of the Rhine, and who, since the first of March of this present year, have paid contributions to the Hessians, shall bear their proportion pro rata of their preceding contributions, to make up the said sum with the Archbishoprics, Bishoprics and Abbey above-named, and forward the payments of the garrisons of the cautionary towns. If any has suffered damage by the delay of others who are to pay their share, the officers or soldiers of his Imperial Majesty, of the most

Christian King and of the Landgravine of Hesse shall not hinder the forcing of those who have been tardy; and the Hessian soldiers shall not pretend to except any from this constraint, to the prejudice of this Declaration, but those who have duly paid their proportion shall thereby be freed from all charges.

LX

As to the differences arisen between the Houses of Hesse-Kassel and of Darmstadt, touching the succession of Marburg; since they have been adjusted at Kassel this past 14th of April by the mutual consent of the interested parties, it has been thought good that that Transaction, with all its clauses, as concluded and signed at Kassel by both parties, should be intimated to this Assembly; and that by virtue of this present Treaty it shall be of the same force, as if inserted word by word: And the same shall never be infringed by the parties, nor any other whatsoever, under any pretence, either by contract, oath or otherways, but ought to be most exactly kept by all, though perhaps some of the parties concerned may refuse to confirm it.

LXI

As also the Transaction between the deceased Monsieur William, Landgrave of Hesse, and Messieurs Christian and Wolrad, Counts of Waldeck, made the 11th of April, 1635, and ratified to Monsieur George, Landgrave of Hesse, the 14th of April 1648, shall no less obtain a full and perpetual force by virtue of this Pacification, and shall no less bind all the Princes of Hesse and all the Counts of Waldeck.

LXII

That the birthright introduced in the House of Hesse-Kassel and in that of Darmstadt, and confirmed by his Imperial Majesty, shall continue and be kept firm and inviolable.

LXIII

And as his Imperial Majesty, upon complaints made in the name of the City of Basle and of all Switzerland, in the presence of their Plenipotentiaries deputed to the present Assembly, touching some procedures and executions proceeding from the Imperial Chamber against the said City and the other united Cantons of the Swiss Country, and their citizens and subjects having demanded the advice of the States of the Empire and their Council; these have, by a Decree of the 14th of May of this last year, declared the said City of Basle and the other Swiss Cantons to be as it were in possession of their full liberty and exemption of the Empire; so that they are no ways subject to the judicatures or judgments of the Empire, and it was thought convenient to insert the same in this Treaty of Peace and confirm it, and thereby to make void and annul all such procedures and arrests given on this account in what form soever.

LXIV

And to prevent for the future any differences arising in the politic state, all and every one of the Electors, Princes and States of the Roman Empire are so established and confirmed in their ancient rights, prerogatives, liberties, privileges, free exercise of territorial right (politic as well as ecclesiastic lordships) and regales, by virtue of this present Transaction: That they never can or ought to be molested therein by any whomsoever upon any manner of pretence.

LXV

They shall enjoy without contradiction the right of suffrage in all deliberations touching the affairs of the Empire; but above all when the business in hand shall be the making or interpreting of laws, the declaring of wars, the imposing of taxes, the levying or quartering of soldiers, the erecting new fortifications in the territories of the States or the reinforcing the old garrisons; as also when a peace and alliance is to be concluded and treated about, or the like; none of these or the like things shall be acted for the future without the suffrage and consent of the free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire to make alliances with strangers for their preservation and safety; provided, nevertheless, such alliances be not against the Emperor and the Empire, nor against the public peace and this Treaty, and without prejudice to the oath by which everyone is bound to the Emperor and the Empire.

LXVI

That the Diets of the Empire shall be held within six months after the ratification of the Peace and, after that time, as often as public utility or necessity requires. That, in the first Diet, the defects of precedent Assemblies be chiefly remedied; that then also be treated and settled, by common consent of the States, the form and election of the Kings of the Romans, by what form and certain Imperial Resolution; the manner and order which is to be observed for declaring one or more States to be within the territories of the Empire, besides the manner otherways described in the Constitutions of the Empire; that they also consider: re-establishing the Circles, renewing the Matricular Book, re-establishing suppressed States, moderating and lessening the collects of the Empire, reformation of justice and policy, the taxing of fees in the Chamber of Justice, the due and requisite instruction of ordinary deputies for the advantage of the public, the true office of Directors in the Colleges of the Empire and such other business as could not be expedited here.

LXVII

That as with the general so with the particular Diets, the Free Cities and other States of the Empire shall have decisive votes; they shall, without molestation, keep their regales, customs, annual revenues, liberties, privileges to confiscate and to raise taxes, and other rights—lawfully obtained from the Emperor and Empire or enjoyed long before these commotions—with a full jurisdiction within the enclosure of their walls, and their

territories: Making void at the same time, annulling and for the future prohibiting, all things which by reprisals, arrests, stopping of passages and other prejudicial acts, either during the war, under what pretext soever have been done and attempted hitherto by private authority, or may hereafter without any preceding formality of right be enterprised. As for the rest, all laudable customs of the Holy Roman Empire, the fundamental constitutions and laws, shall for the future be strictly observed, all the confusions which time of war have, or could introduce, being removed and laid aside.

LXVIII

As for the finding out of equitable and expedient means whereby the prosecution of actions against debtors, ruined by the calamities of war or charged with too great interests, and whereby these matters may be terminated with moderation, to obviate greater inconveniences which might arise and to provide for the public tranquillity; his Imperial Majesty shall take care to hearken as well to the advices of his Privy Council, as of the Imperial Chamber and the States which are to be assembled, to the end that certain firm and invariable Constitutions may be made about this matter. And in the mean time the alleged reasons and circumstances of the parties shall be well weighed in cases brought before the sovereign Courts of the Empire, or subordinate ones of States, and nobody shall be oppressed by immoderate executions; and all this without prejudice to the Constitution of Holstein.

LXIX

And since it much concerns the public that upon the conclusion of the Peace commerce be re-established, for that end it has been agreed that the tolls, customs, as also the abuses of the Bull of Brabant, and the reprisals and arrests which proceeded from thence, together with foreign certifications, exactions, detentions; Item, The immoderate expenses and charges of posts, and other obstacles to commerce and navigation introduced to its prejudice, contrary to the public benefit, here and there in the Empire on occasion of the war, and of late by a private authority against its rights and privileges, without the consent of the Emperor and the Princes of the Empire, shall be fully removed; and the ancient security, jurisdiction and custom, such as have been in use long before these wars, shall be re-established and inviolably maintained in the provinces, ports and rivers.

LXX

The rights and privileges of territories watered by rivers or otherways, as customs granted by the Emperor with the consent of the Electors (among others, to the Count of Oldenburg on the Weser [Visergl]) and introduced by long usage, shall remain in their vigour and execution. There shall be a full liberty of commerce, a secure passage by sea and land: And after this manner all and every one of the vassals, subjects, inhabitants and servants of the allies, on the one side and the other, shall have full power to go and come, to trade and return back, by virtue of this present Article, after the same manner as was allowed before the troubles of Germany. The Magistrates, on the one side and on the

other, shall be obliged to protect and defend them against all sorts of oppressions, equally with their own subjects, without prejudice to the other Articles of this Convention and the particular laws and rights of each place. And that the said Peace and Amity between the Emperor and the most Christian King may be the more corroborated, and the public safety provided for, it has been agreed with the consent, advice and will of the Electors, Princes and States of the Empire, for the benefit of peace:

LXXI

First, That the chief dominion, right of sovereignty [jura superioritatis] and all other rights upon the Bishoprics of Metz, Toul and Verdun and on the cities of that name and their dioceses, particularly on Mayenvick, in the same manner they formerly belonged to the Emperor, shall for the future appertain to the Crown of France and shall be irrevocably incorporated therewith for ever, saving the right of the metropolitan, which belongs to the Archbishop of Trier.

LXXII

That Monsieur Francis, Duke of Lorraine, shall be restored to the possession of the Bishopric of Verdun, as being the lawful Bishop thereof; and shall be left in the peaceable administration of this Bishopric and its Abbeys (saving the right of the King and of particular persons) and shall enjoy his patrimonial estates and his other rights, wherever they may be situated (and as far as they do not contradict the present resignation) his privileges, revenues and incomes; having previously taken the oath of fidelity to the King and provided he undertakes nothing against the good of the state and the service of his Majesty.

LXXIII

In the second place, The Emperor and Empire resign and transfer to the most Christian King and his successors the right of direct lordship and sovereignty, and all that has belonged or might hitherto belong to him or the Holy Roman Empire, upon Pignerol [Pinerolo].

LXXIV

In the third place, The Emperor, on his own behalf as well as on behalf of the whole most Serene House of Austria, as also of the Empire, resigns all rights, properties, domains, possessions and jurisdictions which have hitherto belonged either to him or the Empire and the Family of Austria over the City of Breisach [Brisac], the Landgraveship of Upper and Lower Alsace [Alsatia or Elsass], Sundgau [Suntgau] and the Provincial Lordship of ten Imperial Cities situated in Alsace, viz. Haguenuau, Colmar [Calmer or Kolmar], Sélestat [Schlestadt], Wissembourg [Weissenburg], Landau, Obernheim, Rosheim, Munster in the Valley of St. Gregory, Kaysersberg, Turckheim [Turingham] and of all the villages or other rights which depend on the said Lordship; all and every of them are made over to the most Christian King and the Kingdom of France; in the same manner as

the City of Breisach, with the villages of Hochstet, Niederrimsing, Hartem and Acharren appertaining to the Commonalty of Breisach, with all the ancient territory and dependence; without any prejudice, nevertheless, to the privileges and liberties granted the said Town formerly by the House of Austria.

LXXV

Item, The said Landgraveship of the one and the other Alsace, and Sundgau, as also the Provincial Lordship on the ten Cities named and their dependencies.

LXXVI

Item, All the vassals, subjects, people, towns, boroughs, castles, houses, fortresses, woods, coppices, gold or silver mines, minerals, rivers, brooks, pastures and, in short, all the rights, regales and appurtenances, without any reserve, shall belong to the most Christian King and shall be forever incorporated with the Kingdom of France, with all manner of jurisdiction and sovereignty, without any contradiction from the Emperor, the Empire, the House of Austria or any other: So that no Emperor, or any Prince of the House of Austria, shall or ever ought to usurp, nor so much as pretend any right and power over the said countries, on this as well as the other side of the Rhine.

LXXVII

The most Christian King shall, nevertheless, be obliged to preserve in all and every one of these countries the Catholic religion, as maintained under the Princes of Austria, and to abolish all innovations crept in during the war.

LXXVIII

Fourthly, By the Consent of the Emperor and the whole Empire, the most Christian King and his successors shall have perpetual right to keep a garrison in the Castle of Philipsburg, but limited to such a number of soldiers as may not be capable to give any umbrage or just suspicion to the neighbourhood; which garrison shall be maintained at the expense of the Crown of France. The passage also shall be open for the King into the Empire by water, when and as often as he shall send soldiers and convoys, and bring necessary things thither.

LXXIX

Nevertheless the King shall pretend to nothing more than the protection and safe passage of his garrison into the Castle of Philipsburg: But the property of the place, all jurisdiction, possession, all its profits, revenues, purchases, rights, regales, servitude, people, subjects, vassals and everything that of old in the Bishopric of Speyer, and the churches incorporated therein, had appertained to the Chapter of Speyer or might have appertained thereto; shall appertain, and be entirely and inviolably preserved to the same Chapter, saving the right of protection which the King takes upon him.

LXXX

The Emperor, Empire and Monsieur the Archduke of Innsbruck [Insprug], Ferdinand Charles, respectively discharge the communities, magistrates, officers and subjects of each of the said Lordships and places from the bonds and oaths which they were hitherto bound by and tied to the House of Austria; and discharge and assign them over to the subjection, obedience and fidelity they are to give to the King and Kingdom of France; and consequently confirm the Crown of France in a full and just power over all the said places, renouncing from the present and forever the rights and pretensions they had thereunto: Which cession the Emperor, the said Archduke and his brother (by reason the said renunciation concerns them particularly) shall confirm by particular Letters for themselves and their descendants; and shall so order it also, that the Catholic King of Spain shall make the same renunciation in due and authentic form, which shall be done in the name of the whole Empire the same day this present Treaty shall be signed.

LXXXI

For the greater validity of the said cessions and alienations, the Emperor and Empire, by virtue of this present Treaty, abolish all and every one of the decrees, constitutions, statutes and customs of their predecessors, Emperors of the Holy Roman Empire, though they have been confirmed by oath or shall be confirmed for the future; particularly this Article of the Imperial Capitulation, by which all or any alienation of the appurtenances and rights of the Empire is prohibited: And by the same means they exclude for ever all exceptions hereunto, on what right and titles soever they may be grounded.

LXXXII

Further it has been agreed, That besides the ratification promised hereafter in the next Diet by the Emperor and the States of the Empire, they shall ratify anew the alienations of the said Lordships and rights: Insomuch, that if it should be agreed in the Imperial Capitulation, or if there should be a proposal made for the future, in the Diet, to recover the lands and rights of the Empire, the above-named things shall not be comprehended therein, as having been legally transferred to another's dominion, with the common consent of the States, for the benefit of the public tranquillity; for which reason it has been found expedient the said seigniories should be erased from the Matricular Book of the Empire.

LXXXIII

Immediately after the restitution of Benfield, the fortifications of that place shall be razed, and of the Fort Rheinau, which is hard by, as also of Zabern [Tabern] in Alsace, of the Castle of Hohember and of Newburg on the Rhine: And there shall be in none of those places any soldiers or garrison.

LXXXIV

The magistrates and the inhabitants of the said City of Zabern shall keep an exact neutrality, and the King's troops shall freely pass through there as often as desired. No forts shall be erected on the banks of this side the Rhine, from Basle to Philipsburg; nor shall any endeavours be made to divert the course of the river, neither on the one side or the other.

LXXXV

As for what concerns the debts wherewith the Chamber of Ensisheim is charged, the Archduke Ferdinand Charles shall undertake with that part of the Province which the most Christian King shall restore him to pay one-third without distinction, whether they be bonds or mortgages; provided they are in authentic form and that they have a particular mortgage, either on the Provinces to be restored or on them which are to be transferred; or if there be none, provided they be found on the Books of Accounts, agreeing with those of Receipts of the Chamber of Ensisheim, until the expiration of the year 1632, and have been inserted amongst the debts of the public Chamber, and the said Chamber having been obliged to pay the interests: The Archduke making this payment, shall keep the King exempt from the same.

LXXXVI

And as for those debts which the Colleges of the States have been charged with by the Princes of the House of Austria, pursuant to particular Agreements made in their Provincial Assemblies, or such as the said States have contracted in the name of the public and to which they are liable; a just distribution of the same shall be made between those who are to transfer their allegiance to the King of France and them that continue under the obedience of the House of Austria, that so either party may know what proportion of the said debt he is to pay.

LXXXVII

The most Christian King shall restore to the House of Austria, and particularly to the Archduke Ferdinand Charles, eldest son to Archduke Leopold, four Forest-Towns, viz. Rheinselden, Seckingen, Laussenberg and Waltshutum, with all their territories and bailiwicks, houses, villages, mills, woods, forests, vassals, subjects, and all appurtenances on this or the other side of the Rhine.

LXXXVIII

Item, The County of Hauenstein [Hawenstein], the Black Forest, the Upper and Lower Breisgau [Brisgaw], and the towns situated therein, appertaining of ancient right to the House of Austria, viz. Neuenburg [Neuburg], Freiburg, Endingen, Kenzingen [Renzingen], Waldkirch, Willingen, Brunlingen, with all their territories; as also the monasteries, abbeys, prelacies, deaconries, knight-fees, commanderships, with all their bailiwicks, baronies, castles, fortresses, counties, barons, nobles, vassals, men, subjects,

rivers, brooks, forests, woods and all the regales, rights, jurisdictions, fiefs and patronages, and all other things belonging to the sovereign right of territory, and to the patrimony of the House of Austria, in all that country.

LXXXIX

All Ortenau [Ortnaw], with the Imperial Cities of Offenburg [Ossenburg], Gengenbach, Kehl [Cellaham] and Harmersbach [Harmospach], forasmuch as the said Lordships depend on that of Ortenau, so that no King of France can or ought ever to pretend to or usurp any right or power over the said countries situated on this and the other side the Rhine: Nevertheless, in such a manner that by this present restitution the Princes of Austria shall acquire no new right; that for the future the commerce and transportation shall be free to the inhabitants on both sides of the Rhine, and the adjacent provinces. Above all, the navigation of the Rhine be free and none of the parties shall be permitted to hinder boats going up or coming down, to detain, stop or molest them under any pretence whatsoever, except the inspection and search which is usually done to merchandise: And it shall not be permitted to impose upon the Rhine new and unwonted tolls, customs, taxes, imposts and other like exactions; but the one and the other party shall contented with the tributes, duties and tolls that were paid before these wars, under the government of the Princes of Austria.

XC

That all the vassals, subjects, citizens and inhabitants, on this as well as the other side of the Rhine, who were subject to the House of Austria, who depended immediately on the Empire or who acknowledged for superiors the other Orders of the Empire, notwithstanding all confiscations, transferring or donations made by any captains or generals of the Swedish troops or confederates since the taking of the Province, and ratified by the most Christian King or decreed by his own particular motion; immediately after the publication of the Peace shall be restored to the possession of their goods, immovable and stable, also to their farms, castles, villages, lands and possessions, without any exception upon the account of expenses and compensation of charges which the modern possessors may allege, and without restitution of movables or fruits gathered in.

XCI

As to confiscations of things which consist in weight, number and measure, exactions, concussions and extortions made during the war; the reclaiming of them is fully annulled and taken away on the one side and the other, in order to avoid processes and litigious strifes.

XCII

That the most Christian King shall be bound to leave not only the Bishops of Strasbourg and Basle, with the City of Strasbourg, but also the other States or Orders, Abbots of

Murbach and Luederen, who are in the one and the other Alsace, immediately depending upon the Roman Empire; the Abbess of Andlavian, the Monastery of St. Bennet in the Valley of St. George, the Palatines of Lutzelstein [Luzelstain], the Counts and Barons of Hanau [Hanaw], Fleckenstein and Oberstein, and all the nobility of Lower Alsace; Item, the said ten Imperial Cities which depend on the Mayoralty of Haganoc, in the liberty and possession they have enjoyed hitherto, to arise as immediately dependent upon the Roman Empire; so that he cannot pretend any royal superiority over them, but shall rest contented with the rights which appertained to the House of Austria and which by this present Treaty of Pacification are yielded to the Crown of France. In such a manner, nevertheless, that by the preceding Declaration, nothing is intended that shall derogate from the sovereign dominion already hereabove agreed to.

XCIII

Likewise the most Christian King, in compensation of the things made over to him, shall pay the said Archduke Ferdinand Charles three million French livres, in the next following years—1649, 1650, 1651—on St. John Baptist's Day, paying yearly one-third of the said sum at Basle, in good money, to the deputies of the said Archduke.

XCIV

Besides the said sum, the most Christian King shall be obliged to take upon him two-thirds of the debts of the Chamber of Ensisheim without distinction, whether by bill or mortgage, provided they be in due and authentic form and have a special mortgage either on the Provinces to be transferred or on them to be restored; or if there be none, provided they be found on the Books of Accounts agreeing with those of the Receipts of the Chamber of Ensisheim until the end of the year 1632, the said sums having been inserted among the debts of the community and the Chamber having been obliged to pay the interests: And the King making this payment, the Archduke shall be exempted for such a proportion. And that the same may be equitably executed, Commissaries shall be deputed on the one side and the other, immediately after the signing of this present Treaty, who before the payment of the first sum shall agree between them what debts every one has to pay.

XCV

The most Christian King shall restore to the said Archduke, bona fide and without delay, all papers and documents of what nature soever belonging to the lands which are to be surrendered to him, even as many as shall be found in the Chancery of the Government and Chamber of Ensisheim, or of Breisach, or in the records of officers, towns and castles possessed by his arms.

XCVI

If those documents be public and concern in common and jointly the lands yielded to the King, the Archduke shall receive authentic copies of them, at what time and as often as he shall demand them.

XCVII

Item, For fear the differences arisen between the Dukes of Savoy and Mantua touching Monferrato [Montserrat] and terminated by the Emperor Ferdinand and Lewis XIII, fathers to their Majesties, should revive some time or other to the damage of Christianity; it has been agreed, That the Treaty of Cherasco [Chérasque—Cheras] of the 6th of April 1631, with the execution thereof which ensued in Monferrato, shall continue firm forever, with all its Articles: Pignerol, and its appurtenances, being nevertheless excepted, concerning which there has been a decision between his most Christian Majesty and the Duke of Savoy, and which the King of France and his Kingdom have purchased by particular Treaties that shall remain firm and stable as to what concerns the transferring or resigning of that place and its appurtenances. But if the said particular Treaties contain anything which may trouble the Peace of the Empire and excite new commotions in Italy, after the present war which is now on foot in that Province shall be at an end, they shall be looked upon as void and of no effect; the said cession continuing nevertheless inviolable, as also the other conditions agreed to, in favour of the Duke of Savoy as well as the most Christian King: For which reason their Imperial and most Christian Majesties promise reciprocally that in all other things relating to the said Treaty of Cherasco and its execution, and particularly to Albe, Trin and their territories, and the other places, they never shall contravene them either directly or indirectly by the way of right or in fact; and that they neither shall succour nor countenance the offender, but rather by their common authority shall endeavour that none violate them under any pretence whatsoever; considering that the most Christian King has declared, That he was highly obliged to advance the execution of the said Treaty, and even to maintain it by arms; that above all things the said Lord, the Duke of Savoy, notwithstanding the clauses abovementioned, shall be always maintained in the peaceable possession of Trin and Albe, and other places, which have been allowed and assigned him by the said Treaty and by the investiture which ensued thereon of the Duchy of Monferrato.

XCVIII

And to the end that all differences be extirpated and rooted out between these same Dukes, his most Christian Majesty shall cause to be paid to the said Lord, the Duke of Mantua, four hundred and ninety-four thousand crowns, which the late King of blessed memory, Lewis XIII, had promised to pay to him on the Duke of Savoy's discount; who by this means shall together with his heirs and successors be discharged from this obligation and secured from all demands which might be made upon him of the said sum by the Duke of Mantua or his successors; so that for the future neither the Duke of Savoy nor his heirs and successors shall receive any vexation or trouble from the Duke of Mantua, his heirs and successors, upon this subject or under this pretence.

XCIX

Who hereafter, with the authority and consent of their Imperial and most Christian Majesties, by virtue of this solemn Treaty of Peace, shall have no Action for this account against the Duke of Savoy or his heirs and successors.

C

His Imperial Majesty, at the modest request of the Duke of Savoy, shall together with the investiture of the ancient fiefs and states which the late Ferdinand II of blessed memory granted to the Duke of Savoy, Victor Amadeus, also grant him the investiture of the places, lordships, states and all other rights of Monferrato, with their appurtenances, which have been surrendered to him by virtue of the abovesaid Treaty of Cherasco, and the execution thereof which ensued; as also of the fiefs of New Monsort, of Sine, Monchery and Castelles, with their appurtenances, according to the Treaty of Acquisition made by the said Duke Victor Amadeus, the 13th of October 1634, and conformable to the concessions or permissions and the approbation of his Imperial Majesty; with a confirmation also of all the privileges which have been hitherto granted to the Dukes of Savoy, when and as often as the Duke of Savoy shall request and demand it.

CI

Item, It has been agreed, That the Duke of Savoy, his heirs and successors shall no ways be troubled or called to an account by his Imperial Majesty, upon account of the right of sovereignty they have over the fiefs of Rocheveran, Olme and Casoles, and their appurtenances, which do not in the least depend on the Roman Empire, and that all donations and investitures of the said fiefs being revoked and annulled, the Duke shall be maintained in his possession as rightful Lord and, if need be, reinstated: For the same reason, his vassal the Count of Verrue shall be reinstated in the same fiefs of Olme and Casoles, in possession of the fourth part of Rocheveran and in all his revenues.

CII

Item, It is Agreed, That his Imperial Majesty shall restore to the Counts Clement and John, sons of Count Charles Cachéran, and to his grandsons by his son Octavian the whole fief of la Roche d'Arazy, with its appurtenances and dependencies, without any obstacle whatever.

CIII

The Emperor shall likewise declare, That within the investiture of the Duchy of Mantua are comprehended the Castles of Reygioli and Luzzare, with their territories and dependencies, the possession whereof the Duke of Guastalla shall be obliged to render to the Duke of Mantua, reserving to himself, nevertheless, the right to an annual pension of six thousand crowns, which he pretends to and for which he may sue the Duke before his Imperial Majesty.

CIV

As soon as the Treaty of Peace shall be signed and sealed by the Plenipotentiaries and Ambassadors, all hostilities shall cease and all Parties shall study immediately to put in execution what has been agreed to; and, that the same may be the better and quicker accomplished, the Peace shall be solemnly published the day after the signing thereof in the usual form at the crosses of the Cities of Münster and of Osnabrück. That when it shall be known that the signing has been made in these two places, divers couriers shall presently be sent to the generals of the armies, to acquaint them that the Peace is concluded, and take care that the generals choose a day on which shall be made on all sides a cessation of arms and hostilities for the publishing of the Peace in the army; and that command be given to all and each of the chief officers, military and civil, and to the governors of fortresses to abstain for the future from all acts of hostility: And if it happen that anything be attempted or actually innovated after the said publication, the same shall be forthwith repaired and restored to its former state.

CV

The Plenipotentiaries on all sides shall agree among themselves, between the conclusion and the ratification of the Peace, upon the ways, time and securities which are to be taken for the restitution of places and for the disbanding of troops; of that both Parties may be assured, that all things agreed to shall be sincerely accomplished.

CVI

The Emperor above all things shall publish an Edict throughout the Empire and strictly enjoin all who by these Articles of Pacification are obliged to restore or do anything else, to obey it promptly and without tergiversation, between the signing and the ratifying of this present Treaty; commanding as well the Directors, as Governors of the Militia of the Circles, to hasten and finish the restitution to be made to everyone in conformity to those Conventions, when the same are demanded. This Clause is to be inserted also in the Edicts, That whereas the Directors of the Circles, or the Governors of the Militia of the Circles, in matters that concern themselves are esteemed less capable of executing this affair in this or the like case and, likewise, if the Directors and Governors of the Militia of the Circles refuse this commission, the Directors of the neighbouring Circle or the Governors of the Militia of the Circles shall exercise the function and officiate in the execution of these restitutions in the other Circles, at the instance of the Parties concerned.

CVII

If any of those who are to have something restored to them suppose that the Emperor's Commissaries are necessary to be present at the execution of some restitution (which is left to their choice) they shall have them. In which case, that the effect of the things agreed on may be the less hindered, it shall be permitted as well to those who restore as to those to whom restitution is to be made to nominate two or three Commissaries immediately after the signing of the Peace, of whom his Imperial Majesty shall choose

two, one of each religion and one of each party, whom he shall enjoin to accomplish without delay all that which ought to be done by virtue of this present Treaty. If the restorers have neglected to nominate commissioners, his Imperial Majesty shall choose one from those nominated by those to whom restitution is to be made and another as he shall think fit (observing, nevertheless, in all cases the difference of religion, that an equal number be put on each side) from among those whom the party to which somewhat is to be restored shall have nominated, to whom he shall commit the commission of executing it, notwithstanding all exceptions made to the contrary; and for those who pretend to restitutions, they are to intimate to the restorers the tenor of these Articles immediately after the conclusion of the Peace.

CVIII

Finally, That all and every one, whether States, commonalities or private men, either ecclesiastical or secular, who by virtue of this Transaction and its general Articles or by the express and special disposition of any of them are obliged to restore, transfer, give, do or execute anything, shall be bound forthwith after the publication of the Emperor's Edicts, and after notification given, to restore, transfer, give, do or execute the same without any delay or exception, without evading any general or particular clause contained in the preceding Amnesty and without any exception and fraud as to what they are obliged unto.

CIX

That none, either officer or soldier in garrisons or any other whatsoever, shall oppose execution by the Directors and Governors of the Militia of the Circles or by the Commissaries, but they shall rather promote the execution; and the said executors shall be permitted to use force against such as shall endeavour to obstruct the execution in what manner soever.

CX

Moreover, all prisoners on the one side and the other, without any distinction of the gown or the sword, shall be released after the manner it has been covenanted or as shall be agreed between the generals of the armies, with his Imperial Majesty's approbation.

CXI

The restitution being made pursuant to the Articles of Amnesty and Grievances, the prisoners being released, all the soldiery of the garrisons, as well the Emperor's and his allies, as the most Christian King's, the Landgrave of Hesse's and their allies and adherents, or by whom they may have been put in, shall be drawn out at the same time, without any damage, exception or delay, from the cities of the Empire and all other places which are to be restored.

CXII

That the very places, cities, towns, boroughs, villages, castles, fortresses and forts which have been possessed and retained, as well in the Kingdom of Bohemia and other countries of the Empire and hereditary dominions of the House of Austria as in the other Circles of the Empire, by one or the other army, or have been surrendered by composition; shall be restored without delay to their former and lawful possessors and lords, whether they be mediately or immediately States of the Empire, ecclesiastical or secular, comprehending therein also the Free Nobility of the Empire: And they shall be left at their own free disposal, either according to right and custom or according to the force of this present Treaty which they ought to have, notwithstanding all donations, enfeoffments, concessions (except they have been made by the free will of some State), bonds for redeeming of prisoners or to prevent burnings and pillages, or such other like titles acquired to the prejudice of the former and lawful masters and possessors. Let also all contracts, bargains and all exceptions contrary to the said restitution cease, all which are to be esteemed void; saving nevertheless such things as have been otherwise agreed on in the preceding Articles touching the satisfaction to made to his most Christian Majesty, as also some concessions and equivalent compensations granted to the Electors and Princes of the Empire. That neither the mention of the Catholic King nor the quality of the Duke of Lorraine, given to Duke Charles in the Treaty between the Emperor and Sweden, and much less the title of Landgrave of Alsace, given to the Emperor, shall be any prejudice to the most Christian King. That also which has been agreed touching the satisfaction to be made to the Swedish troops shall have no effect in respect to his Majesty.

CXIII

And that this restitution of possessed places, as well by his Imperial Majesty as the most Christian King, and the allies and adherents of the one and the other Party, shall be reciprocally and bona fide executed.

CXIV

That the records, writings, documents and other movables be also restored; as likewise the cannon found at the taking of the places and which are still in being, but they shall be allowed to carry off with them, or cause to be carried off, such as have been brought thither from other parts after the taking of the places, or have been taken in battles, with all the carriages of war, and what belongs thereunto.

CXV

That the inhabitants of each place shall be obliged, when the soldiers and garrisons draw out, to furnish them without money the necessary wagons, horses, boats and provisions to carry off all things to the appointed places in the Empire; which wagons, horses and boats the governors of the garrisons and the captains of the withdrawing soldiers shall restore without any fraud or deceit. The inhabitants of the States shall free and relieve each other of this trouble of carrying the things from one territory to the other, until they arrive at the

appointed place in the Empire; and the governors or other officers shall not be allowed to bring with him or them the lent wagons, horses and boats, nor any other thing they are accommodated with, out of the limits they belong unto, much less out of those of the Empire.

CXVI

That the places which have been restored, as well maritime as frontiers, or in the heart of the country, shall from henceforth and forever be exempted from all garrisons introduced during the wars, and left (without prejudice in other things to every one's right) at the full liberty and disposal of their masters.

CXVII

That it shall not for the future or at present prove to the damage and prejudice of any town that has been taken and kept by the one or other Party; but that all and every one of them, with their citizens and inhabitants, shall enjoy as well the general benefit of the Amnesty, as the rest of this Pacification. And for the remainder of their rights and privileges, ecclesiastical and secular, which they enjoyed before these troubles, they shall be maintained therein; save, nevertheless the rights of sovereignty and what depend thereon for the lords to whom they belong.

CXVIII

Finally, that the troops and armies of all those who are making war in the Empire shall be disbanded and discharged; with each party only maintaining as many men in his own dominion as he shall judge necessary for his security.

CXIX

The Ambassadors and Plenipotentiaries of the Emperor, of the King and of the States of the Empire promise respectively, one to the other, to cause the Emperor, the most Christian King, the Electors of the Holy Roman Empire and the Princes and States to agree and ratify the Peace which has been concluded in this manner, and by general consent; and so infallibly to order it that the solemn acts of ratification be presented at Minister and mutually and in good form exchanged within the term of eight weeks, to reckon from the day of signing.

CXX

For the greater firmness of all and every one of these Articles, this present Transaction shall serve for a perpetual law and established sanction of the Empire, to be inserted like other fundamental laws and constitutions of the Empire in the Acts of the next Diet of the Empire, and the Imperial Capitulation; binding no less the absent than the present, the ecclesiastical than secular, whether they be States of the Empire or not: Insomuch as that it shall be a prescribed Rule, perpetually to be followed, as well by the Imperial

Counsellors and officers, as those of other lords, and all judges and officers of courts of justice.

CXXI

That it never shall be alleged, allowed or admitted that any canonical or civil law, any general or particular decrees of councils, any privileges, any indulgences, any edicts, any commissions, inhibitions, mandates, decrees, prescripts, suspensions of law, judgments pronounced at any time, adjudications, capitulations of the Emperor and other rules and exceptions of religious orders, past or future protestations, contradictions, appeals, investitures, transactions, oaths, renunciations, contracts and, much less, the Edict of 1629, the Transaction of Prague, with its appendices, the Concordats with the Popes, the Interims of the year 1548 or any other politic statutes or ecclesiastical decrees, dispensations, absolutions, or any other exceptions, under what pretence or colour they can be invented, shall take place against this Convention or any of its Clauses and Articles, neither shall any inhibitory or other processes or commissions be ever allowed to the plaintiff or defendant.

CXXII

That he who by his assistance or counsel shall contravene this Transaction of public peace, who shall oppose its execution and the abovesaid restitution or who shall have endeavoured, after the restitution has been lawfully made, and without exceeding the manner agreed on before, without a lawful cognizance of the cause and without the ordinary course of justice, to molest those that have been restored, whether ecclesiastical or lay, he shall incur the punishment of being an infringer of the public peace, and sentence shall be given against him according to the Constitutions of the Empire, so that the restitution and reparation may have its full effect.

CXXIII

That nevertheless the concluded Peace shall remain in force, and all Parties in this Transaction shall be obliged to defend and protect all and every Article of this Peace against anyone, without distinction of religion; and if it happens at any point it shall be violated, the offended shall before all things exhort the offender not to come to any hostility, submitting the cause to a friendly composition or the ordinary proceedings of justice.

CXXIV

Nevertheless, if for the space of three years the difference cannot be terminated by any of those means, all and every one of those concerned in this Transaction shall be obliged to join the injured party and to assist him with counsel and force to repel the injury, being first advertised by the injured that gentle means and justice prevailed nothing; but without prejudice, nevertheless, to every one's jurisdiction and the administration of justice conformable to the laws of each Prince and State: And it shall not be permitted to any

State of the Empire to pursue his right by force and arms; but, if any difference has happened or happens for the future, everyone shall try the means of ordinary justice and the contravener shall be regarded as an infringer of the Peace. That which has been determined by sentence of the judge shall be put in execution, without distinction of condition, as the laws of the Empire enjoin touching the execution of arrests and sentences.

CXXV

And that the public peace may be so much the better preserved entire, the Circles shall be renewed; and as soon as any beginnings of troubles are perceived, that which has been concluded in the Constitutions of the Empire touching the execution and preservation of the public peace shall be observed.

CXXVI

And as often as any would march troops through the other territories, this passage shall be done at the charge of him whom the troops belong to, and that without burdening or doing any harm or damage to those whose countries they march through. In a word, all that the Imperial Constitutions determine and ordain touching the preservation of the public peace shall be strictly observed.

CXXVII

In this present Treaty of Peace are comprehended such, who before the exchange of the ratification or in six months after, shall be nominated by general consent, by the one or the other Party; mean time by a common Agreement, the Republic of Venice is therein comprised as Mediatrix of this Treaty. It shall also be of no prejudice to the Dukes of Savoy and Modena or to what they shall act or are now acting in Italy by arms for the most Christian King.

CXXVIII

In testimony of all and each of these things, and for their greater validity, the Ambassadors of their Imperial and most Christian Majesties, and the Deputies in the name of all the Electors, Princes and States of the Empire, sent particularly for this end [the names of the signatories are not reproduced here], with their proper hands and seals have signed and sealed this present Treaty of Peace. Which said Deputies of the several Orders have engaged to procure the ratifications of their superiors in the prefixed time and in the manner it has been covenanted, leaving the liberty to the other Plenipotentiaries of States to sign it, if they think it convenient, and send for the ratifications of their superiors: And that on condition that by the subscription of the abovesaid Ambassadors and Deputies, all and every one of the other States who shall abstain from signing and ratifying the present Treaty, shall be no less obliged to maintain and observe what is contained in this present Treaty of Pacification, than if they had subscribed and ratified it. No protestation or contradiction of the council of direction in

the Roman Empire shall be valid or received in respect to the subscription said Deputies have made.

DONE, PASSED AND CONCLUDED at Minister in Westphalia, the 24th day of October, 1648.

CHAPTER TWO

Paris Convention for the Protection of Industrial Property

Paris, 20 March 1883

INTRODUCTION

This is one of the first international legal instruments on intellectual property. It creates a Union of the country parties for the purposes of protecting industrial inventions by nationals of members. It gives a very wide interpretation of industrial property. Specific industrial properties mentioned include: utility models; industrial designs; trademarks; service marks; trade names; indications of source or appellations of origin; food and beverages, including beer and wines; and agricultural products and flowers. In a way, this Convention saw an early application of the 'nationality principle', in that it provided for the full enjoyment of industrial property protection by nationals of any member state in the countries of all other members of the Union. The privilege is extended to nationals of non-member states resident in a country member.

The Paris Convention regularized the priority arrangements for the registration of patents, industrial design and trademark. The filing of applications for patent, registration of a model, industrial design or trademark in a member country was to be accorded the right of priority in all other countries. Such priority rights are not affected by intervening activities like publication, exploitation of the invention, sale or use of the trademark. The patent itself shall not be held back on grounds that restrictions have been placed on the sale of the patented product or the result of the patented process. Furthermore, third parties cannot claim rights based on personal possession or any other right in respect of the invention or product. The periods of priority vary between six months for industrial designs and trademarks and one year from the day of filing for patents and utility models. Applicants are allowed to make multiple filings and, therefore, get multiple priorities, provided that there is unity of invention or that the invention is one package within the context of the domestic law of the member state. It is possible for the applicant to divide his inventions if the patent application is thought to contain more than one invention.

The inventor or patent owner does not have absolute rights over his invention. It is open to country members to allow the use of the product or process on board vessels flying the flag of other countries of the Union that were in the territory temporarily or accidentally. The patented product or process can be used in the building or operation of

aircraft or land vehicles of other countries of the Union, or their accessories, if they entered accidentally or were there temporarily. More generally, each member of the Union is given the right to pass laws providing for compulsory licences to allow the use of the patented material or process in order to prevent monopolistic abuses, which might result from the exclusive rights conferred by the patent.

The Paris Convention introduced the concept of unions as an exclusive club of signatories to a convention. This Union has an organizational structure with an Assembly of representatives at the apex. An International Bureau, headed by a Director-General, was also created to perform the administrative functions relating to the working of the Convention. The Union has a budget detailing its sources of income and objects of expenditure. It has an Executive Committee, made up of elected members of the Assembly, which sees to the effective co-ordination of Union activity and has relations with other international organizations.

This Convention has seen many revisions and amendments (see below). The most important, and the most recent, is the Stockholm amendment of July 1967. As far as the relations of country members is concerned, the 1967 act replaced the 1883 treaty, which was originally signed in Paris (France), with its intervening revisions.

The Paris Convention was formally amended in Brussels (Belgium) on 14 December 1900, in Washington, DC (USA), on 2 June 1911, in The Hague (Netherlands) on 6 November 1925, in London (United Kingdom) on 2 June 1934, in Lisbon (Portugal) on 31 October 1958 and, finally, in Stockholm (Sweden) on 14 July 1967. The revised Convention then generally came into force on 26 April 1970. By 2005 there were 169 contracting parties.

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY OF 20 MARCH 1883, ETC. (AS AMENDED AND REVISED)*

ARTICLE 1 [ESTABLISHMENT OF THE UNION; SCOPE OF INDUSTRIAL PROPERTY]

1. The countries to which this Convention applies constitute a Union for the protection of industrial property.
2. The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.
3. Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.
4. Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

ARTICLE 2 [NATIONAL TREATMENT FOR NATIONALS OF COUNTRIES OF THE UNION]

1. Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.
2. However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.
3. The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property be expressly reserved.

ARTICLE 3 [SAME TREATMENT FOR CERTAIN CATEGORIES OF PERSONS AS FOR NATIONALS OF COUNTRIES OF THE UNION]

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

ARTICLE 4 [A TO I: PATENTS, UTILITY MODELS, INDUSTRIAL DESIGNS, MARKS, INVENTORS' CERTIFICATES: RIGHT OF PRIORITY. G: PATENTS: DIVISION OF THE APPLICATION]

Section A

1. Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.
2. Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.
3. By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

Section B

Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

Section C

1. The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.
2. These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.
3. If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.
4. A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

Section D

1. Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.
2. These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.
3. The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed,

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

4. No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.
5. Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

Section E

1. Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.
2. Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

Section F

No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

Section G

1. If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.
2. The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

Section H

Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

Section I

1. Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.
2. In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

ARTICLE 4 BIS [PATENTS: INDEPENDENCE OF PATENTS OBTAINED FOR THE SAME INVENTION IN DIFFERENT COUNTRIES]

1. Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.
2. The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.
3. The provision shall apply to all patents existing at the time when it comes into effect.
4. Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.
5. Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

ARTICLE 4 TER [PATENTS: MENTION OF THE INVENTOR IN THE PATENT]

The inventor shall have the right to be mentioned as such in the patent.

ARTICLE 4 QUATER [PATENTS: PATENTABILITY IN CASE OF RESTRICTIONS OF SALE BY LAW]

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

ARTICLE 5 [A: PATENTS: IMPORTATION OF ARTICLES; FAILURE TO WORK OR INSUFFICIENT WORKING; COMPULSORY LICENSES. B: INDUSTRIAL DESIGNS: FAILURE TO WORK; IMPORTATION OF ARTICLES. C: MARKS: FAILURE TO USE; DIFFERENT FORMS; USE BY CO-PROPRIETORS. D: PATENTS, UTILITY MODELS, MARKS, INDUSTRIAL DESIGNS: MARKING]

Section A

1. Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.
2. Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.
3. Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.
4. A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory licence shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.
5. The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.

Section B

The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

Section C

1. If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.
2. Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.
3. Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

Section D

No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

ARTICLE 5 BIS [ALL INDUSTRIAL PROPERTY RIGHTS: PERIOD OF GRACE FOR THE PAYMENT OF FEES FOR THE MAINTENANCE OF RIGHTS; PATENTS: RESTORATION]

1. A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.
2. The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

ARTICLE 5 TER [PATENTS: PATENTED DEVICES FORMING PART OF VESSELS, AIRCRAFT, OR LAND VEHICLES]

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

- 1: the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessel temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;
- 2: the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

**ARTICLE 5 QUATER [PATENTS: IMPORTATION OF
PRODUCTS MANUFACTURED BY A PROCESS PATENTED IN
THE IMPORTING COUNTRY]**

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent with respect to products manufactured in that country.

ARTICLE 5 QUINQUIES [INDUSTRIAL DESIGNS]

Industrial designs shall be protected in all the countries of the Union.

**ARTICLE 6 [MARKS: CONDITIONS OF REGISTRATION;
INDEPENDENCE OF PROTECTION OF SAME MARK IN
DIFFERENT COUNTRIES]**

1. The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.
2. However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.
3. A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

ARTICLE 6 BIS [MARKS: WELL-KNOWN MARKS]

1. The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.
2. A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
3. No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

**ARTICLE 6 *TER* [MARKS: PROHIBITIONS CONCERNING
STATE EMBLEMS, OFFICIAL HALLMARKS AND EMBLEMS
OF INTERGOVERNMENTAL ORGANIZATIONS]**

1.

- (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.
- (b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.
- (c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

2. Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

3.

- (a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated.
Nevertheless such communication is not obligatory in respect of flags of States.
- (b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

4. Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.
5. In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after 6 November 1925.
6. In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.
7. In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before 6 November 1925.
8. Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.
9. The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.
10. The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6 *quinquies*, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

ARTICLE 6 QUATER [MARKS: ASSIGNMENT OF MARKS]

1. When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.
2. The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

**ARTICLE 6 QUINQUIES [MARKS: PROTECTION OF MARKS
REGISTERED IN ONE COUNTRY OF THE UNION IN THE
OTHER COUNTRIES OF THE UNION]**

Section A

1. Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.
2. Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

Section B

Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

- 1: when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
 - 2: when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
 - 3: when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.
- This provision is subject, however, to the application of Article 10 *bis*.

Section C

1. In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.
2. No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

Section D

No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.

Section E

However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.

Section F

The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

ARTICLE 6 SEXIES [MARKS: SERVICE MARKS]

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

ARTICLE 6 SEPTIES [MARKS: REGISTRATION IN THE NAME OF THE AGENT OR REPRESENTATIVE OF THE PROPRIETOR WITHOUT THE LATTER'S AUTHORIZATION]

1. If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.
2. The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.
3. Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

ARTICLE 7 [MARKS: NATURE OF THE GOODS TO WHICH THE MARK IS APPLIED]

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

ARTICLE 7 BIS [MARKS: COLLECTIVE MARKS]

1. The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.
2. Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.
3. Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

ARTICLE 8 [TRADE NAMES]

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

ARTICLE 9 [MARKS, TRADE NAMES: SEIZURE, ON IMPORTATION, ETC., OF GOODS UNLAWFULLY BEARING A MARK OR TRADE NAME]

1. All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.
2. Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.
3. Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.
4. The authorities shall not be bound to effect seizure of goods in transit.
5. If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.
6. If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

**ARTICLE 10 [FALSE INDICATIONS: SEIZURE, ON
IMPORTATION, ETC., OF GOODS BEARING FALSE
INDICATIONS AS TO THEIR SOURCE OR THE IDENTITY OF
THE PRODUCER]**

1. The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.
2. Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

ARTICLE 10 BIS [UNFAIR COMPETITION]

1. The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
3. The following in particular shall be prohibited:
 - 1: all acts of such a nature as to create confusion by any means whatever with the establishment, the goods or the industrial or commercial activities, of a competitor;
 - 2: false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - 3: indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

**ARTICLE 10 TER [MARKS, TRADE NAMES, FALSE
INDICATIONS, UNFAIR COMPETITION: REMEDIES, RIGHT
TO SUE]**

1. The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10 *bis*.
2. They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10 *bis*, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

ARTICLE 11 [INVENTIONS, UTILITY MODELS, INDUSTRIAL DESIGNS, MARKS: TEMPORARY PROTECTION AT CERTAIN INTERNATIONAL EXHIBITIONS]

1. The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.
2. Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.
3. Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

ARTICLE 12 [SPECIAL NATIONAL INDUSTRIAL PROPERTY SERVICES]

1. Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.
2. This service shall publish an official periodical journal. It shall publish regularly:
 - (a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;
 - (b) the reproductions of registered trademarks.

ARTICLE 13 [ASSEMBLY OF THE UNION]

1.
 - (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.
 - (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
2.
 - (a) The Assembly shall:
 - i. deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
 - ii. give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as “the

Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;

- iii. review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
 - iv. elect the members of the Executive Committee of the Assembly;
 - v. review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
 - vi. determine the program and adopt the triennial budget of the Union, and approve its final accounts;
 - vii. adopt the financial regulations of the Union;
 - viii. establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;
 - ix. determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - x. adopt amendments to Articles 13 to 17;
 - xi. take any other appropriate action designed to further the objectives of the Union;
 - xii. perform such other functions as are appropriate under this Convention;
 - xiii. subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

3.

- (a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.
- (b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.

4.

- (a) Each country member of the Assembly shall have one vote.
- (b) One-half of the countries members of the Assembly shall constitute a quorum.
- (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the

date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

5.

(a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavour to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

6. Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

7.

(a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

8. The Assembly shall adopt its own rules of procedure.

ARTICLE 14 [EXECUTIVE COMMITTEE]

1. The Assembly shall have an Executive Committee.

2.

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 16(7)(b), have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

3. The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.
4. In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.

5.

- (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.
- (b) Members of the Executive Committee may be re-elected, but only up to a maximum of two-thirds of such members.
- (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

6.

(a) The Executive Committee shall:

- i. prepare the draft agenda of the Assembly;
- ii. submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;
- iii. approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;
- iv. submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
- v. take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;
- vi. perform such other functions as are allocated to it under this Convention,

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

7.

- (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

8.

- (a) Each country member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one country only.

9. Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

10. The Executive Committee shall adopt its own rules of procedure.

ARTICLE 15 [INTERNATIONAL BUREAU]

1.

- (a) Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.
- (b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.
- (c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

2. The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.

3. The International Bureau shall publish a monthly periodical.

4. The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.

5. The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of industrial property.

6. The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

7.

- (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.

- (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

8. The International Bureau shall carry out any other tasks assigned to it.

ARTICLE 16 [FINANCES]

1.

- (a) The Union shall have a budget.
- (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.
- (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

2. The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

3. The budget of the Union shall be financed from the following sources:

- i. contributions of the countries of the Union;
- ii. fees and charges due for services rendered by the International Bureau in relation to the Union;
- iii. sale of, or royalties on, the publications of the International Bureau concerning the Union;
- iv. gifts, bequests, and subventions;
- v. rents, interests, and other miscellaneous income.

4.

- (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I: 25

Class II: 20

Class III: 15

Class IV: 10

Class V: 5

Class VI: 3

Class VII: 1.

- (b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must

announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

- (c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.
- (d) Contributions shall become due on the first of January of each year.
- (e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.
- (f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

5. The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

6.

- (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.
- (b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.
- (c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

7.

- (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.
- (b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

8. The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

ARTICLE 17 [AMENDMENT OF ARTICLES 13 TO 17]

1. Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.
2. Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.
3. Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

ARTICLE 18 [REVISION OF ARTICLES 1 TO 12 AND 18 TO 30]

1. This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.
2. For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.
3. Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

ARTICLE 19 [SPECIAL AGREEMENTS]

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

**ARTICLE 20 [RATIFICATION OR ACCESSION BY COUNTRIES
OF THE UNION; ENTRY INTO FORCE]**

1.

- (a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.
- (b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:
 - i. to Articles 1 to 12, or
 - ii. to Articles 13 to 17.
- (c) Any country of the Union which, in accordance with subparagraph (b), has excluded from the effects of its ratification or accession one of the two groups of Articles referred to in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

2.

- (a) Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(i), three months after the deposit of the tenth such instrument of ratification or accession.
- (b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(ii), three months after the deposit of the tenth such instrument of ratification or accession.
- (c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs (a) and (b), of each of the two groups of Articles referred to in paragraph (1)(b)(i) and (ii), and subject to the provisions of paragraph (1)(b), Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs (a) and (b), which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)(c), enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

3. With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)(b) enters into force with respect to that country pursuant to paragraph (2)(a), (b), or (c).

ARTICLE 21 [ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE]

1. Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.
2.
 - (a) With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2)(a) or (b); provided that:
 - i. if Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,
 - ii. if Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

- (b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph (a), enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.
3. With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

ARTICLE 22 [CONSEQUENCES OF RATIFICATION OR ACCESSION]

Subject to the possibilities of exceptions provided for in Articles 20(1)(b) and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

ARTICLE 23 [ACCESSION TO EARLIER ACTS]

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

ARTICLE 24 [TERRITORIES]

1. Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.
2. Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.
3.
 - (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General,
 - (b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

ARTICLE 25 [IMPLEMENTATION OF THE CONVENTION ON THE DOMESTIC LEVEL]

1. Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.
2. It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

ARTICLE 26 [DENUNCIATION]

1. This Convention shall remain in force without limitation as to time.
2. Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.
3. Denunciation shall take effect one year after the day on which the Director General has received the notification.
4. The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

ARTICLE 27 [APPLICATION OF EARLIER ACTS]

1. The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of 20 March 1883, and the subsequent Acts of revision.
2.
 - (a) As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of 31 October 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
 - (b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of 2 June 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
 - (c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of 6 November 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).
3. Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)(b)(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

ARTICLE 28 [DISPUTES]

1. Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.
2. Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.
3. Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

ARTICLE 29 [SIGNATURE, LANGUAGES, DEPOSITARY FUNCTIONS]

1.
 - (a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.
 - (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.
 - (c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.
2. This Act shall remain open for signature at Stockholm until 13 January 1968.
3. The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.
4. The Director General shall register this Act with the Secretariat of the United Nations.
5. The Director General shall notify the Governments of all countries the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)(c), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

ARTICLE 30 [TRANSITIONAL PROVISIONS]

1. Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively.
2. Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.
3. As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.
4. Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

[Note: Articles have been given titles to facilitate identification, but there are no titles in the definitive, French-language text. Signatures are not reproduced here.]

CHAPTER THREE

The Berlin Act

Berlin, 26 February 1885

INTRODUCTION

The exigencies of the industrial revolution in Europe and the quest for territories that would yield cheap raw materials, a 'free market' and cheap labour, as well as boost the comparative and competitive standing of individual European countries, resulted in intense struggle and, in some cases, violent competition for territories in Africa. To stem the violence and disorder in the acquisition and maintenance of such territories, the Berlin Conference was arranged by the ambitious and fiery German Chancellor, Otto von Bismarck. The overriding objective of the Conference was to regularize the acquisition and maintenance of colonial possessions in Africa and to allow or enhance the freedom to trade by all European nations and by the USA in Africa, irrespective of their respective colonial holds or nationalities. There were also exhortations on the need to stop the slave trade, especially since the violence associated with it disrupted the exploration and exploitation of raw materials as well as the marketing of industrial goods.

The coastlines of Africa were used by the European states, and seen as such by the Berlin Act, as the starting line of the various territorial acquisitions by the individual states. Any new claims to territory in Africa were to be notified to the state parties. Signatory states were placed under an obligation to establish effective authority in the territories occupied by them, in order to protect freedom of trade and transit as appropriate. All the flags of all European states (and the USA) were to have free access to the coastlines of all territories. There was to be free navigation on the long Congo and Niger rivers. The removal of restraints was not only in regard to physical or legal obstacles, but also to taxes and other fiscal obstacles. Goods of any origin (European or US) were not to be subjected to import and transit duties, except where such taxes might be necessary to cover administrative expenses. Furthermore, exclusive operation or monopoly rights or special favour to trade, to exploit resources in Africa or to navigate on the Rivers Niger and Congo were not to be conferred or accorded to any company or interest in any territory occupied or administered by a state party to the Act.

In many ways, the Berlin Conference and Act can be described as the first multilateral round of trade negotiations with a resulting pact. This is because not only did the Act prescribe future negotiations and revisions (specifically, the tariff duties), but also put into operation in significant terms the modern concepts of most favoured nation and

nationality principles or the nondiscrimination ethos of the General Agreement on Tariffs and Trade/World Trade Organization (GATT/ WTO) system. However, there was an exception—at this ‘Berlin Round’, Africa was not a participant but the subject, and from where the benefits of trade were to be guaranteed to Europe and the USA.

The General Act of the Conference of Berlin was signed by the representatives of 15 Powers on 26 February 1885.

THE BERLIN CONFERENCE: THE GENERAL ACT OF 26 FEBRUARY 1885

GENERAL ACT OF THE CONFERENCE AT BERLIN OF THE
PLENIPOTENTIARIES OF GREAT BRITAIN, AUSTRIA-HUNGARY, BELGIUM,
DENMARK, FRANCE, GERMANY, ITALY, THE NETHERLANDS, PORTUGAL,
RUSSIA, SPAIN, SWEDEN AND NORWAY, TURKEY AND THE UNITED STATES
RESPECTING:

1. freedom of trade in the basin of the Congo;
2. the slave trade;
3. neutrality of the territories in the basin of the Congo;
4. navigation of the Congo;
5. navigation of the Niger; and
6. rules for future occupation on the coast of the African continent

IN THE NAME OF GOD ALMIGHTY.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc, and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the United States of America; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxemburg, etc; His Majesty the King of Portugal and the Algarves, etc; His Majesty the Emperor of all the Russias; His Majesty the King of Sweden and Norway, etc; and His Majesty the Emperor of the Ottomans,

WISHING, in a spirit of good and mutual accord, to regulate the conditions most favourable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean;

BEING DESIROUS, on the other hand, to obviate the misunderstanding and disputes which might in future arise from new acts of occupation (*prises de possession*) on the coast of Africa; and concerned, at the same time, as to the means of furthering the moral and material well-being of the native populations;

HAVE RESOLVED, on the invitation addressed to them by the Imperial Government of Germany, in agreement with the Government of the French Republic, to meet for those purposes in Conference at Berlin, and have appointed as their Plenipotentiaries, to wit:

[Names of plenipotentiaries not listed here.]

Who, being provided with full powers, which have been found in good and due form, have successively discussed and adopted:

1. A Declaration relative to freedom of trade in the basin of the Congo, its embouchures and circumjacent regions, with other provisions connected therewith.
2. A Declaration relative to the slave trade, and the operations by sea or land which furnish slaves to that trade.
3. A Declaration relative to the neutrality of the territories comprised in the Conventional basin of the Congo.
4. An Act of Navigation for the Congo, which, while having regard to local circumstances, extends to this river, its affluents, and the waters in its system (*eaux qui leur sont assimilées*), the general principles enunciated in Articles CVIII and CXVI of the Final Act of the Congress of Vienna, and intended to regulate, as between the Signatory Powers of that Act, the free navigation of the waterways separating or traversing several States—these said principles having since then been applied by agreement to certain rivers of Europe and America, but especially to the Danube, with the modifications stipulated by the Treaties of Paris (1856), of Berlin (1878), and of London (1871 and 1883).
5. An Act of Navigation for the Niger, which, while likewise having regard to local circumstances, extends to this river and its affluents the same principles as set forth in Articles CVIII and CXVI of the Final Act of the Congress of Vienna.
6. A Declaration introducing into international relations certain uniform rules with reference to future occupations on the coast of the African Continent.

And deeming it expedient that all these several documents should be combined in one single instrument, they (the Signatory Powers) have collected them into one General Act, composed of the following Articles:

CHAPTER I DECLARATION RELATIVE TO FREEDOM OF TRADE IN THE BASIN OF THE CONGO, ITS MOUTHS AND CIRCUMJACENT REGIONS, WITH OTHER PROVISIONS CONNECTED THEREWITH

Article I

The trade of all nations shall enjoy complete freedom:

1. In all the regions forming the basin of the Congo and its outlets. This basin is bounded by the watersheds (or mountain ridges) of the adjacent basins, namely, in particular, those of the Niari, the Ogowé, the Schari, and the Nile, on the north; by the eastern watershed line of the affluents of Lake Tanganyika on the east; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries.
2. In the maritime zone extending along the Atlantic Ocean from the parallel situated in 2°30' of south latitude to the mouth of the Logé.

The northern boundary will follow the parallel situated in 2°30' from the coast to the point where it meets the geographical basin of the Congo, avoiding the basin of the Ogowé, to which the provisions of the present Act do not apply.

The southern boundary will follow the course of the Logé to its source, and thence pass eastwards till it joins the geographical basin of the Congo.

3. In the zone stretching eastwards from the Congo Basin, as above defined, to the Indian Ocean from 5 degrees of north latitude to the mouth of the Zambesi in the south, from which point the line of demarcation will ascend the Zambesi to 5 miles above its confluence with the Shiré, and then follow the watershed between the affluents of Lake Nyassa and those of the Zambesi, till at last it reaches the watershed between the waters of the Zambesi and the Congo.

It is expressly recognized that in extending the principle of free trade to this eastern zone the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State this principle shall only be applicable in so far as it is approved by such State. But the Powers agree to use their good offices with the Governments established on the African shore of the Indian Ocean for the purpose of obtaining such approval, and in any case of securing the most favourable conditions to the transit (traffic) of all nations.

Article II

All flags, without distinction of nationality, shall have free access to the whole of the coastline of the territories above enumerated, to the rivers there running into the sea, to all the waters of the Congo and its affluents, including the lakes, and to all the ports situate on the banks of these waters, as well as to all canals which may in future be constructed with intent to unite the watercourses or lakes within the entire area of the territories described in Article I. Those trading under such flags may engage in all sorts of transport, and carry on the coasting trade by sea and river, as well as boat traffic, on the same footing as if they were subjects.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the depositary Government, that of Germany.

Article III

Wares, of whatever origin, imported into these regions, under whatsoever flag, by sea or river, or overland, shall be subject to no other taxes than such as may be levied as fair compensation for expenditure in the interests of trade, and which for this reason must be equally borne by the subjects themselves and by foreigners of all nationalities. All differential dues on vessels, as well as on merchandise, are forbidden.

Article IV

Merchandise imported into these regions shall remain free from import and transit dues.

The Powers reserve to themselves to determine after the lapse of twenty years whether this freedom of import shall be retained or not.

Article V

No Power which exercises or shall exercise sovereign rights in the abovementioned regions shall be allowed to grant therein a monopoly or favour of any kind in matters of trade.

Foreigners, without distinction, shall enjoy protection of their persons and property, as well as the right of acquiring and transferring movable and immovable possessions; and national rights and treatment in the exercise of their professions.

PROVISIONS RELATIVE TO PROTECTION OF THE NATIVES, OF MISSIONARIES AND TRAVELLERS, AS WELL AS RELATIVE TO RELIGIOUS LIBERTY

Article VI

All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.

Christian missionaries, scientists and explorers, with their followers, property and collections, shall likewise be the objects of especial protection.

Freedom of conscience and religious toleration are expressly guaranteed to the natives, no less than to subjects and to foreigners. The free and public exercise of all forms of divine worship, and the right to build edifices for religious purposes, and to organize religious missions belonging to all creeds, shall not be limited or fettered in any way whatsoever.

POSTAL REGIME

Article VII

The Convention of the Universal Postal Union, as revised at Paris 1 June 1878, shall be applied to the Conventional basin of the Congo.

The Powers who therein do or shall exercise rights of sovereignty or Protectorate engage, as soon as circumstances permit them, to take the measures necessary for the carrying out of the preceding provision.

RIGHT OF SURVEILLANCE VESTED IN THE INTERNATIONAL NAVIGATION COMMISSION OF THE CONGO

Article VIII

In all parts of the territory had in view by the present Declaration, where no Power shall exercise rights of sovereignty or Protectorate, the International Navigation Commission of the Congo, instituted in virtue of Article XVII, shall be charged with supervising the application of the principles proclaimed and perpetuated (*consacrés*) by this Declaration.

In all cases of difference arising relative to the application of the principles established by the present Declaration, the Governments concerned may agree to appeal to the good offices of the International Commission, by submitting to it an examination of the facts which shall have occasioned these differences.

CHAPTER II DECLARATION RELATIVE TO THE SLAVE TRADE

Article IX

Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers, and seeing also that the operations, which, by sea or land, furnish slaves to trade, ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the Conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it.

CHAPTER III DECLARATION RELATIVE TO THE NEUTRALITY OF THE TERRITORIES COMPRISED IN THE CONVENTIONAL BASIN OF THE CONGO

Article X

In order to give a new guarantee of security to trade and industry, and to encourage, by the maintenance of peace, the development of civilization in the countries mentioned in Article I, and placed under the free trade system, the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to respect the neutrality of the territories, or portions of territories, belonging to the said countries, comprising therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of sovereignty or Protectorate over those territories, using their option of proclaiming themselves neutral, shall fulfil the duties which neutrality requires.

Article XI

In case a Power exercising rights of sovereignty or Protectorate in the countries mentioned in Article I, and placed under the free trade system, shall be involved in a war, then the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to this Power and comprised in the Conventional free trade zone shall, by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a non-belligerent State, the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralized, and from using them as a base for warlike operations.

Article XII

In case a serious disagreement originating on the subject of, or in the limits of, the territories mentioned in Article I, and placed under the free trade system, shall arise between any Signatory Powers of the present Act, or the Powers which may become parties to it, these Powers bind themselves, before appealing to arms, to have recourse to the mediation of one or more of the friendly Powers.

In a similar case the same Powers reserve to themselves the option of having recourse to arbitration.

CHAPTER IV ACT OF NAVIGATION FOR THE CONGO

Article XIII

The navigation of the Congo, without excepting any of its branches or outlets, is, and shall remain, free for the merchant ships of all nations equally, whether carrying cargo or ballast, for the transport of goods or passengers. It shall be regulated by the provisions of this Act of Navigation, and by the rules to be made in pursuance thereof.

In the exercise of this navigation the subjects and flags of all nations shall in all respects be treated on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Congo, and vice versa, but also for the great and small coasting trade, and for boat traffic on the course of the river.

Consequently, on all the course and mouths of the Congo there will be no distinction made between the subjects of riverain States and those of non-riverain States, and no exclusive privilege of navigation will be conceded to companies, corporations or private persons whatsoever.

These provisions are recognized by the Signatory Powers as becoming henceforth a part of international law.

Article XIV

The navigation of the Congo shall not be subject to any restriction or obligation which is not expressly stipulated by the present Act. It shall not be exposed to any landing dues, to

any station or depot tax, or to any charge for breaking bulk, or for compulsory entry into port.

In all the extent of the Congo the ships and goods in process of transit on the river shall be submitted to no transit dues, whatever their starting place or destination. There shall be levied no maritime or river toll based on the mere

fact of navigation, nor any tax on goods aboard of ships. There shall only be levied taxes or duties having the character of an equivalent for services rendered to navigation itself, to wit:

1. Harbour dues on certain local establishments, such as wharves, warehouses, etc, if actually used.

The tariff of such dues shall be framed according to the cost of constructing and maintaining the said local establishments; and it will be applied without regard to whence vessels come or what they are loaded with.

2. Pilot dues for those stretches of the river where it may be necessary to establish properly qualified pilots.

The tariff of these dues shall be fixed and calculated in proportion to the service rendered.

3. Charges raised to cover technical and administrative expenses incurred in the general interest of navigation, including lighthouse, beacon and buoy duties.

The lastmentioned dues shall be based on the tonnage of vessels as shown by the ship's papers, and in accordance with the rules adopted on the Lower Danube.

The tariffs by which the various dues and taxes enumerated in the three preceding paragraphs shall be levied shall not involve any differential treatment, and shall be officially published at each port.

The Powers reserve to themselves to consider, after the lapse of five years, whether it may be necessary to revise, by common accord, the abovementioned tariffs.

Article XV

The affluents of the Congo shall in all respects be subject to the same rules as the river of which they are tributaries.

And the same rules shall apply to the streams and river as well as the lakes and canals in the territories defined in paragraphs 2 and 3 of Article I.

At the same time the powers of the International Commission of the Congo will not extend to the said rivers, streams, lakes and canals, unless with the assent of the States under whose sovereignty they are placed. It is well understood, also, that with regard to the territories mentioned in paragraph 3 of Article I the consent of the Sovereign States owning these territories is reserved.

Article XVI

The roads, railways or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfection of the river route on certain sections of the course of the Congo, its affluents, and other waterways placed under a similar system, as laid down in Article XV, shall be considered in their quality of means

of communication as dependencies of this river, and as equally open to the traffic of all nations.

And, as on the river itself, so there shall be collected on these roads, railways and canals only tolls calculated on the cost of construction, maintenance and management, and on the profits due to the promoters.

As regards the tariff of these tolls, strangers and the natives of the respective territories shall be treated on a footing of perfect equality.

Article XVII

There is instituted an International Commission, charged with the execution of the provisions of the present Act of Navigation.

The Signatory Powers of this Act, as well as those who may subsequently adhere to it, may always be represented on the said Commission, each by one delegate. But no delegate shall have more than one vote at his disposal, even in the case of his representing several Governments.

This delegate will be directly paid by his Government. As for the various agents and employees of the International Commission, their remuneration shall be charged to the amount of the dues collected in conformity with paragraphs 2 and 3 of Article XIV.

The particulars of the said remuneration, as well as the number, grade and powers of the agents and employees, shall be entered in the returns to be sent yearly to the Governments represented on the International Commission.

Article XVIII

The members of the International Commission, as well as its appointed agents, are invested with the privilege of inviolability in the exercise of their functions. The same guarantee shall apply to the offices and archives of the Commission.

Article XIX

The International Commission for the Navigation of the Congo shall be constituted as soon as five of the Signatory Powers of the present General Act shall have appointed their delegates. And, pending the constitution of the Commission, the nomination of these delegates shall be notified to the Imperial Government of Germany, which will see to it that the necessary steps are taken to summon the meeting of the Commission.

The Commission will at once draw up navigation, river police, pilot and quarantine rules.

These rules, as well as the tariffs to be framed by the Commission, shall, before coming into force, be submitted for approval to the Powers represented on the Commission. The Powers interested will have to communicate their views with as little delay as possible.

Any infringement of these rules will be checked by the agents of the International Commission wherever it exercises direct authority, and elsewhere by the riverain Power.

In the case of an abuse of power, or of an act of injustice, on the part of any agent or employee of the International Commission, the individual who considers himself to be

aggrieved in his person or rights may apply to the consular agent of his country. The latter will examine his complaint, and if he finds it *prima facie* reasonable he will then be entitled to bring it before the Commission. At his instance then, the Commission, represented by at least three of its members, shall, in conjunction with him, inquire into the conduct of its agent or employee. Should the consular agent look upon the decision of the Commission as raising questions of law (*objections de droit*), he will report on the subject to his Government, which may then have recourse to the Powers represented on the Commission, and invite them to agree as to the instructions to be given to the Commission.

Article XX

The International Commission of the Congo, charged in terms of Article XVII with the execution of the present Act of Navigation, shall in particular have power:

1. To decide what works are necessary to assure the navigability of the Congo in accordance with the needs of international trade.

On those sections of the river where no Power exercises sovereign rights the International Commission will itself take the necessary measures for assuring the navigability of the river.

On those sections of the river held by a Sovereign Power the International Commission will concert its action (*s'entendra*) with the riparian authorities.

2. To fix the pilot tariff and that of the general navigation dues as provided for by paragraphs 2 and 3 of Article XIV.

The tariffs mentioned in the first paragraph of Article XIV shall be framed by the territorial authorities within the limits prescribed in the said Article.

The levying of the various dues shall be seen to by the international or territorial authorities on whose behalf they are established.

3. To administer the revenue arising from the application of the preceding paragraph (2).
4. To superintend the quarantine establishment created in virtue of Article XXIV.
5. To appoint officials for the general service of navigation, and also its own proper employees.

It will be for the territorial authorities to appoint sub-inspectors on sections of the river occupied by a Power, and for the International Commission to do so on the other sections.

The riverain Power will notify to the International Commission the appointment of sub-inspectors, and this Power will undertake the payment of their salaries.

In the exercise of its functions, as above defined and limited, the International Commission will be independent of the territorial authorities.

Article XXI

In the accomplishment of its task the International Commission may, if need be, have recourse to the war vessels of the Signatory Powers of this Act, and of those who may in future accede to it, under reserve, however, of the instructions which may be given to the commanders of these vessels by their respective Governments.

Article XXII

The war vessels of the Signatory Powers of this Act that may enter the Congo are exempt from payment of the navigation dues provided for in paragraph 3 of Article XIV; but, unless their intervention has been called for by the International Commission or its agents, in terms of the preceding Article, they shall be liable to the payment of the pilot or harbour dues which may eventually be established.

Article XXIII

With the view of providing for the technical and administrative expenses which it may incur, the International Commission created by Article XVII may, in its own name, negotiate loans to be exclusively guaranteed by the revenues raised by the said Commission.

The decisions of the Commission dealing with the conclusion of a loan must be come to by a majority of two-thirds. It is understood that the Governments represented on the Commission shall not in any case be held as assuming any guarantee, or as contracting any engagement or joint liability (*solidarité*) with respect to the said loans, unless under special Conventions concluded by them to this effect.

The revenue yielded by the dues specified in paragraph 3 of Article XIV shall bear, as a first charge, the payment of the interest and sinking fund of the said loans, according to agreement with the lenders.

Article XXIV

At the mouth of the Congo there shall be founded, either on the initiative of the riverain Powers, or by the intervention of the International Commission, a quarantine establishment for the control of vessels passing out of as well as into the river.

Later on the Powers will decide whether and on what conditions a sanitary control shall be exercised over vessels engaged in the navigation of the river itself.

Article XXV

The provisions of the present Act of Navigation shall remain in force in time of war. Consequently all nations, whether neutral or belligerent, shall be always free, for the purposes of trade, to navigate the Congo, its branches, affluents and mouths, as well as the territorial waters fronting the embouchure of the river.

Traffic will similarly remain free, despite a state of war, on the roads, railways, lakes and canals mentioned in Articles XV and XVI.

There will be no exception to this principle, except in so far as concerns the transport of articles intended for a belligerent, and in virtue of the law of nations regarded as contraband of war.

All the works and establishments created in pursuance of the present Act, especially the tax collecting offices and their treasuries, as well as the permanent service staff of these establishments, shall enjoy the benefits of neutrality (*places sous le régime de la neutralité*), and shall, therefore, be respected and protected by belligerents.

CHAPTER V ACT OF NAVIGATION FOR THE NIGER

Article XXVI

The navigation of the Niger, without excepting any of its branches and outlets, is and shall remain entirely free for the merchant ships of all nations equally, whether with cargo or ballast, for the transportation of goods and passengers. It shall be regulated by the provisions of this Act of Navigation, and by the rules to be made in pursuance of this Act.

In the exercise of this navigation the subjects and flags of all nations shall be treated, in all circumstances, on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Niger, and vice versa, but for the great and small coasting trade, and for boat trade on the course of the river.

Consequently, on all the course and mouths of the Niger there will be no distinction made between the subjects of the riverain States and those of non-riverain States; and no exclusive privilege of navigation will be conceded to companies, corporations or private persons.

These provisions are recognized by the Signatory Powers as forming henceforth a part of international law.

Article XXVII

The navigation of the Niger shall not be subject to any restriction or obligation based merely on the fact of navigation.

It shall not be exposed to any obligation in regard to landing-station or depot, or for breaking bulk, or for compulsory entry into port.

In all the extent of the Niger the ships and goods in process of transit on the river shall be submitted to no transit dues, whatever their starting place or destination.

No maritime or river toll shall be levied based on the sole fact of navigation, nor any tax on goods on board of ships. There shall only be collected taxes or duties which shall be an equivalent for services rendered to navigation itself. The tariff of these taxes or duties shall not warrant any differential treatment.

Article XXVIII

The affluents of the Niger shall be in all respects subject to the same rules as the river of which they are tributaries.

Article XXIX

The roads, railways or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfections of the river route on certain sections of the course of the Niger, its affluents, branches and outlets, shall be considered,

in their quality of means of communication, as dependencies of this river, and as equally open to the traffic of all nations.

And, as on the river itself, so there shall be collected on these roads, railways and canals only tolls calculated on the cost of construction, maintenance and management, and on the profits due to the promoters.

As regards the tariff of these tolls, strangers and the natives of the respective territories shall be treated on a footing of perfect equality.

Article XXX

Great Britain undertakes to apply the principles of freedom of navigation enunciated in Articles XXVI, XXVII, XXVIII and XXIX on so much of the waters of the Niger, its affluents, branches and outlets, as are or may be under her sovereignty or protection.

The rules which she may establish for the safety and control of navigation shall be drawn up in a way to facilitate, as far as possible, the circulation of merchant ships.

It is understood that nothing in these obligations shall be interpreted as hindering Great Britain from making any rules of navigation whatever which shall not be contrary to the spirit of these engagements.

Great Britain undertakes to protect foreign merchants and all the trading nationalities on all those portions of the Niger which are or may be under her sovereignty or protection as if they were her own subjects, provided always that such merchants conform to the rules which are or shall be made in virtue of the foregoing.

Article XXXI

France accepts, under the same reservations, and in identical terms, the obligations undertaken in the preceding Articles in respect of so much of the waters of the Niger, its affluents, branches and outlets, as are or may be under her sovereignty or protection.

Article XXXII

Each of the other Signatory Powers binds itself in the same way in case it should ever exercise in the future rights of sovereignty or protection over any portion of the waters of the Niger, its affluents, branches or outlets.

Article XXXIII

The arrangements of the present Act of Navigation will remain in force in time of war. Consequently, the navigation of all neutral or belligerent nationals will be in all time free for the usages of commerce on the Niger, its branches, its affluents, its mouths and outlets, as well as on the territorial waters opposite the mouths and outlets of that river.

The traffic will remain equally free in spite of a state of war on the roads, railways and canals mentioned in Article XXIX.

There will be an exception to this principle only in that which relates to the transport of articles destined for a belligerent, and considered, in virtue of the law of nations, as articles contraband of

**CHAPTER VI DECLARATION RELATIVE TO THE ESSENTIAL
CONDITIONS TO BE OBSERVED IN ORDER THAT NEW
OCCUPATIONS ON THE COASTS OF THE AFRICAN
CONTINENT MAY BE HELD TO BE EFFECTIVE**

Article XXXIV

Any Power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

Article XXXV

The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

CHAPTER VII GENERAL DISPOSITIONS

Article XXXVI

The Signatory Powers of the present General Act reserve to themselves to introduce into it subsequently, and by common accord, such modifications and improvements as experience may show to be expedient.

Article XXXVII

The Powers who have not signed the present General Act shall be free to adhere to its provisions by a separate instrument.

The adhesion of each Power shall be notified in diplomatic form to the Government of the German Empire, and by it in turn to all the other signatory or adhering Powers.

Such adhesion shall carry with it full acceptance of all the obligations as well as admission to all the advantages stipulated by the present General Act.

Article XXXVIII

The present General Act shall be ratified with as little delay as possible, the same in no case to exceed a year.

It will come into force for each Power from the date of its ratification by that Power.

Meanwhile, the Signatory Powers of the present General Act bind themselves not to take any steps contrary to its provisions.

Each Power will address its ratification to the Government of the German Empire, by which notice of the fact will be given to all the other Signatory Powers of the present Act.

The ratifications of all the Powers will be deposited in the archives of the Government of the German Empire. When all the ratifications shall have been sent in, there will be drawn up a Deposit Act, in the shape of a Protocol, to be signed by the representatives of all the Powers which have taken part in the Conference of Berlin, and of which a certified copy will be sent to each of those Powers.

IN TESTIMONY WHEREOF the several plenipotentiaries have signed the present General Act and have affixed thereto their seals.

DONE at Berlin, the 26th day of February, 1885

CHAPTER FOUR

Berne Convention for the Protection of Literary and Artistic Works

Berne, 9 September 1886

INTRODUCTION

Known for the Swiss city where it was first signed, this is one of the series of treaties entered into mainly by European countries and their overseas territories in the last quarter of the 19th century. It was preceded by the Paris Convention (see above) on industrial property and followed by a series of revisions and amendments over the following century. The last amendment to the Berne Convention was negotiated in September 1979. The Convention relies on the WIPO for its administration.

The works protected include production in literary, scientific and artistic works. For the purposes of this Convention, the means of expression of the work is not relevant. Known means include books and other writings, and largely oral presentations, such as sermons, lectures and addresses, but not necessarily political speeches or advocacy in legal proceedings. Other means are musical, dramatic, choreographic and cinematographic, and include paintings, architecture, sculpture, other works of art, illustrations, maps, plans and three-dimensional works relating to construction and geography. There does not appear to be any definitive limitation on the means of expressing the art or literary work. It is the substance that matters most. Country parties to the Convention are free to make laws that would specify means of expressing the work that would merit protection. It is also left to individual countries to pass laws relating to the status and protection of official material, such as legislation and administrative documents. News and press information are clearly not protected by this Convention.

The protection is individual based. Authors would have their works protected if they are citizens of countries that are party to the Berne Convention. Authors who are not nationals of a country member may have their work protected if the work was first published in a country member or published in a country member at the same time as it was published in a non-member country. Residence in a country member is also sufficient for protection of work on the basis of an assumed assimilation. Authors of works of architecture or other works of art erected or incorporated in a country that is a member of the Convention's Union shall be protected. The protection is Union wide and no other formal procedures are required in a country other than the country of origin of

the author. The protection runs the whole of the life of the author and 50 years after his or her death. In case of cinematographic works and pseudonymous work, country members may opt to protect for 50 years after the work was first published.

The protections operate on the principle of nationality and reciprocity. The protections accorded authors of a country member by the country of origin shall not be less than that accorded non-citizen authors or residents. At the same time, if inadequate protection or no protection is accorded non-citizen authors or residents by a country that is not a party to the Convention, the latter country is entitled not to accord protection to the works of authors from the former country. Individual countries are to pass legislation that make for various enforcement forms, especially the seizure of works that infringe the rights conferred by this Convention.

Even within the period of protection it is possible to have free use of otherwise protected works. Quotations and excerpts are allowed, provided that the work has been published, the extract is fair practice and justifiable in the context of the purpose of the extract. Works may be utilized for academic purposes and illustrations in publications, if that is required by fair practice and that authorship is acknowledged. Other forms of free use are to be determined by domestic legislation. Developing countries, if they make appropriate declaration, may be granted exemptions or less stringent obligations, especially relating to periods of implementing the provisions of the Convention and the effectiveness of protection accorded works from members of the Union.

The Convention came into force on 1 August 1951. The Berne Convention is described as having been completed in Paris (France) on 4 May 1896, revised at Berlin (Germany) in November 1908 and completed in Berne in March 1914, then revised at Rome (Italy) in June 1928, Brussels (Belgium) in June 1948, Stockholm (Sweden) in July 1967 and Paris in July 1971. The Convention was amended on 2 October 1979, and it is this text reproduced below. By April 2005 there were 159 contracting parties.

CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (AS REVISED AND AMENDED)*

THE COUNTRIES OF THE UNION, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

RECOGNIZING the importance of the work of the Revision Conference held at Stockholm in 1967,

HAVE RESOLVED to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

CONSEQUENTLY, the undersigned Plenipotentiaries [not reproduced], having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

1. The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
2. It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.
3. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.
4. It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.
5. Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.
6. The works mentioned in this article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.
7. Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.
8. The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2 *bis*

1. It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.
2. It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to

the public by wire and made the subject of public communication as envisaged in Article 11 *bis* (1) of this Convention, when such use is justified by the informative purpose.

3. Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

1. The protection of this Convention shall apply to:

- (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
- (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

2. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

3. The expression “published works” means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

4. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

- (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;
- (b) authors of works of architecture, erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

1. Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

2. The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.
3. Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

4. The country of origin shall be considered to be
 - (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
 - (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
 - (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
 - i. when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
 - ii. when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

1. Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.
2. No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

3. The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as “the Director General”) by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6 bis

1. Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
2. The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
3. The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

1. The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
2. However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.
3. In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.
4. It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

5. The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4), shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the 1st of January of the year following the death or such event.
6. The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.
7. Those countries of the Union bound by the Rome Act of this Convention, which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs, shall have the right to maintain such terms when ratifying or acceding to the present Act.
8. In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7 bis

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

1. Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
2. It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.
3. Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

1. It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.
2. It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in

publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

3. Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author, if it appears thereon.

Article 10 bis

1. It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire, of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.
2. It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

1. Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:
 - i. the public performance of their works, including such public performance by any means or process;
 - ii. any communication to the public of the performance of their works.
2. Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11 bis

1. Authors of literary and artistic works shall enjoy the exclusive right of authorizing:
 - i. the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
 - ii. any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
 - iii. the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

2. It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.
3. In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11 *ter*

1. Authors of literary works shall enjoy the exclusive right of authorizing:
 - i. the public recitation of their works, including such public recitation by any means or process;
 - ii. any communication to the public of the recitation of their works.
2. Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

1. Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.
2. Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

3. Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

1. Authors of literary or artistic works shall have the exclusive right of authorizing:
 - i. the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
 - ii. the public performance and communication to the public by wire of the works thus adapted or reproduced.
2. The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.
3. The provisions of Article 13(1) shall not apply.

Article 14 bis

1. Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.
2.
 - (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.
 - (b) However, in the countries of the Union which, by legislation include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.
 - (c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By “contrary or special stipulation” is meant any restrictive condition which is relevant to the aforesaid undertaking.

3. Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, nor to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14 *ter*

1. The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.
2. The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.
3. The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

1. In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.
2. The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.
3. In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity be shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.
4.
 - (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent

authority who shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

- (b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

1. Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.
2. The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.
3. The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

1. This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.
2. If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.
3. The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.
4. The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

1. Special provisions regarding developing countries are included in the Appendix.
2. Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

Article 22

1.
 - (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.
 - (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
2.
 - (a) The Assembly shall:
 - i. deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
 - ii. give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;
 - iii. review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
 - iv. elect the members of the Executive Committee of the Assembly;
 - v. review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
 - vi. determine the program and adopt the biennial budget of the Union, and approve its final accounts;
 - vii. adopt the financial regulations of the Union;
 - viii. establish such committees of experts and working groups as may be necessary for the work of the Union;

- ix. determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- x. adopt amendments to Articles 22 to 26;
- xi. take any other appropriate action designed to further the objectives of the Union;
- xii. exercise such other functions as are appropriate under this Convention;
- xiii. subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

3.

- (a) Each country member of the Assembly shall have one vote.
- (b) One half of the countries members of the Assembly shall constitute a quorum.
- (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one half but equal to or more than one third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.
- (d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two thirds of the votes cast.
- (e) Abstentions shall not be considered as votes.
- (f) A delegate may represent, and vote in the name of, one country only.
- (g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

4.

- (a) The Assembly shall meet once in every other calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one fourth of the countries members of the Assembly.

5. The Assembly shall adopt its own rules of procedure.

Article 23

1. The Assembly shall have an Executive Committee.
2.
 - (a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an ex officio seat on the Committee.
 - (b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
3. The number of countries members of the Executive Committee shall correspond to one fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.
4. In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.
5.
 - (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.
 - (b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.
 - (c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.
6.
 - (a) The Executive Committee shall:
 - i. prepare the draft agenda of the Assembly;
 - ii. submit proposals to the Assembly respecting the draft program and biennial budget of the Union, prepared by the Director General;
 - iii. Deleted.
 - iv. submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
 - v. in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;
 - vi. perform such other functions as are allocated to it under this Convention.

- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

7.

- (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one fourth of its members.

8.

- (a) Each country member of the Executive Committee shall have one vote.
- (b) One half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one country only.

9. Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

10. The Executive Committee shall adopt its own rules of procedure.

Article 24

1.

- (a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.
- (b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.
- (c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

2. The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

3. The International Bureau shall publish a monthly periodical.

4. The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

5. The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

6. The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.
7.
 - (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.
 - (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.
 - (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.
8. The International Bureau shall carry out any other tasks assigned to it.

Article 25

1.
 - (a) The Union shall have a budget.
 - (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.
 - (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.
2. The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.
3. The budget of the Union shall be financed from the following sources:
 - i. contributions of the countries of the Union;
 - ii. fees and charges due for services performed by the International Bureau in relation to the Union;
 - iii. sale of, or royalties on, the publications of the International Bureau concerning the Union;
 - iv. gifts, bequests, and subventions;
 - v. rents, interests, and other miscellaneous income.
4.
 - (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I 25
 Class II 20
 Class III 15
 Class IV 10
 Class V 5
 Class VI 3
 Class VII 1

- (b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.
- (c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.
- (d) Contributions shall become due on the first of January of each year.
- (e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.
- (f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

5. The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

6.

- (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.
- (b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.
- (c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

7.

- (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.
 - (b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.
8. The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

- 1. Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.
- 2. Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four fifths of the votes cast.
- 3. Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

- 1. This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.
- 2. For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.
- 3. Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

1.
 - (a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.
 - (b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.
 - (c) Any country of the Union which, in accordance with subparagraph (b), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.
2.
 - (a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:
 - i. at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),
 - ii. France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.
 - (b) The entry into force referred to in sub-paragraph (a) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b).
 - (c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.
 - (d) The provisions of sub-paragraphs (a) to (c) do not affect the application of Article VI of the Appendix.
3. With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29

1. Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.
2.
 - (a) Subject to sub-paragraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated,
 - (b) If the entry into force according to sub-paragraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29 bis

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

Article 30

1. Subject to the exceptions permitted by paragraph (2) of this article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.
2.
 - (a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession,
 - (b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation

of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

- (c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

1. Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.
2. Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.
3.
 - (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.
 - (b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.
4. This article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

1. This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.
2. Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:
 - i. may apply the provisions of the most recent Act by which it is bound, and
 - ii. subject to Article 1(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.
3. Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties

of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

1. Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.
2. Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.
3. Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

1. Subject to Article 29 *bis*, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.
2. Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

1. This Convention shall remain in force without limitation as to time.
2. Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.
3. Denunciation shall take effect one year after the day on which the Director General has received the notification.
4. The right of denunciation provided by this article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

1. Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

2. It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

1.
 - (a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.
 - (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.
 - (c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.
2. This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.
3. The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.
4. The Director General shall register this Act with the Secretariat of the United Nations.
5. The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

1. Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.
2. As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.
3. Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

Article I

1. Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).
2.
 - (a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than 15 months and not less than three months before the expiration of the ten-year period then running.
 - (b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of sub-paragraph (a).
3. Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.
4. Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.
5. Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification

remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

6.

- (a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.
- (b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).

Article II

1. Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

2.

- (a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.
- (b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

3.

- (a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a),
- (b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

4.

- (a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed
 - i. from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
 - ii. where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.
- (b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

- 5. Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.
- 6. If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the licence. Any copies already made before the license terminated may continue to be distributed until their stock is exhausted.
- 7. For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.
- 8. No licence shall be granted under this Article when the author has withdrawn from circulation all copies of his work.
- 9.

- (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:
 - i. the translation is made from a copy made and acquired in accordance with the laws of the said country;
 - ii. the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
 - iii. the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

- iv. all uses made of the translation are without any commercial purpose.
- (b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.
- (c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.
- (d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

1. Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.
2.
 - (a) If, in relation to a work to which this article applies by virtue of paragraph (7), after the expiration of
 - i. the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
 - ii. any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date, copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.
 - (b) A license to reproduce and publish an edition which has been distributed as described in sub-paragraph (a) may also be granted under the conditions provided for in this article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.
3. The period referred to in paragraph (2)(a)(i) shall be five years, except that

- i. for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- ii. for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

4.

(a) No license obtainable after three years shall be granted under this article until a period of six months has elapsed

- i. from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- ii. where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in sub-paragraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

5. A license to reproduce and publish a translation of a work shall not be granted under this article in the following cases:

- i. where the translation was not published by the owner of the right of translation or with his authorization, or
- ii. where the translation is not in a language in general use in the country in which the license is applied for.

6. If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

7.

(a) Subject to sub-paragraph (b), the works to which this article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This article shall also apply to the reproduction in audiovisual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the

country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

1. A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).
2. If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.
3. The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.
4.
 - (a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.
 - (b) For the purposes of sub-paragraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).
 - (c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of sub-paragraph (a), be considered to constitute export if all of the following conditions are met:
 - i. the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
 - ii. the copies are to be used only for the purpose of teaching, scholarship or research;
 - iii. the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
 - iv. the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the

agreement by the Government of the country in which the license has been granted.

5. All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

6.

(a) Due provision shall be made at the national level to ensure

- i. that the license provides, in favor of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- ii. payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent,

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

1.

(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

- i. if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- ii. if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article 1(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

2. Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

3. Any country which has ceased to be regarded as a developing country as referred to in Article 1(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI

1. Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:
 - i. if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article 1(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
 - ii. that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.
2. Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

CHAPTER FIVE

Convention respecting the Free Navigation of the Suez Maritime Canal

Constantinople, 29 October 1888

INTRODUCTION

The creation of a canal at the edge of Egypt to link trade routes from Europe to the East, connecting the Mediterranean (and the Atlantic) to the Red Sea (and the Indian Ocean), was one of the earliest feats in modern engineering history. It was to prove pivotal in international trade, as well as generating a significant amount of political tension and conflict. It is to the credit of the interested Powers at the time that they had the foresight to enter into an agreement to govern the use of the Suez Canal. The configuration of countries such as Austria and Hungary, India and Turkey that signed the treaty has changed since the Convention was signed in 1888, but the efficacy of the treaty to the successor states remains.

The protection of the Canal was extended to the branches and approaches or ports of access to the Canal. All ships, including war ships, were to be allowed access not only to the Canal, but also to an area within a radius of three marine or nautical miles (3.5 statute miles or 5.6 km) from the access ports. In time of war, belligerent parties were not to embark or disembark, nor to load or discharge war equipment, in the Canal and its surrounding areas, unless in emergency situations where specified numbers of men and corresponding munitions might disembark in the access ports.

The preoccupation of the parties was to keep the Suez Canal always free and open to navigation and commerce. The very first article provides that the Canal ‘shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction’. This is interesting, as it suggests no right of ownership denominated by the right to exclude others from the use of the Canal. Article XII enshrines a principle of equality in the free use of the Canal, but adds that ‘the rights of Turkey as the territorial Power are reserved’. Egypt was placed in a puzzling position. At one level, it was to be the implementing agency of the terms of the treaty, under the direction of the representatives of the parties. At the same time, under article IX, Egypt was to take all necessary steps to ensure the execution of the treaty, but in case its Government did not have sufficient resources to discharge this responsibility, it could call upon the Ottoman Government to assist. This seemingly unclear position can be explained by the historical

context. Egypt was at the time part of the Ottoman Empire, which was headquartered in Constantinople (now Istanbul), Turkey. Ultimate responsibility for the territorial dynamics of Egypt and the Canal area, therefore, rested with the Ottoman Government. The succession to this treaty based on international law was taken for granted as country parties reconfigured significantly, notably when the Ottoman Empire collapsed and Egypt asserted its independence. The difficulties thrust by the 1888 treaty provisions on ownership and control was to be tested in the 1950s, when the Egyptian Government of Nasser (Gamal Abd an-Nasir) attempted to assert control over the Canal. Egypt succeeded in nationalizing the Canal company, but continued to guarantee the free international access under the Constantinople Convention.

The Convention came into force on 22 December 1888. The original nine signatories were almost all imperial powers and many countries are counted among their successors. The most apparent successions are: the United Kingdom, India and other former dominions from the British Empire; Austria and Hungary from the heart of the old Habsburg empire; the Netherlands and Luxembourg from the dissolution of a personal union in the monarch; and Egypt and Turkey as separate and independent from Ottoman rule.

CONVENTION RESPECTING THE FREE NAVIGATION OF THE SUEZ MARITIME CANAL*

IN THE NAME OF ALMIGHTY GOD.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc, and Apostolic King of Hungary; His Majesty the King of Spain, and in his name the Queen Regent of the Kingdom; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxembourg, etc; His Majesty the Emperor of all the Russias; and His Majesty the Emperor of the Ottomans; wishing to establish, by a Conventional Act, a definite system destined to guarantee at all times, and for all the Powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this Canal has been placed by the Firman of His Imperial Majesty the Sultan, dated 22 February 1866 (2 Zilkádé, 1281), and sanctioning the concessions of His Highness the Khedive, have named as their Plenipotentiaries, that is to say:

[Names of plenipotentiaries are not reproduced here.]

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace.

The Canal shall never be subjected to the exercise of the right of blockade.

ARTICLE II

The High Contracting Parties, recognizing that the Fresh-Water Canal is indispensable to the Maritime Canal, take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh-Water Canal; which engagements are stipulated in a Convention bearing date 18 March 1863, containing an expose and four Articles.

They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

ARTICLE III

The High Contracting Parties likewise undertake to respect the plant, establishments, buildings and works of the Maritime Canal and of the Fresh-Water Canal.

ARTICLE IV

The Maritime Canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I of the present Treaty, the High Contracting Parties agree that no right of war, no act of hostility, nor any act having for its object to obstruct the free navigation of the Canal, shall be committed in the Canal and its ports of access, as well as within a radius of three marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers.

Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may be strictly necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Said and in the roadstead of Suez shall not exceed 24 hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of 24 hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

ARTICLE V

In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI

Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.

ARTICLE VII

The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each Power.

This right shall not be exercised by belligerents.

ARTICLE VIII

The Agents in Egypt of the Signatory Powers of the present Treaty shall be charged to watch over its execution. In case of any event threatening the security or the free passage of the Canal, they shall meet on the summons of three of their number under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to insure the protection and the free use of the Canal. Under any circumstances, they shall meet once a year to take note of the due execution of the Treaty.

The last-mentioned meetings shall take place under the presidency of a Special Commissioner nominated for that purpose by the Imperial Ottoman Government. A Commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman Commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

ARTICLE IX

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present Treaty, take the necessary measures for insuring the execution of the said Treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the Signatory Powers of the Declaration of London of 17 March 1885; and shall, if necessary, concert with them on the subject.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the depositary Government, that of Turkey.

The provisions of Articles IV, V, VII and VIII shall not interfere with the measures which shall be taken in virtue of the present Article.

ARTICLE X

Similarly, the provisions of Articles IV, V, VII and VIII, shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this Article provides, the Signatory Powers of the Declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four Articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.

ARTICLE XI

The measures which shall be taken in the cases provided for by Articles IX and X of the present Treaty shall not interfere with the free use of the Canal. In the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

ARTICLE XII

The High Contracting Parties, by application of the principle of equality as regards the free use of the Canal, a principle which forms one of the bases of the present Treaty, agree that none of them shall endeavour to obtain with respect to the Canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover the rights of Turkey as the territorial Power are reserved.

ARTICLE XIII

With the exception of the obligations expressly provided by the clauses of the present Treaty, the sovereign rights of His Imperial Majesty the Sultan, and the rights and immunities of His Highness the Khedive, resulting from the Firmans, are in no way affected.

ARTICLE XIV

The High Contracting Parties agree that the engagements resulting from the present Treaty shall not be limited by the duration of the Acts of Concession of the Universal Suez Canal Company.

ARTICLE XV

The stipulations of the present Treaty shall not interfere with the sanitary measures in force in Egypt.

ARTICLE XVI

The High Contracting Parties undertake to bring the present Treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII

The present Treaty shall be ratified, and the ratifications shall be exchanged at Constantinople within the space of one month, or sooner if possible.

IN FAITH OF WHICH the respective Plenipotentiaries have signed the present Treaty, and have affixed to it the seal of their arms.

DONE at Constantinople, the 29th day of the month of October, in the year 1888.

CHAPTER SIX

Hague Rules (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading)

Brussels, 25 August 1924

INTRODUCTION

This must be the first global attempt at codifying uniform rules for commercial documentation and carriage of goods by sea. The Convention seeks to cover every contract of carriage of goods by sea from the point of loading to the point of discharge or delivery. The carrier is obliged to provide or guarantee a seaworthy vessel, properly equipped, manned by skilled personnel and provided with adequate supplies. If the cargo that is to be carried needs special care, such as refrigeration, the carrier is to ensure that the holds, refrigerating and cool chambers, etc., are fit and safe for the reception, carriage and preservation of the said cargo.

Upon receipt of the goods, the carrier or his appropriate agent must, on demand from the shipper, issue a bill of lading to the shipper. The bill of lading must disclose the necessary marks for the identification of the goods, as provided by the shipper prior to loading—the number of packages or pieces, the quantity, weight and the apparent condition or order of the goods. If the value of the goods is more than £100 (pounds sterling), or its equivalent, per package or unit, the parties must agree and state the higher value before shipment. The higher value must be stated in the bill of lading. If the carrier or his agent has reasonable grounds to doubt the authenticity or accuracy of the particulars stated by the shipper, he is not bound to state them in the bill of lading. However, the bill of lading serves as *prima facie* evidence of the receipt of the goods by the carrier. It is, however, not conclusive or binding on the carrier as far as the varied value of the goods carried is concerned.

A major part of this Convention deals with the carrier's liabilities or limitations on such liabilities. Any provision in a contract of carriage that reduces or relieves the carrier or the ship from liability for loss or damage due to negligence, or failure in the discharge of its duties under the Convention, is null, void and of no effect *ab initio*. This includes benefits from insurance for the carrier. If the carriers does everything with due diligence, it shall not be liable for the loss or damage arising from unseaworthiness. The burden of proof of the exercise of due diligence in this case rests with the carrier. More specifically,

the carrier or the ship is not to be held responsible for loss or damage resulting from act or neglect, default of the master, pilot, mariner or the agents of the carrier in the navigation or management of the ship. This is intriguing and might be contradictory to the obligation of the carrier to provide a seaworthy vessel, as well as skilled personnel and supplies. If the carrier is not responsible, then who would be? There are further contestable grounds for exemption or limitation of liability by the carrier. These are: act or omission of the shipper or his agent; wastage in bulk or weight or any other loss or damage arising from inherent defect or quality of the goods; insufficiency of packing; inadequate marks and 'any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier' (article IV).

Other, more familiar bases for exemptions or limitation of liability include: acts of God, war or public enemies; perils and accidents of the sea; arrest or seizure under a due legal process; quarantine restrictions; strikes or riots; saving or attempting to save life; and latent defects that could not be discovered on due diligence. Under the terms of the additional Protocol, the parties can prescribe that the holder of the bill of lading is entitled to establish that it is the fault of the carrier or his agents that caused the loss or damage, instead of the stated grounds for exemption of liability. The carrier is at liberty to take on greater liabilities, or to waive his exemptions, under this Convention, if the particular cargo or transaction so warrants, provided such departures are stated in the bill of lading.

The Convention came into force on 2 June 1931. As many as 95 countries and territories have been covered by the Hague Rules, although the total is now much fewer, owing to denunciation of the treaty by a number of countries (mainly in Europe—see Hague-Visby Rules of 1968) and the disappearance of other polities.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF
CERTAIN RULES OF LAW RELATING TO BILLS OF LADING
[HAGUE RULES], AND THE PROTOCOL OF SIGNATURE*

**INTERNATIONAL CONVENTION FOR THE UNIFICATION OF
CERTAIN RULES OF LAW RELATING TO BILLS OF LADING**

The President of the German Republic, the President of the Argentine Republic, His Majesty the King of the Belgians, the President of the Republic of Chile, the President of the Republic of Cuba, His Majesty the King of Denmark and Iceland, His Majesty the King of Spain, the Head of the Estonian State, the President of the United States of America, the President of the Republic of Finland, the President of the French Republic, His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, His Most Supreme Highness the Governor of the Kingdom of Hungary, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Latvian Republic, the President of the Republic of Mexico, His Majesty the King of Norway, Her Majesty the Queen of the Netherlands, the President of the Republic of Peru, the President of the Polish Republic, the President of the Portuguese Republic, His Majesty the King of Romania, His Majesty the King of the

Serbs, Croats and Slovenes, His Majesty the King of Sweden, and the President of the Republic of Uruguay,

HAVING RECOGNIZED the utility of fixing by agreement certain uniform rules of law relating to bills of lading,

HAVE DECIDED to conclude a convention with this object and have appointed the following Plenipotentiaries [not reproduced]:

WHO, duly authorized thereto, have agreed as follows:

Article I

In this Convention the following words are employed with the meanings set out below:

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) "Goods" includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) "Ship" means any vessel used for the carriage of goods by sea.
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
 - (a) Make the ship seaworthy.
 - (b) Properly man, equip and supply the ship.
 - (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:
 - (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
 - (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
 - (c) The apparent order and condition of the goods. Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.
4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c).
5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, the notice must be given within three days of the delivery of the goods.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.
7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at

the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Adopted by a diplomatic conference, the Convention is in the public domain. However, enquiries about the official document and its status should be satisfied via, for example, the website of the International Maritime Committee, Comité Maritime International—CMI (<http://www.comitemaritime.org/>).

date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this Article be deemed to constitute a “shipped” bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connexion with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
 - (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
 - (b) Fire, unless caused by the actual fault or privity of the carrier.
 - (c) Perils, dangers and accidents of the sea or other navigable waters.
 - (d) Act of God.
 - (e) Act of war.
 - (f) Act of public enemies.
 - (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
 - (h) Quarantine restrictions.
 - (i) Act or omission of the shipper or owner of the goods, his agent or representative.
 - (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
 - (k) Riots and civil commotions.
 - (l) Saving or attempting to save life or property at sea.

- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connexion with goods in an amount exceeding 100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connexion with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damage and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this Convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connexion with, the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea.

Article VIII

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX

The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

Article X

The provisions of this Convention shall apply to all bills of lading issued in any of the contracting States.

Article XI

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the Powers which take part therein and by the Belgian Minister of Foreign Affairs.

The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the Powers who have signed this Convention or who have acceded to it. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

Article XII

Non-signatory States may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article XIII

The High Contracting Parties may at the time of signature, ratification or accession declare that their acceptance of the present Convention does not include any or all of the self-governing dominions, or of the colonies, overseas possessions, protectorates or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate or territory excluded in their declaration. They may also denounce the Convention separately in accordance with its provisions in respect of any self-governing dominion, or any colony, overseas possession, protectorate or territory under their sovereignty or authority.

Article XIV

The present Convention shall take effect, in the case of the States which have taken part in the first deposit of ratifications, one year after the date of the protocol recording such deposit.

As respects the States which ratify subsequently or which accede, and also in cases in which the Convention is subsequently put into effect in accordance with Article XIII, it shall take effect six months after the notifications specified in paragraph 2 of Article XI and paragraph 2 of Article XII have been received by the Belgian Government.

Article XV

In the event of one of the contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other States, informing them of the date on which it was received.

The denunciation shall only operate in respect of the State which made the notification, and on the expiry of one year after the notification has reached the Belgian Government.

Article XVI

Any one of the contracting States shall have the right to call for a fresh conference with a view to considering possible amendments.

A State which would exercise this right should notify its intention to the other States through the Belgian Government, which would make arrangements for convening the Conference.

DONE at Brussels, in a single copy, August 25th, 1924.

PROTOCOL OF SIGNATURE

At the time of signing the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading the Plenipotentiaries whose signatures appear below have adopted this Protocol, which will have the same force and the same value as if its provisions were inserted in the text of the Convention to which it relates.

The High Contracting Parties may give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Convention.

They may reserve the right:

1. To prescribe that in the cases referred to in paragraph 2(c) to (p) of Article IV the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a).
2. To apply Article VI in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

DONE at Brussels, in single copy, August 25th, 1924.

CHAPTER SEVEN

International Convention relating to Economic Statistics

Geneva, 14 December 1928

INTRODUCTION

The rationale for this Convention was stated as the recognition of the importance of statistics in showing the comparative economic development of various countries. The less clearly stated reason is to have uniformity in the compilation of economic data in an obligatory manner. Five key subject areas have been specified for coverage. These are: external trade; occupations; agriculture; mining or metallurgy; and industry.

For external trade, statistics must be compiled and maintained on the quantity and value of imports and exports. This must be done, at the very least, on an annual basis, but preferably monthly or quarterly. Imports have been divided into special and general imports. Special imports include all goods earmarked for domestic consumption in the territory where the particular statistics were gathered. It also includes goods brought in for transformation, repair or supplementary treatment. General imports include all merchandise brought in from other countries. Exports are also classified into special and general. Special exports are all goods that are produced from the particular territory and exported to other countries or goods that are 'nationalized'. Nationalized goods are taken to be imported goods that are placed at the free disposal of the importers, after they have paid the requisite fees, or goods brought in for transformation, repair or supplementary treatment and on which no duties were applied. Any part of transit trade must not be included in the statistics, for both imports and exports. Similarly, goods that were repacked, sorted or blended will not be considered as transformation for the purposes of exports. Interestingly, if two or more countries entered into a customs union arrangement, statistics on the trade of the union would be expected to be published, but individual countries or territories may also publish separate statistics, especially where the customs territory is made up of non-contiguous territories. The statistics must show the countries of origin or production, countries of consignment or provenance, countries of purchase and the countries of consumption, destination and sale.

Census must be taken of the major occupations engaged in by the population of country members. This must be done at least once in every decade and towards the end of the closing year of the decade—for example, in 1970, 1980, 1990, etc. Census is also to

be taken of agriculture in each decade. There must be returns showing land under cultivation, principal crops, and areas and quantities of harvested crops. At the same time, data on numbers of the main species of livestock, showing sex and age where possible. In countries where timber harvesting is an important sector of the economy there must be periodical returns on forest resources, showing forest area, timber content, annual growth and cut and species of timber. As well, in countries where fishing is an important and well organized economic activity, there must be returns on the main species and quantities landed, including inland fisheries, the nationalities of vessels used in the catch and the number of employees on each vessel. There must also be data on minerals and metals, where such resources are key to the economy of the country concerned. The resources specified include coal, fossil fuel, nitrates, phosphates, potash, sulphur, iron, aluminium, tin, manganese, copper, lead, zinc and nickel. Smelter production of these resources is also specified, and others include gold, platinum and molybdenum.

Member states are also to conduct industrial surveys, and census of industrial and, if possible, commercial establishments. The surveys must be done at least every decade. For purposes of economy, consistency and convenience, the industrial surveys are recommended for the same period as population census. Unlike the other economic sectors, the industrial census must state the nature or form of ownership, the nationality and number of 'owners', the number of people working, as well as their gender and age, and the engine technology of the industrial establishments. The materials used in the production, the wholesale and retail prices, depreciation charges, etc., must all be stated.

The Convention came into force on 14 December 1930 and is widely seen as the basis of modern international statistical standards. However, its role has now been largely displaced and there have been no new ratifications since the 1950s (although the Czech Republic formally deposited instruments of succession in 1993).

INTERNATIONAL CONVENTION RELATING TO ECONOMIC STATISTICS*

PREAMBLE

The President of the German Reich; the Federal President of the Austrian Republic; His Majesty the King of the Belgians; the President of the United States of Brazil; His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Bulgarians; His Majesty the King of Denmark; the President of the Polish Republic for the Free City of Danzig; His Majesty the King of Egypt; the Government of the Estonian Republic; the President of the Republic of Finland; the President of the French Republic; the President of the Hellenic Republic; His Serene Highness the Regent of the Kingdom of Hungary; His Majesty the King of Italy; His Majesty the Emperor of Japan; the President of the Latvian Republic; Her Royal Highness the Grand Duchess of Luxemburg; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; the President of the Polish Republic; the President of the Portuguese Republic; His Majesty the King of Roumania; His Majesty the King of the Serbs, Croats and Slovenes; His Majesty the King of Sweden; the Swiss Federal Council; the President of the Czechoslovak Republic.

RECOGNISING the importance of statistics being available to show the economic position and development in the world as a whole and in different countries on a comparable basis;

CONSIDERING that this object may best be achieved by resort to simultaneous and concerted action in the form of an international Convention, by which the official preparation and publication of various classes of economic statistics and the general adoption of uniform methods in the preparation of certain statistical returns may be assured;

Have appointed as their Plenipotentiaries for this purpose:

[Names of plenipotentiaries are not reproduced here.]

Who, having communicated their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

1. The High Contracting Parties undertake to compile and publish, in respect of every part of the territories under their administration to which the present Convention applies, the statistics mentioned in Article 2 below and at the intervals stated therein.
2. For the purpose of the statistics required by the present Convention, every territory possessing a separate statistical system for any class of statistics may be shown in such statistics as a separate unit. It shall be stated in all statistics published under the provisions of this Convention to what territories such statistics apply.
3. The obligations contained in the present Convention are subject to the interpretations and to the reservations which are set out in the Protocol to the present Convention and to the reservations which may be allowed hereafter under the provisions of Article 17 below.

ARTICLE 2

The classes of statistics referred to in the preceding Article are the following:

I. External trade

- (a) Annual and monthly returns of the quantity and value of imports and exports;
- (b) Annual, and if possible quarterly or preferably monthly, returns showing the net tonnage of vessels engaged in external trade entered at and cleared from the ports of the country concerned, according to their nationalities.

II. Occupations

Returns of the population according to occupations to be compiled and published at least once in each decade, and to relate to the closing year of the decade (that is to say, the years 1930, 1940, 1950 and so on), or to a year as near as possible to such closing year.

III. Agriculture, live-stock, forestry and fisheries

- A. General censuses of agriculture, to be taken if possible once in each decade, on the line proposed and, if possible, for the year proposed by the International Institute of Agriculture.
- B. Annual returns showing:
 - (1) The distribution of the cultivated area amongst the principal crops, stating if possible, in cases where such information is of importance, both the areas sown or planted and the areas harvested; and
 - (2) The quantities of such crops harvested.
- C. Periodical (if possible annual) returns of the numbers of the chief species of live-stock, showing sex and age where possible.
- D. In the case of countries to whose economy timber production is important, periodical returns of forest resources, showing forest area and, whenever possible, timber content, annual growth and annual cut; distinction to be made as far as possible according to the species of the timber.
- E. In the case of countries in which fisheries are an important and organised branch of economic activity, annual returns showing:
 - (1) the products of the main sea fisheries landed and, if possible, of inland-water fisheries;
 - (2) the nationalities of the boats by which such products are landed;
 - (3) the numbers and classes of national boats engaged in fisheries; and
 - (4) the number of persons employed on such boats.

Whenever it is possible to render complete returns, an approximate indication of the extent to which such returns are defective shall be given.

IV. Mining and metallurgy

Returns (at least annual) of the quantities produced of any of the minerals and metals mentioned below, the production of which in the country concerned is of national importance:

1. Non-metallic minerals:

- Coal (bituminous or anthracite), lignite and coke
- Petroleum and natural gas
- Nitrates
- Phosphates
- Potash minerals
- Sulphur

2. Metallic minerals and metals:

(a) Ores of the following:

- Iron
- Aluminium

Tin
 Manganese
 Copper
 Lead
 Zinc
 Nickel

(b) Smelter production (actual or estimated) of the following:

Iron and steel
 Tin
 Antimony
 Silver
 Copper
 Zinc
 Tungsten
 Gold
 Aluminium
 Manganese
 Molybdenum
 Platinum
 Lead
 Nickel
 Bismuth

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

V. Industry

A. Statistical surveys at regular intervals, and if possible at least once in every ten years, of:

- (a) Industrial establishments, including at least all such establishments of any considerable importance;
- (b) If possible, commercial establishments. Such surveys may be carried out in connection with a census of population or with a census of industrial production or independently, and shall show, inter alia:
 - (1) With regard to such establishments, the number of persons of each sex employed therein; and, so far as possible, such persons according to categories of their employment and distinguishing adults from young persons, the age at which this distinction is made being stated.

An estimate shall also be made, if possible, of the numbers of persons employed in establishments which are not included in the surveys.

- (2) In the case of industrial establishments, the nominal capacity of the prime movers (if any) installed, distinguishing, if possible, between (i) steam engines, (ii)

internal-combustion engines, and (iii) hydraulic engines; and the nominal capacity of the electric motors installed (if any), indicating whether the electric energy is generated in the establishment or elsewhere. In each of the above-mentioned classes, prime movers and electric motors normally in use should, if possible, be shown separately from those idle or in reserve.

- B. Returns of industrial production, as comprehensive as it may be possible in the case of each country to furnish with a sufficient degree of accuracy.
- C. Statistical series in the form either of absolute figures or relative figures referring to a period taken as a basis of comparison, at regular intervals, if possible quarterly or preferably monthly, showing the variations of the industrial activity of the most representative branches of production.

VI. Index numbers of prices

- (a) Showing the general movement of wholesale prices, to be compiled and published monthly, and
- (b) Showing the general movement of the cost of living, to be compiled and published at least quarterly.

The cost-of-living indices may be based on data relating to a single town or to several towns selected as being representative and taken either separately or collectively.

Each statement of index numbers mentioned above shall contain a reference to a short official publication showing the items the prices of which have been used, and the methods employed in the calculation of the indices.

In addition to the indices mentioned above, the wholesale prices, in absolute or relative form, of the principal individual commodities shall, so far as practicable, be published for the same periods.

ARTICLE 3

The High Contracting Parties, in order to facilitate comparison of the statistics of external trade of different countries, undertake to adopt for the purpose of the compilation of this class of statistics the principles set out in Annex I, Part I.

The High Contracting Parties further undertake, as far as the means of investigation at their disposal permit, to prepare, for the purposes of experiment, the statistical tables specified in Annex I, Part III.

ARTICLE 4

The High Contracting Parties express their general acceptance of the principles set out in Annex II for the compilation of fishery statistics, and agree to apply them as far as possible in their respective fishery statistics.

ARTICLE 5

The High Contracting Parties express their general acceptance of the principles underlying Annex III for use, so far as practicable, as a basis for their statistics of the production of the minerals and metals referred to in Article 2-IV, whenever the production of such minerals and metals in the country concerned is considered to be of national importance, and agree, in the event of their compiling statistics of the production of other minerals and metals, to do so on similar lines.

ARTICLE 6

The High Contracting Parties express their general acceptance of the principles underlying Annex IV, which is attached as a model scheme of census of industrial production, and agree to consider the question of giving effect to such of them as may be applicable when it becomes possible to contemplate a complete or partial census of the type indicated in that Annex.

ARTICLE 7

The High Contracting Parties express their general acceptance of the principles underlying Annex V, which is attached as an illustration of a scheme for the compilation of indices of industrial activity, and agree to consider the question of giving effect to such of them as may be applicable when it becomes possible to contemplate the preparation of indices of industrial activity on a comprehensive scale.

ARTICLE 8

1. A Committee of Technical Experts shall be appointed at a meeting of the Council of the League of Nations and one delegate from each State, not a Member of the League of Nations, represented at the Conference of Geneva, on behalf of which ratifications or accessions have been deposited.
2. In addition to the particular functions which are entrusted to it under the provisions of the present Convention and the instruments annexed thereto, the Committee of Experts referred to in the preceding paragraph of this Article may make any suggestions which appear to it useful, for the purpose of improving or amplifying the principles and arrangements laid down in the Convention concerning the classes of statistics dealt with therein. It may also make suggestions in regard to other classes of statistics of a similar character in respect of which it appears desirable and practicable to secure international uniformity. It shall examine all suggestions to the same end which may be submitted to it by the Governments of any of the High Contracting Parties. The Committee shall not make any suggestions in respect of statistics relating to public or

private finance (public debt, revenue and expenditure, banking, the money market, stock exchange, etc), or without the previous agreement of the appropriate international institutions or organisations in respect of statistics relating to agriculture, labour or transport.

3. The Council of the League of Nations is requested, if at any time a desire to that effect is expressed by not less than half of those Members of the League and non-member States on whose behalf instruments of ratification or accession have been deposited, to convoke a conference for the revision and, if it seems desirable, the amplification of the present Convention.

ARTICLE 9

The High Contracting Parties undertake that their respective statistical services shall exchange with each other the statistical returns compiled and published by them in accordance with the provisions of the present Convention.

ARTICLE 10

Should a dispute arise between two or more High Contracting Parties as to the interpretation or application of the provisions of the present Convention, and should such dispute not be settled either directly between the parties or by the employment of other means of reaching agreement, the parties may, by mutual consent, submit the dispute, with a view to an amicable settlement, to the Committee of Experts referred to in Article 8.

In such circumstances, this Committee may request the parties to submit their observations either orally or in writing and shall give an advisory opinion on the question at issue.

ARTICLE 11

Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate; and the present Convention shall not apply to any territories named in such declaration.

Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice one year after its receipt by the Secretary-General of the League of Nations.

Any High Contracting Party may, at any time after the expiration of the five years' period mentioned in Article 16, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration six months after its receipt by the Secretary-General of the League of Nations.

The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and non-member States mentioned in Article 12 all declarations and notices received in virtue of this Article.

ARTICLE 12

The present Convention, of which the French and English texts shall both be authentic, shall bear this day's date; it may, until 30 September 1929, be signed on behalf of any Member of the League of Nations, or of any non-member State which was represented at the Conference of Geneva or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-member States referred to in the preceding paragraph.

ARTICLE 13

As from 1 October 1929, the present Convention may be acceded to on behalf of any Member of the League of Nations or any non-member State mentioned in Article 12.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in Article 12.

ARTICLE 14

The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of ratifications or accessions on behalf of not less than ten Members of the League of Nations or non-member States.

ARTICLE 15

Ratifications or accessions received after the entry into force of the Convention in accordance with Article 14 shall take effect as from the ninetieth day following the date of their receipt by the Secretary-General of the League of Nations.

ARTICLE 16

After the expiration of five years from the coming into force of the present Convention in accordance with Article 14, it may be denounced by an instrument in writing, deposited with the Secretary-General of the League of Nations. The denunciation shall take effect six months after its receipt by the Secretary-General and shall operate only as regards the Member of the League or non-member State on whose behalf it has been deposited.

The Secretary-General shall notify all the Members of the League and the non-member States mentioned in Article 12 of any denunciations received.

If, as the result of simultaneous or successive denunciations, the number of Members of the League and non-member States bound by the present Convention is reduced to less than ten, the Convention shall cease to be in force.

ARTICLE 17

The High Contracting Parties agree to accept the reservations to the application of the present Convention which are set forth in the Protocol to this Convention and in respect of the countries therein named.

The Governments of countries which are ready to accede to the Convention under Article 13, but desire to be allowed to make any reservations with regard to the application of the Convention, may inform the Secretary-General of the League of Nations to this effect, who shall forthwith communicate such reservations to the Governments of all countries on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. If within six months of the date of the communication of the Secretary-General no objections have been received, the reservation shall be deemed to have been accepted.

ARTICLE 18

The present Convention shall be registered by the Secretary-General of the League of Nations on the day of its entry into force.

IN FAITH WHEREOF the abovementioned Plenipotentiaries have signed the present Convention.

DONE at Geneva, this fourteenth day of December, nineteen hundred and twenty-eight, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 12.

[Signatures are not reproduced here, nor are six annexes: on External Trade Statistics (including lists of products and countries); on Statistics of Fisheries; on Metallurgical Statistics; on Census of Industrial Production; and, for “information and reference”, a report by an international committee of agricultural statisticians.]

CHAPTER EIGHT

Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air

Warsaw, 12 October 1929

INTRODUCTION

This is a treaty that was conceived of between the two World Wars (and amended in the aftermath of the latter one). However, apart from the usual *force majeure*-type provisions, there is hardly anything to suggest the historical context of the Convention. It applies to all international carriage of human beings, baggage and cargo by aircraft, whether for reward or gratuitously, provided the carriage is done by an air-transport undertaking. The air-transport undertaking can be state owned, a publicly registered private company or the state itself, directly. The prominence given to the involvement of the state is understandable in the context of the time. The state was very prominent in economic matters, private ownership of aircraft was limited and economic philosophies or ideologies were not as polarized as in the period after the Second World War.

Any international carriage of persons or goods must be accompanied by the appropriate documentation. For the carriage of passengers, an air ticket must show the points of departure and destination, a notice that the passenger's journey would stop or terminate in a country other than that from which he or she departed and a statement regarding the limitation of liability of the carrier in the event of loss, damage injury or fatality. The ticket itself is *prima facie* evidence of the contract of carriage, and its loss or 'non-discovery' would not invalidate the contract or the limitations of the carrier. All the same, if the carrier allows carriage without ticket, or a ticket does not state the ultimate destination or the carrier's limitations of liability, it cannot claim the benefits of the limitation of liability. In the case of registered baggage or carriage of cargo, there should be a baggage check or an air waybill or any other agreed means that would preserve the record of the carriage transaction. Provisions similar to the carriage of persons must be followed, except that with cargo, procedures similar to carriage by sea must be followed. For example, several copies of waybills, signatures of carrier, consignor, consignee, etc. The party that furnished particular information for the waybills or other documentation is responsible for the consequences of any errors or misinformation.

The consignor has the right to direct the delivery of the cargo to a place or person other than that originally agreed to in the waybill, but must bear the cost of any such directive. Whenever any such changes in delivery or order of disposal are given by the consignor, the carrier must insist on the production of the waybill covering that part of the cargo. Failure to do that may render the carrier liable for any damage caused to any body in lawful possession of the counterpart waybill. Barring any such 'mid-journey' directive of disposal of the cargo, the carrier must deliver the cargo to the consignee on the production of the appropriate documentation and payment of the relevant charges. The provisions regarding delivery, directive for disposal or non-delivery, or charges and consequences of any orders by the consignor can all be varied by express provisions in the waybill.

The next important set of provisions relates to the liability of the carrier. The carrier is generally liable for any damage, injury or fatality sustained by a passenger if the accident that occasioned the injury occurred on board the aircraft or in the course of embarking or disembarking. The carrier is also liable for damage caused by the destruction or loss or damage to any registered baggage or cargo if the event occurred during the carriage by air. Considering that the carrier or its agents usually take charge of baggage or cargo from the point of loading till it is actually delivered to the consignee or passenger at the point of destination, the designation of 'during carriage by air' would necessarily extend to loading and unloading. The carrier is also liable for damage caused by delay in transporting passengers, baggage or cargo. Of course, there are absolute exemptions and/or limitations on monetary compensations. For instance, if the carrier proves that the damage caused by delay, injury, loss, damage to cargo or fatality to passengers is due exclusively to the inherent defect or quality of the cargo, by defective packing by persons who are not agents of the carrier, by an act of war or armed conflict, or by an act of government agency or public authority regarding entry, exit or transit of cargo. In the case of passengers or baggage, the carrier is not liable if he establishes that he and his agents took all necessary measures to avoid the damage or that it was impossible for them to take such measures. The defence of contributory negligence is also available to the carrier. The monetary limitation is based on the IMF's special drawing rights (SDR) as unit of account, following amendment in the second half of the 20th century (replacing the French franc). For example, in the carriage of persons, the liability of the carrier to each passenger does not now exceed 16,600 SDR; for registered baggage or cargo, it is not more than 17 SDR per kilogram, unless the consignor or passenger makes a special declaration at the time of handing the package over to the carrier and pays a supplementary amount if required.

The Convention came into force on 13 February 1933. The major amendment to the Warsaw provisions was in 1955, contained in a protocol agreed at The Hague (Netherlands), which came into effect on 1 August 1963. However, not all the parties have subscribed to The Hague Protocol (the USA, for instance, only ratified the instrument in 2003), and fewer still to the four protocols amending the revised Convention agreed at Montreal (Canada) in 1975. By early 2005 there were 151 parties to the Convention and 136 to The Hague Protocol. The original 1929 Warsaw Convention is reproduced below, followed by the text of the 1955 Hague Protocol.

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES
RELATING TO INTERNATIONAL CARRIAGE BY AIR, SIGNED AT
WARSAW ON 12 OCTOBER 1929*

CHAPTER I: SCOPE, DEFINITIONS

Article 1

1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
2. For the purposes of this Convention the expression “international carriage” means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.
3. A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. This Convention does not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II: DOCUMENTS OF CARRIAGE

SECTION I: PASSENGER TICKET

Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

- (a) the place and date of issue;
 - (b) the place of departure and of destination;
 - (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
 - (d) the name and address of the carrier or carriers;
 - (e) a statement that the carriage is subject to the rules relating to liability established by this Convention.
2. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

SECTION II: LUGGAGE TICKET

Article 4

1. For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.
2. The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.
3. The luggage ticket shall contain the following particulars:-
 - (a) the place and date of issue;
 - (b) the place of departure and of destination;
 - (c) the name and address of the carrier or carriers;
 - (d) the number of the passenger ticket;
 - (e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket;
 - (f) the number and weight of the packages;
 - (g) the amount of the value declared in accordance with Article 22(2);
 - (h) a statement that the carriage is subject to the rules relating to liability established by this Convention.
4. The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

SECTION III: AIR CONSIGNMENT NOTE

Article 5

1. Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an “air con-

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signment note”; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.
2. The first part shall be marked “for the carrier,” and shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.
3. The carrier shall sign on acceptance of the goods.
4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.
5. If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

Article 8

The air consignment note shall contain the following particulars:

- (a) the place and date of its execution;
- (b) the place of departure and of destination;

- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the goods;
- (h) the number of the packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the goods;
- (j) the apparent condition of the goods and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;
- (l) if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;
- (m) the amount of the value declared in accordance with Article 22(2);
- (n) the number of parts of the air consignment note;
- (o) the documents handed to the carrier to accompany the air consignment note;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.
2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

1. The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.
2. The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition

of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.
3. If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air consignment note.

Article 16

1. The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III: LIABILITY OF THE CARRIER

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.
2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.
3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the

performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

Article 20

1. The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.
2. In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.
4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65 milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.
2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seised of the case, is considered to be equivalent to wilful misconduct.
2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.
4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.
2. Questions of procedure shall be governed by the law of the Court seized of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV: PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of

carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V: GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.
3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.
2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.
3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.
2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.
3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

ADDITIONAL PROTOCOL (WITH REFERENCE TO ARTICLE 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR, SIGNED AT THE HAGUE ON 28 SEPTEMBER 1955*

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929,

HAVE AGREED as follows:

CHAPTER I AMENDMENTS TO THE CONVENTION

Article I

In Article 1 of the Convention:

(a) paragraph 2 shall be deleted and replaced by the following:

“2. For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.”

(b) paragraph 3 shall be deleted and replaced by the following:

“3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.”

Article II

In Article 2 of the Convention, paragraph 2 shall be deleted and replaced by the following:

“2. This Convention shall not apply to carriage of mail and postal packages.”

Article III

In Article 3 of the Convention:

(a) paragraph 1 shall be deleted and replaced by the following:

“1. In respect of the carriage of passengers a ticket shall be delivered containing:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.”

(b) paragraph 2 shall be deleted and replaced by the following:

“2. The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.”

Article IV

In Article 4 of the Convention:

(a) paragraphs 1, 2 and 3 shall be deleted and replaced by the following:

“1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.”

(b) paragraph 4 shall be deleted and replaced by the following:

“2. The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1(c)) does not include the notice required by paragraph 1(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.”

Article V

In Article 6 of the Convention paragraph 3 shall be deleted and replaced by the following:

“3. The carrier shall sign prior to the loading of the cargo on board the aircraft.”

Article VI

Article 8 of the Convention shall be deleted and replaced by the following:

“The air waybill shall contain:

(a) an indication of the places of departure and destination;

- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.”

Article VII

Article 9 of the Convention shall be deleted and replaced by the following:

“If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air

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waybill does not include the notice required by Article 8, paragraph c, the carrier shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.”

Article VIII

In Article 10 of the Convention paragraph 2 shall be deleted and replaced by the following:

“2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.”

Article IX

To Article 15 of the Convention the following paragraph shall be added:

“3. Nothing in this Convention prevents the issue of a negotiable air waybill.”

Article X

Paragraph 2 of Article 20 of the Convention shall be deleted.

Article XI

Article 22 of the Convention shall be deleted and replaced by the following:

“Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2.
 - (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogram, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
 - (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.
4. The limits prescribed in this article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment."

Article XII

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows:

- "2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried."

Article XIII

In Article 25 of the Convention paragraphs 1 and 2 shall be deleted and replaced by the following:

“The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.”

Article XIV

After Article 25 of the Convention, the following article shall be inserted:

“Article 25A

1. If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
3. The provisions of paragraphs 1 and 2 of this article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.”

Article XV

In Article 26 of the Convention paragraph 2 shall be deleted and replaced by the following:

“2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.”

Article XVI

Article 34 of the Convention shall be deleted and replaced by the following:

“The provisions of Articles 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier’s business.”

Article XVII

After Article 40 of the Convention, the following Article shall be inserted:

“Article 40A

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression High Contracting Party shall mean State. In all other cases, the expression High Contracting Party shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.
2. For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.”

**CHAPTER II SCOPE OF APPLICATION OF THE CONVENTION
AS AMENDED**

Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place within the territory of another State.

CHAPTER III FINAL CLAUSES

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955.

Article XX

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

Article XXI

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.
2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
3. Any State may subsequently, by notification to the Government of the People's Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;
- (c) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XXV and the date thereof; and
- (f) of the receipt of any notification made under Article XXVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol [signatures are not reproduced here].

DONE at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations, and to the International Civil Aviation Organization.

CHAPTER NINE

Incoterms 2000

INTERNATIONAL CHAMBER OF COMMERCE
(Originally published 1936)

INTRODUCTION

Some general terms have emerged over centuries of trading and shipment. These 'international commercial terms' (Incoterms) have been regularized, consolidated and codified by the International Chamber of Commerce (ICC). The terms address the three key concerns of parties to international trade transactions. These are security, liquidity and proximity. They deal with not only the contract of sale, but also the shipment, payment and insurance contracts.

There are four main categories of the terms: first, Ex Works and Ex Wares (EXW); secondly, Free On Board (FOB), Free Carrier (FCA) and Free Alongside Ship (FAS); thirdly, Cost and Freight (CFR), Cost Insurance and Freight (CIF), Carriage Paid to (CPT) and Carriage and Insurance Paid to (CIP); and, finally, Delivered At Frontier (DAF), Delivered Ex Ship (DES), Delivered Ex Quay (DEQ), Delivered Duty Unpaid (DDU) and Delivered Duty Paid (DDP). They are sometimes described as the 'E' terms, the 'C' terms, the 'F' terms and the 'D' terms. The E terms apply to the relationship between the buyer and the seller of a product that terminates at the warehouse or, often, on the seller's premises. The buyer takes responsibility for the shipment, insurance, etc., from the place of collection of the product. This often raises difficulty in the classification of category E transactions as international (especially, for instance, having regard to Section 26 of the United Kingdom's Unfair Contracts Act 1977). Category F transactions are an advance on those of category E. The goods are delivered on board the vessel or craft chosen by the buyer. The seller's responsibility ends when the goods pass over the ship's rail. The buyer is responsible for the freight and insurance contracts. The C terms are a further advance on the previous two. In this category of contracts, the buyer pays the seller not only the cost of the goods, but also the cost of insurance and of freight. The seller, therefore, has a responsibility to arrange the shipment and the insurance. In reality, however, as far as insurance is concerned, the seller is acting as an agent of the buyer, as is the buyer who maintains the right to sue in case the risk insured against manifests. Category D terms, also known as 'delivery contracts', cover the transaction from the manufacturer or seller's premises to the buyer or consignee's premises or designated place of delivery. The seller is responsible for almost everything to the point of delivery, except the documentation and, in the case of DAF, the costs of clearance.

These terms were developed and used mainly for multimodal transport transactions. It must be noted that, in many cases, there are variations in these terms and that there are hybrids or combinations of various terms in any particular transaction. For example, there could be 'FOB Additional Services', where the seller may be called upon to perform

functions other than delivering the goods to the captain of a ship nominated by the buyer. The seller may be asked to nominate the ship and/or take care of insurance.

The Incoterms are updated periodically, to keep abreast with practical developments in the business. It is not inconceivable, however, to have, in the near future, a complete overhaul or radical change as de-materialization or electronic commerce takes hold. This is seen with the growing strength of the Bill of Lading Electronic Registry Organisation (BOLERO), for example.

The current set of Incoterms was effective from 1 January 2000. The 13 terms, with the brief definition and introductory preamble, are reproduced below by the kind permission of the ICC. This is not the entire text. ‘Incoterms’ is an ICC trademark, registered in the European Union and elsewhere. The text of Incoterms, in whole or in part, is subject to ICC’s copyright.

INTERNATIONAL CHAMBER OF COMMERCE INCOTERMS 2000*

EXW

EX WORKS (...named place)

“Ex works” means that the seller delivers when he places the goods at the disposal of the buyer at the seller’s premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.

This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises.

However, if the parties wish the seller to be responsible for the loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit wording to this effect in the contract of sale.† This term should not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the FCA term should be used, provided the seller agrees that he will load at his cost and risk.

FCA

FREE CARRIER (...named place)

“Free Carrier” means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller’s premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading.

This term may be used irrespective of the mode of transport, including multimodal transport.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.

If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

FAS

FREE ALONGSIDE SHIP (...named port of shipment)

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment.

The FAS term requires the seller to clear the goods for export.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE BUYER TO ARRANGE FOR EXPORT CLEARANCE.

However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale.[†]

This term can be used only for sea or inland waterway transport.

FOB

FREE ON BOARD (...named port of shipment)

“Free on Board” means that the seller delivers when the goods pass the ship’s rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the FCA term should be used.

CFR

COST AND FREIGHT (...named port of destination)

“Cost and Freight” means that the seller delivers when the goods pass the ship’s rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the CPT term should be used.

CIF

COST, INSURANCE AND FREIGHT (...named port of destination)

“Cost, Insurance and Freight” means that the seller delivers when the goods pass the ship’s rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover.[‡]

Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CIP term should be used.

CPT

CARRIAGE PAID TO (...named place of destination)

"Carriage paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

CIP

CARRIAGE AND INSURANCE PAID TO (...named place of destination)

"Carriage and Insurance paid to..." means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.

[‡] The document above is printed with kind permission of the International Chamber of Commerce. These preambles neither constitute the full text of *Incoterms 2000* (Incoterms is a protected ICC trademark) nor a summary of them; only the full and official text should be relied upon for legal purposes. They only present selected features of Incoterms. The full text of *Incoterms 2000* is available as ICC Publication No 560, ISBN 9-28421-199-9; published in its official English and French versions by the International Chamber of Commerce, Paris; Copyright © 1999 International Chamber of Commerce (ICC). Available from ICC Publishing S.A., 38 Cours Albert ler, 75008 Paris, France or <http://www.iccbooks.com/>.

Consequently, the seller contracts for insurance and pays the insurance premium.

The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover.[†] Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CIP term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

DAF

DELIVERED AT FRONTIER (...named place)

“Delivered at Frontier” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term “frontier” may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

However, if the parties wish the seller to be responsible for the unloading of the goods from the arriving means of transport and to bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale.[†]

This term may be used irrespective of the mode of transport when goods are to be delivered at a land frontier. When delivery is to take place in the port of destination, on board a vessel or on the quay (wharf), the DES or DEQ terms should be used.

DES

DELIVERED EX SHIP (...named port of destination)

“Delivered Ex Ship” means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

DEQ

DELIVERED EX QUAY (...named port of destination)

“Delivered Ex Quay” means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf). The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE SELLER TO ARRANGE FOR IMPORT CLEARANCE.

If the parties wish to include in the seller’s obligations all or part of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.[†]

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on discharging from a vessel onto the quay (wharf) in the port of destination. However if the parties wish to include in the seller’s obligations the risks and costs of the handling of the goods from the quay to another place (warehouse, terminal, transport station, etc.) in or outside the port, the DDU or DDP terms should be used

DDU

DELIVERY DUTY UNPAID (...named place of destination)

“Delivered duty unpaid” means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods thereto, other than, where applicable,[§] any “duty” (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such “duty” has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

However, if the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom as well as some of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.[†]

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

DDP

DELIVERED DUTY PAID (...named place of destination)

“Delivered duty paid” means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable,[§] any “duty” (which term includes the responsibility for and the risks of the carrying out of customs formalities and the payment of

formalities, customs duties, taxes and other charges) for import in the country of destination.

Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

However, if the parties wish to exclude from the seller's obligations some of the costs payable upon import of the goods (such as value-added tax: VAT), this should be made clear by adding explicit wording to this effect in the contract of sale.[†]

If the parties wish the buyer to bear all risks and costs of the import, the DDU term should be used.

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

Note: ICC recommends that "Incoterms 2000" be referred to specifically whenever the terms are used, together with a location. For example, the term "Delivered at Frontier" (DAF) should always be accompanied by a reference to an exact place and the frontier to which delivery is to be made. Here are three examples of correct use of Incoterms:

FCA Kuala Lumpur Incoterms 2000;

FOB Liverpool Incoterms 2000;

DDU Frankfurt Schmidt GmbH Warehouse 4 Incoterms 2000.

[†] Variants of Incoterms: In practice, it frequently happens that the parties themselves by adding words to an Incoterm seek further precision than the term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties cannot rely on a well-established custom of the trade for the interpretation of such additions they may encounter serious problems when no consistent understanding of the additions could be proven. If for instance the common expressions "FOB stowed" or "EXW loaded" are used, it is impossible to establish a world-wide understanding to the effect that the seller's obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary trouble and cost.

Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.

EXW—the added obligation for the seller to load the goods on the buyer's collecting vehicle;

CIF/CIP—the buyer's need for additional insurance;

DEQ—the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charter party trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale.

Unfortunately, there are no authoritative definitions

of expressions such as "liner terms" and "terminal handling charges" (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are

recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charterparties, such as “FOB stowed”, “FOB stowed and trimmed”, are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However in some cases—particularly where Incoterms 2000 differ from Incoterms 1990—the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signalled by the word “However”.

‡ The Terms: The “C”-terms require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which he would have to pay transport costs must necessarily be indicated after the respective “C”-term. Under the CIF and CIP terms the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a point in the country of destination, the “C”-terms are frequently mistakenly believed to be arrival contracts, in which the seller would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the “C”-terms are of the same nature as the “F”-terms in that the seller fulfils the contract in the country of shipment or dispatch. Thus, the contracts of sale under the “C”-terms, like the contracts under the “F”-terms, fall within the category of shipment contracts.

It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the goods by a usual route and in a customary manner to the agreed place, the risk of loss or of damage to the goods, as well as additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the buyer. Hence, the “C”-terms are distinguishable from all other terms in that they contain two “critical” points, one indicating the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the “C”-terms which seek to extend the seller’s responsibility beyond the aforementioned “critical” point for the allocation of risk. It is of the very essence of the “C”-terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF- and CIP-terms.

The essential nature of the “C”-terms as shipment contracts is also illustrated by the common use of documentary credits as the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however, additional costs which may result from events occurring subsequent to shipment and dispatch are necessarily for the account of the buyer.

If the seller has to provide a contract of carriage which involves payment of duties, taxes and other charges, such costs will, of course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the A6 clause of all “C”-terms.

If it is customary to procure several contracts of carriage involving transshipment of the goods at intermediate places in order to reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are transhipped from one means of conveyance to the other. If, however, the carrier exercised his rights under a transshipment—or similar clause—in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders, war or warlike operations) then any additional cost resulting therefrom would be for the

account of the buyer, since the seller's obligation is limited to procuring the usual contract of carriage.

It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under "liner terms". In other cases, the word "landed" is added after CFR or CIF. However, it is advisable not to use abbreviations added to the "C"-terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.

In particular, the seller should not—and indeed could not, without changing the very nature of the "C"-terms—undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, "shipment (dispatch) not later than...". An agreement for example, "CFR Hamburg not later than..." is really a misnomer and thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word "afloat" is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR- and CIF-terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR- and CIF-terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason the 1980 United Nations Convention on Contracts for the International Sale of Goods article 68 stipulates that "if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage". There is, however, an exception to this rule when "the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer". Thus, the interpretation of a CFR- or CIF-term with the addition of the word "afloat" will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.

In practice, the parties frequently continue to use the traditional expression C&F (or C and F, C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract the parties should use the correct Incoterm which is CFR, the only world-wide-accepted standard abbreviation for the term "Cost and Freight (...named port of destination)".

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document (usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation "all other terms and conditions as per charterparty". Although, of course, a contracting party should always be able to ascertain all terms of his contract—preferably at the time of the conclusion of the contract—it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.

Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with “proof of delivery”, it should be stressed that the seller fulfils that requirement when he provides the “usual” proof. Under CPT and CIP it would be the “usual transport document” and

under CFR and CIF a bill of lading or a sea waybill. The transport documents must be “clean”, meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as “unclean” and would then not be accepted by banks in documentary credit transactions.

However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper’s declarations and therefore that the information is only “said to be” as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier’s means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms which deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer’s precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in “minimum cover” under Clause C, “medium cover” under Clause B and “most extended cover” under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller’s insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller’s insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly in which case the seller would have to provide such insurance if procurable.

[§] Customs Clearance: The term “customs clearance” has given rise to misunderstandings. Thus, whenever reference is made to an obligation of the seller or the buyer to undertake obligations in connection with passing the goods through customs of the country of export or import it is now made clear that this obligation does not only include the payment of duty and other charges but also the performance and payment of whatever administrative matters are connected with the passing of the goods through customs and the information to the authorities in this connection. Further, it has—although quite wrongfully—been considered in some quarters inappropriate to use terms dealing with the obligation to clear the goods through customs when, as in intra-European Union

trade or other free trade areas, there is no longer any obligation to pay duty and no restrictions relating to import or export. In order to clarify the situation, the words “*where applicable*” have been added in the A2 and B2, A6 and B6 clauses of the relevant Incoterms *in order for them to be used without any ambiguity where no customs procedures are required*.

It is normally desirable that customs clearance is arranged by the party domiciled in the country where such clearance should take place or at least by somebody acting there on his behalf. Thus, the exporter should normally clear the goods for export, while the importer should clear the goods for import.

Incoterms 1990 departed from this under the trade terms EXW and FAS (export clearance duty on the buyer) and DEQ (import clearance duty on the seller) but in Incoterms 2000 FAS and DEQ place the duty of clearing the goods for export on the seller and to clear them for import on the buyer respectively, while EXW—representing the seller’s minimum obligation—has been left unamended (export clearance duty on the buyer). Under DDP the seller specifically agrees to do what follows from the very name of the term—Delivered Duty Paid—namely to clear the goods for import and pay any duty as a consequence thereof.

CHAPTER TEN

International Air Transport Agreement

Chicago, IL, 11 December 1944

INTRODUCTION

This treaty is one part of the package on international air transport concluded at about the same time, at the end of 1944, after the Chicago Conference. The other main treaty is the Convention on International Civil Aviation (see below). In fact, membership of the International Civil Aviation Organization, established under the latter treaty, is largely a condition to being a party.

The International Air Transport Agreement, which is also known as the ‘Five Freedoms of the Air’, grants a number of flight freedoms to scheduled air services from contracting parties. These include: the privilege to fly across the territories of member states without landing; aircraft landing for non-traffic purposes; and the privilege to set down or collect passengers, as well as mail and cargo, carried from or to the territory of the state whose nationality the aircraft retains or to the territory of any other member state. These privileges are not extended to airports used solely for military purposes. Airlines granted the privilege to stop in a member country for non-traffic reasons may be required to offer a reasonable commercial service at the termini used. This is to be done in a way that is neither discriminatory nor prejudicial to the normal air-travel activities or to the rights and obligations of other member states. Contracting states are allowed to make arrangements regarding international air services provided they are consistent with the terms of this Agreement. This would be the basis for the various strategic alliances between different airlines.

As these ‘freedoms’ are couched as privileges, they may be revoked, modified or made conditional by the member state granting them. However, any such modification or conditions must not be discriminatory. One clear basis for revocation or for not allowing a particular air transport service to operate in a contracting state’s territory is where: a substantial owner and effective control is not vested in nationals of a contracting state; the airline failed to comply with the laws of the state in which, or over which, it operates; or the airline failed to perform its treaty obligations. This is interesting in that modern ownership arrangements are not always clear, but, in the war situation of the time, this restriction was important for security reasons. Beyond that, any contracting state can enter a reservation to any provision of this Agreement, and can withdraw from any of the ‘privileges’ permitted under the Agreement by giving six months’ notice. The state can

resume such obligations after the same notice period. The entire Agreement can be denounced by a member upon giving one year's notice.

It is interesting that this Agreement did not make any reference to its Second World War context. It is remarkable that, at the height of the War, countries were looking beyond, to a peaceful, orderly and prosperous civil, commercial, international air transport business. As this Agreement was entered into before the United Nations was formally established and when a number of territories were under the control of various colonial or military powers, the US Government served as the depository. At the same time, territory was defined, under article 2 of the Chicago Convention on International Civil Aviation, to 'land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such state'.

The Convention came into force on 8 February 1945. A maximum of 17 countries proceeded to endorse the Convention (which was negotiated at a conference attended by the representatives of 52 countries), but a number soon withdrew, including the depository of the treaty, the USA (in 1947). Eleven signatories remain.

INTERNATIONAL AIR TRANSPORT AGREEMENT (FIVE FREEDOMS OF THE AIR—FROM THE FINAL ACT OF THE CHICAGO CONFERENCE, 1944)*

THE STATES WHICH SIGN AND ACCEPT THIS INTERNATIONAL AIR TRANSPORT AGREEMENT, BEING MEMBERS OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION, DECLARE AS FOLLOWS:

ARTICLE I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

1. The privilege to fly across its territory without landing;
2. The privilege to land for non-traffic purposes;
3. The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
4. The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
5. The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

With respect to the privileges specified under paragraphs (3), (4) and (5) of this section, the undertaking of each contracting State relates only to through services on a route constituting a reasonably, direct line out from and back to the homeland of the State whose nationality the aircraft possesses.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of any contracting State.

Section 4

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Section 5

Each contracting State may, subject to the provisions of this Agreement,

1. Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
2. Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 6

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

ARTICLE II

Section 1

The contracting States accept this Agreement as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which has undertaken any other obligations inconsistent with this Agreement shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Agreement.

Section 2

Subject to the provisions of the preceding section, any contracting State may make arrangements concerning international air services not inconsistent with this Agreement. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

ARTICLE III

Each contracting State undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services.

ARTICLE IV

Section 1

Any contracting State may by reservation attached to this Agreement at the time of signature or acceptance elect not to grant and receive the rights and obligations of Article I, Section 1, paragraph (5), and may at any time after acceptance, on six months' notice given by it to the Council, withdraw itself from such rights and obligations. Such contracting State may on six months' notice to the Council assume or resume, as the case

may be, such rights and obligations. No contracting State shall be obliged to grant any rights under the said paragraph to any contracting State not bound thereby.

Section 2

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Civil Aviation Organization (<http://www.icao.int/>).

thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 3

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

ARTICLE V

This Agreement shall remain in force as long as the above-mentioned Convention; provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice and withdrawal.

ARTICLE VI

Pending the coming into force of the above-mentioned Convention, all references to it herein other than those contained in Article IV, Section 3, and Article VII shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation

Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and the Interim Council, respectively.

ARTICLE VII

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above-mentioned Convention.

ARTICLE VIII

Signatures and Acceptances of Agreement

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

IN WITNESS WHEREOF, the undersigned [not reproduced here], having been duly authorized, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures.

DONE at Chicago the seventh day of December 1944 in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or accept this Agreement.

CHAPTER ELEVEN

Chicago Convention on International Civil Aviation

Chicago, 7 December 1944

INTRODUCTION

This treaty explicitly acknowledges the war circumstances of its inception and argues that international civil aviation can contribute immensely to the creation and preservation of friendship and understanding among nations and peoples of the world. The desire in entering the treaty, therefore, was to remove or avoid friction, to promote co-operation, to enhance equality of opportunity and to achieve economic efficiency in the air-transport business.

The Convention appreciates that ‘every State has complete and exclusive sovereignty over the airspace above its territory’ (article 1), and prescribes that no aircraft is to fly over the territory of a member state or to land on its territory without authorization, by special agreement or any similar arrangement. As with the International Air Transport Agreement (see above), this treaty applies only to civil aircraft and not to aircraft used for military, customs or police purposes. Civil aircraft are not to be used for purposes inconsistent with the spirit and letter of the agreement.

Under the treaty, all non-scheduled air services have the right, subject to the terms of the treaty, to fly into or, in transit, non-stop across the territories of member states. Airlines of member states should also be able to stop for non-traffic reasons without prior permission. There are exceptions to this right. These include restrictions on grounds of safety or requirement of notification and assistance to remote, ill-equipped areas. The relevant national authorities also have the right to inspect relevant documents relating to the aeroplane and its crew and to search the aircraft of other contracting states as soon as they have landed or before departure. Pilotless aircraft can only be flown over the territory of member states with their specific permission. States also reserve the right to prohibit flights over their territories or specific parts of their territories for a certain period. These possible restrictions must, where applied, be uniform and not discriminate between airlines of various member countries. As far as possible, such restrictions, if any, must also not discriminate in favour of national airlines, except perhaps for inland flights. The same principle applies to the formulation and application of air-traffic regulations and the fixing or levying of charges and other costs for aviation services.

The Convention lays emphasis on measures to facilitate air transport. In particular, it calls for the passing of regulations and related measures in the areas of quarantine, immigration and customs, in order to expedite navigation and international movement of aircraft. The aircraft itself, as well as the equipment and supplies retained on it for use on the aircraft, are exempted from customs duties, inspection fees and other charges. Other measures to facilitate international air transport include the provision of safe airports, radio services, meteorological services and other working and reliable navigational facilities. Contracting countries are to collaborate in adopting uniform standards in air navigation. This is to be co-ordinated by the International Civil Aviation Organization (ICAO) established under the Chicago Convention. Particular areas of concern are: communications systems; navigation facilities; ground marking; rules on air-traffic control; airworthiness of aircraft; aeronautical maps; log books; the licensing of operating personnel; and aircraft in distress, as well as the handling of accidents. Each state is to provide effective assistance to aircraft in distress within its territory and to permit and assist, under that state's control, the owners of the aircraft or the authorities of the country where the aircraft is registered to be involved with the situation. In cases of major accidents, the state on whose territory the accident manifests is to institute an immediate enquiry, allowing the state in which the aircraft is registered to be an observer or otherwise assist with the investigations.

One important feature of the Convention is that it established the ICAO. The body's objectives are to develop and co-ordinate principles, procedures and techniques of international air navigation and transport in ways that promote orderly growth, safety and the operation of aircraft for peaceful purposes and that encourage the development of airways, airports and air-navigation facilities. One of the more interesting objectives (article 44) is the prevention of economic waste caused by unreasonable competition, but, at the same time, meeting 'the needs of the peoples of the world for safe, regular, efficient and economical air transport'. It is difficult to understand the orientation behind these provisions. Was the ICAO envisaged as a competition or anti-trust body? What competition is 'unreasonable'? How is the prevention of unreasonable competition to be reconciled with the promotion of economical air transport?

To help achieve the objectives set out for the ICAO, including dispute resolution, where necessary, there is an Assembly made up of representatives of all contracting states, a Council of 21 elected representatives (from the Assembly) and a chief executive officer known as the Secretary General.

The Convention came into force on 4 April 1947. Now adhered to by 188 states, it is one of the most widely signed treaties.

CONVENTION ON INTERNATIONAL CIVIL AVIATION (FROM THE FINAL ACT OF THE CHICAGO CONFERENCE, 1944)*

PREAMBLE

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the genera security; and

WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples-upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end.

PART I: AIR NAVIGATION

CHAPTER I: GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION

Article I: Sovereignty

The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 2: Territory

For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3: Civil and state aircraft

- (a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- (b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.
- (c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.
- (d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

Article 4: Misuse of civil aviation

Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.

CHAPTER II: FLIGHT OVER TERRITORY OF CONTRACTING STATES

Article 5: Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

Article 6: Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

Article 7: Cabotage

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis, to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Article 8: Pilotless aircraft

No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

Article 9: Prohibited areas

- (a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in inter, national scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.
- (b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to- aircraft of all other States.
- (c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

Article 10: Landing at customs airport

Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States.

Article 11: Applicability of air regulations

Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to

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the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Article 12: Rules of the air

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Article 13: Entry and clearance regulations

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

Article 14: Prevention of spread of disease

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures, applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

Article 15: Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imported by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

- (a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and
- (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: provided that, upon representation by an interested contracting State, the charger, imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

Article 16: Search of aircraft

The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

CHAPTER III: NATIONALITY OF AIRCRAFT

Article 17: Nationality of aircraft

Aircraft have the nationality of the State in which they are registered.

Article 18: Dual registration

An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

Article 19: National laws governing registration

The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

Article 20: Display of marks

Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

Article 21: Report of registrations

Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained

by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

CHAPTER IV: MEASURES TO FACILITATE AIR NAVIGATION

Article 22: Facilitation of formalities

Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

Article 23: Customs and immigration procedures

Each contracting State undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention. Nothing in this Convention shall be construed as preventing the establishment of customs-free airports.

Article 24: Customs duty

(a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

(b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

Article 25: Aircraft in distress

Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention.

Article 26: Investigation of accidents

In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

Article 27: Exemption from seizure on patent claims

- (a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.
- (b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.
- (c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

Article 28: Air navigation facilities and standard systems

Each contracting State undertakes, so far as it may find practicable, to:

- (a) Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;
- (b) Adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules

which may be recommended or established from time to time, pursuant to this Convention;

- (c) Collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention.

CHAPTER V: CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT

Article 29: Documents carried in aircraft

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:

- (a) Its certificate of registration;
- (b) Its certificate of airworthiness;
- (c) The appropriate licenses for each member of the crew;
- (d) Its journey log book;
- (e) If it is equipped with radio apparatus, the aircraft radio station license;
- (f) If it carries passengers, a list of their names and places of embarkation and destination;
- (g) If it carries cargo, a manifest and detailed declarations of the cargo.

Article 30: Aircraft radio equipment

- (a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.
- (b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special license for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Article 31: Certificates of airworthiness

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Article 32: Licenses of personnel

- (a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.

- (b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

Article 33: Recognition of certificates and licenses

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Article 34: Journey log books

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention.

Article 35: Cargo restrictions

- (a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implement, of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make
- (b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a): provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

Article 36: Photographic apparatus

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

CHAPTER VI: INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES

Article 37: Adoption of international standards and procedures

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including
- (b) Characteristics of airports and landing areas; ground marking;
- (c) Rules of the air and air traffic control practices;
- (d) Licensing of operating and mechanical personnel;
- (e) Airworthiness of aircraft;
- (f) Registration and identification of aircraft;
- (g) Collection and exchange of meteorological information;
- (h) Log books;
- (i) Aeronautical maps and charts;
- (j) Customs and immigration procedures;
- (k) Aircraft in distress and investigation of accidents; and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Article 38: Departures from international standards and procedures

Any State which finds it impracticable to comply in all respects with any such international standards or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other States of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

Article 39: Endorsement of certificates and licenses

- (a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.
- (b) Any person holding a license who does not satisfy in full the conditions laid down in the international standard relating to the class of license or certificate which he holds shall have endorsed on or attached to his license a complete enumeration of the particulars in which he does not satisfy such conditions.

Article 40: Validity of endorsed certificates and licenses

No aircraft or personnel having certificates or licenses so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

Article 41: Recognition of existing standards of airworthiness

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment.

Article 42: Recognition of existing standards of competency of personnel

The provisions of this Chapter shall not apply to personnel whose licenses are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licenses remain valid five years after the date of adoption of such standard.

PART II: THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

CHAPTER VII: THE ORGANIZATION

Article 43: Name and composition

An organization to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

Article 44: Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- (a) Insure the safe and orderly growth of international civil aviation throughout the world;
- (b) Encourage the arts of aircraft design and operation for peaceful purposes;
- (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) Prevent economic waste caused by unreasonable competition;
- (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) Avoid discrimination between contracting States;
- (h) Promote safety of flight in international air navigation;
- (i) Promote generally the development of all aspects of international civil aeronautics.

Article 45: Permanent seat

The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944. The seat may be temporarily transferred elsewhere by decision of the Council.

Article 46: First meeting of Assembly

The first meeting of the Assembly shall be summoned by the Interim Council of the above-mentioned Provisional Organization as soon as the Convention has come into force, to meet at a time and place to be decided by the Interim Council.

Article 47: Legal capacity

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

CHAPTER VIII: THE ASSEMBLY

Article 48: Meetings of Assembly and voting

- (a) The Assembly shall meet annually and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary General.
- (b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.
- (c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Article 49: Powers and duties of Assembly

The powers and duties of the Assembly shall be to:

- (a) Elect at each meeting its President and other officers;
- (b) Elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
- (c) Examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
- (d) Determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
- (e) Vote an annual budget and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;
- (f) Review expenditures and approve the accounts of the Organization;
- (g) Refer, at its discretion, to the Council, to subsidiary commissions or to any other body any matter within its sphere of action;
- (h) Delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
- (i) Carry out the appropriate provisions of Chapter XIII;
- (j) Consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;

- (k) Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

CHAPTER IX: THE COUNCIL

Article 50: Composition and election of Council

- (a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of twenty-one contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next following election.
- (b) In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.
- (c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

Article 51: President of Council

The Council shall elect its President for a term of three years. He may be reelected. He shall have no vote. The Council shall elect from among its members one or more Vice Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to:

- (a) Convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
- (b) Serve as representative of the Council; and
- (c) Carry out on behalf of the Council the functions which the Council assigns to him.

Article 52: Voting in Council

Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

Article 53: Participation without a vote

Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions on any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party.

Article 54: Mandatory functions of Council

The Council shall:

- (a) Submit annual reports to the Assembly;
- (b) Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
- (c) Determine its organization and rules of procedure;
- (d) Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;
- (e) Establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
- (f) Administer the finances of the Organization in accordance with the provisions of Chapters XII and XV;
- (g) Determine the emoluments of the President of the Council;
- (h) Appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
- (i) Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;
- (j) Report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;
- (k) Report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;
- (l) Adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;
- (m) Consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;
- (n) Consider any matter relating to the Convention which any contracting State refers to it.

Article 55: Permissive functions of Council

The Council may:

- (a) Where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention;
- (b) Delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;
- (c) Conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;
- (d) Study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;
- (e) Investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable.

CHAPTER X: THE AIR NAVIGATION COMMISSION

Article 56: Nomination and appointment of Commission

The Air Navigation Commission shall be composed of twelve members appointed by the Council from among persons nominated by contracting States.

These persons shall have suitable qualifications and experience in the science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

Article 57: Duties of Commission

The Air Navigation Commission shall:

- (a) Consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;
- (b) Establish technical subcommissions on which any contracting State may be represented, if it so desires;
- (c) Advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation.

CHAPTER XI: PERSONNEL

Article 58: Appointment of personnel

Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State.

Article 59: International character of personnel

The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting State undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities.

Article 60: Immunities and privileges of personnel

Each contracting State undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement.

CHAPTER XII: FINANCE

Article 61: Budget and apportionment of expenses

The Council shall submit to the Assembly an annual budget, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budget with whatever modification it sees fit to prescribe, and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine.

Article 62: Suspension of voting power

The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.

Article 63: Expenses of delegations and other representatives

Each contracting State shall bear the expenses of its own delegation to the Assembly and the remuneration, travel, and other expenses of any person whom it appoints to serve on the Council, and of its nominees or representatives on any subsidiary committees or commissions of the Organization.

CHAPTER XIII: OTHER INTERNATIONAL ARRANGEMENTS

Article 64: Security arrangements

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.

Article 65: Arrangements with other international bodies

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization.

Article 66: Functions relating to other agreements

- (a) The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.
- (b) Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement or the International Air Transport Agreement drawn up at Chicago on December 7, 1944 shall not have the right to vote on any questions referred to the Assembly or Council under the provisions of the relevant Agreement.

PART III: INTERNATIONAL AIR TRANSPORT

CHAPTER XIV: INFORMATION AND REPORTS

Article 67: File reports with Council

Each contracting State undertakes that its international airlines shall, in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof.

CHAPTER XV: AIRPORTS AND OTHER AIR NAVIGATION FACILITIES

Article 68: Designation of routes and airports

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use.

Article 69: Improvement of air navigation facilities

If the Council is of the opinion that the airports or other air navigation facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned, and other States affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose. No contracting State shall be guilty of an infraction of this Convention if it fails to carry out these recommendations.

Article 70: Financing of air navigation facilities

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the States does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the cost.

Article 71: Provision and maintenance of facilities by Council

If a contracting State so requests, the Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities, including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided.

Article 72: Acquisition or use of land

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State shall either provide the land itself, retaining title if it wishes, or facilitate the use of the land by the Council on just and reasonable terms and in accordance with the laws of the State concerned.

Article 73: Expenditure and assessment of funds

Within the limit of the funds which may be made available to it by the Assembly under Chapter XII, the Council may make current expenditures for the purposes of this Chapter

from the general funds of the Organization. The Council shall assess the capital funds required for the purposes of this Chapter in previously agreed proportions over a reasonable period of time to the contracting States consenting thereto whose airlines use the facilities. The Council may also assess to States that consent any working funds that are required.

Article 74: Technical assistance and utilization of revenues

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges.

Article 75: Taking over of facilities from Council

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or amend the decision of the Council.

Article 76: Return of funds

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments, as determined by the Council.

CHAPTER XVI: JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES

Article 77: Joint operating organizations permitted

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

Article 78: Function of Council

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

Article 79: Participation in operating organizations

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

PART IV: FINAL PROVISIONS**CHAPTER XVII: OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS****Article 80: Paris and Habana Conventions**

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 or the Convention on Commercial Aviation signed at Habana [Havana] on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to.

Article 81: Registration of existing agreements

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council.

Article 82: Abrogation of inconsistent arrangements

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has under taken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention.

Article 83: Registration of new arrangements

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

CHAPTER XVIII: DISPUTES AND DEFAULT

Article 84: Settlement of disputes

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an ad hoc arbitral tribunal agreed upon with the other State. Any such appeal shall be notified to the Council within sixty days of the decision of the Council.

Article 85: Arbitration procedure

If any contracting State party to a dispute in which the decision of the Council is under appeal has not accepted the Statute of the Permanent Court of International Justice and the contracting States parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the contracting States parties to the dispute shall name a single arbitrator who shall name an umpire. If either contracting State party to the dispute fails to name an arbitrator within a period of three months from the date of the appeal, an arbitrator shall be named on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its own procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.

Article 86: Appeals

Unless the Council decides otherwise, any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

Article 87: Penalty for non-conformity of airline

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

Article 88: Penalty for non-conformity by State

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

CHAPTER XIX: WAR

Article 89: War and emergency conditions

In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council.

CHAPTER XX: ANNEXES

Article 90: Adoption and amendment of Annexes

- (a) The adoption by the Council of the Annexes described in Article 54, subparagraph (I), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.
- (b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.

CHAPTER XXI: RATIFICATIONS, ADHERENCES, AMENDMENTS AND DENUNCIATIONS

Article 91: Ratification of Convention

- (a) This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United States of America, which shall give notice of the date of the deposit to each of the signatory and adhering States.

- (b) As soon as this Convention has been ratified or adhered to by twenty six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.
- (c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force.

Article 92: Adherence to Convention

- (a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict.
- (b) Adherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.

Article 93: Admission of other States

States other than those provided for in Articles 91 and 92(a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: provided that in each case the assent of any State invaded or attacked during the present war by the State seeking admission shall be necessary.

Article 94: Amendment of Convention

- (a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.
- (b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommending adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

Article 95: Denunciation of Convention

- (a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.

- (b) Denunciation shall take effect one year from the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation.

CHAPTER XXII: DEFINITIONS

Article 96: For the purpose of this Convention the expression:

- (a) “Air service”—means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.
- (b) “International air service” means an air service which passes through the air space over the territory of more than one State.
- (c) “Airline” means any air transport enterprise offering or operating an international air service.
- (d) “Stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

SIGNATURE OF CONVENTION

IN WITNESS WHEREOF, the undersigned plenipotentiaries, having been duly authorized, sign this Convention on behalf of their respective governments on the dates appearing opposite their signatures [not reproduced here].

DONE at Chicago the seventh day of December 1944, in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be open for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or adhere to this Convention.

CHAPTER TWELVE

Articles of Agreement for the International Bank for Reconstruction and Development (The World Bank)

Washington, DC, 27 December 1945

INTRODUCTION

The International Bank for Reconstruction and Development (IBRD) or the World Bank was the second of the trinity of economic institutions and processes established after the Second World War. The agreement establishing the World Bank has been amended a few times, but its overriding focus is on reconstruction of countries devastated by war or other conflict and support for countries pursuing various development projects. Other purposes of the World Bank include: the promotion of private foreign investment or, where necessary, directly supplementing investments; promoting long-term balanced growth in international trade; prioritizing the guarantee or granting of loans in order to attend to more useful and urgent projects; and helping convert wartime economy to peacetime economy. There is no doubt that these objectives were heavily influenced by the need to rebuild post-war Europe. Once that appeared to have been achieved, the objectives of the Bank were adapted for the purposes of poor developing countries and for rebuilding the former bloc of Eastern Europe and those countries that have had civil conflicts.

The Bank is structured with a Board of Governors at the apex. The Board consists of representatives, usually finance ministers, of all the members of the Bank and meets once a year. It may delegate its functions to other bodies within the IBRD structure, except for the following: the admission and suspension of a member; adjustments in the capital stock; appellate functions in respect of the interpretation of the Articles of Agreement; distribution of the income of the Bank; formal co-operation with other international organizations; and the possible suspension or winding up of the activities of the Bank.

Next in authority to the Board is the Executive Directorate. There are 12 Executive Directors, of whom five are appointed by the leading five contributors to the share capital of the Bank. The rest are elected by the remainder of the members through the Governors. The seven representatives who receive the seven highest vote counts shall be considered elected Executive Directors. All the Executive Directors serve an initial period of two years. The Executive Directors are responsible for the day-to-day operations of the Bank. Unlike the Governors, the Executive Directors are considered

employees of the IBRD, although their votes on any matter are determined by the votes held or allotted the members who elected the particular director. This clearly compromises their independence. Both Governors and Executive Directors have alternates, who can sit in meetings, but cannot vote while the particular Governor or Director is present.

The final layer in the organization of the Bank is the President and his staff. The President is the administrative head of the Bank and is appointed by the Executive Directors, but must not be a Governor or an Executive Director or an alternate of either. The President appointed is, by tradition, the nominee of the USA, the chief contributor. The President chairs the Executive Directorate, but has no vote, except where a deciding vote is required in an impasse. The President and the staff are responsible solely to the Bank. Apart from these three main units, there is an Advisory Council of at least seven people selected by the Board of Governors. They must include representatives of various economic sectors—for example, banking, agriculture, industry, labour—and come from a wide spread of geographical areas. The Council meets annually and advises the Bank on matters of general policy.

The authorized capital stock of the IBRD is 1,420,500 shares. The capital stock is divided into 100,000 shares at par value of US \$100,000.00 each. The capital stock can be, and in fact has been increased in the past, when members with over 75% of voting power so determine. Liability of members is limited to their unpaid share subscription. Shares held by members can be transferred only to the Bank and cannot be pledged or otherwise encumbered in any way. Apart from shares, the Bank raises money from the money markets, loans and the issue of securities.

The Bank is not to give loans or guarantees of more than 100% of its unimpaired subscribed capital, reserves and surplus. The specific conditions that have to exist before a loan or guarantee is issued by the IBRD include: the full guarantee of repayment of the loan by the central bank of the member in whose territory the subject of the loan is located, if the said member is not itself the borrower; the Bank is satisfied that the borrower cannot obtain the loan on more competitive terms; a loans committee established by the Bank studied and recommended the loan; the loan can be repaid within the projected time; and the Bank receives appropriate compensation for its participation or guarantee. One condition that the IBRD is prohibited from considering is politics or ideology of the member(s) involved. This has raised some controversy in recent times, as the Bank is accused of giving loans to allegedly kleptocratic governments like that of Mobutu (Zaire—now the Democratic Republic of the Congo), Duvalier (Haiti), Samuel Doe (Liberia), Arap Moi (Kenya), etc.

The World Bank was agreed at an international conference of the wartime Allies held at Bretton Woods, NH (USA), in July 1944 and signed into existence on 27 December 1945. Twenty-nine countries signed the Articles in 1945, but by the beginning of 2005 there were 184 members of the IBRD.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL BANK
FOR RECONSTRUCTION AND DEVELOPMENT (AS AMENDED
EFFECTIVE 16 FEBRUARY 1989)*

THE GOVERNMENTS ON WHOSE BEHALF THE PRESENT AGREEMENT IS
SIGNED AGREE AS FOLLOWS:

INTRODUCTORY ARTICLE

The International Bank for Reconstruction and Development is established and shall operate in accordance with the following provisions:

ARTICLE I PURPOSE

The purposes of the Bank are:

- i. To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- ii. To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- iii. To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.
- iv. To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- v. To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

ARTICLE II MEMBERSHIP IN AND CAPITAL OF THE BANK

SECTION 1: Membership

- (a) The original members of the Bank shall be those members of the International Monetary Fund which accept membership in the Bank before the date specified in Article XI, Section 2(e).
- (b) Membership shall be open to other members of the Fund, at such times and in accordance with such terms as may be prescribed by the Bank.

SECTION 2: Authorized Capital

- (a) The authorized capital stock of the Bank shall be \$10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares having a par value of \$100,000 each, which shall be available for subscription only by members.
- (b) The capital stock may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power.

SECTION 3: Subscription of Shares

- (a) Each member shall subscribe shares of the capital stock of the Bank. The minimum number of shares to be subscribed by the original members shall be those set forth in Schedule A. The minimum number of shares to be subscribed by other members shall be determined by the Bank, which shall reserve a sufficient portion of its capital stock for subscription by such members.
- (b) The Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.
- (c) If the authorized capital stock of the Bank is increased, each member shall have a reasonable opportunity to subscribe, under such conditions as the Bank shall decide, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank, but no member shall be obligated to subscribe any part of the increased capital.

SECTION 4: Issue Price of Shares

Shares included in the minimum subscriptions of original members shall be issued at par. Other shares shall be issued at par unless the Bank by a majority of the total voting power decides in special circumstances to issue them on other terms.

SECTION 5: Division and Calls of Subscribed Capital

The subscription of each member shall be divided into two parts as follows:

- i. twenty percent shall be paid or subject to call under Section 7(i) of this Article as needed by the Bank for its operations;
- ii. the remaining eighty percent shall be subject to call by the Bank only when required to meet obligations of the Bank created under Article IV, Sections 1(a)(ii) and (iii). Calls on unpaid subscriptions shall be uniform on all shares.

SECTION 6: Limitation on Liability

Liability on shares shall be limited to the unpaid portion of the issue price of the shares.

SECTION 7: Method of Payment of Subscriptions for Shares

Payment of subscriptions for shares shall be made in gold or United States dollars and in the currencies of the members as follows:

- i. under Section 5(i) of this Article, two percent of the price of each share shall be payable in gold or United States dollars, and, when calls are made, the remaining eighteen percent shall be paid in the currency of the member;
- ii. when a call is made under Section 5(ii) of this Article, payment may be made at the option of the member either in gold, in United States dollars or in the currency required to discharge the

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Bank for Reconstruction and Development—the World Bank (<http://www.worldbank.org/>).

obligations of the Bank for the purpose for which the call is made;

- iii. when a member makes payments in any currency under (i) and (ii) above, such payments shall be made in amounts equal in value to the member's liability under the call. This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article.

SECTION 8: Time of Payment of Subscriptions

- (a) The two percent payable on each share in gold or United States dollars under Section 7(i) of this Article, shall be paid within sixty days of the date on which the Bank begins operations, provided that
 - i. any original member of the Bank whose metropolitan territory has suffered from enemy occupation or hostilities during the present war shall be granted the right to postpone payment of one-half percent until five years after that date;
 - ii. an original member who cannot make such a payment because it has not recovered possession of its gold reserves which are still seized or immobilized as a result of the war may postpone all payment until such date as the Bank shall decide.
- (b) The remainder of the price of each share payable under Section 7(i) of this Article shall be paid as and when called by the Bank, provided that

- i. the Bank shall, within one year of its beginning operations, call not less than eight percent of the price of the share in addition to the payment of two percent referred to in (a) above;
- ii. not more than five percent of the price of the share shall be called in any period of three months.

SECTION 9: Maintenance of Value of Certain Currency Holdings of the Bank

- (a) Whenever (i) the par value of a member's currency is reduced, or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid in to the Bank by the member under Article II, Section 7(i), from currency referred to in Article IV, Section 2(b), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank.
- (b) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (a) above.
- (c) The provisions of the preceding paragraphs may be waived by the Bank when a uniform proportionate change in the par values of the currencies of all its members is made by the International Monetary Fund.

SECTION 10: Restriction on Disposal of Shares

Shares shall not be pledged or encumbered in any manner whatever and they shall be transferable only to the Bank.

ARTICLE III GENERAL PROVISIONS RELATING TO LOANS AND GUARANTEES

SECTION 1: Use of Resources

- (a) The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to projects for development and projects for reconstruction alike.
- (b) For the purpose of facilitating the restoration and reconstruction of the economy of members whose metropolitan territories have suffered great devastation from enemy occupation or hostilities, the Bank, in determining the conditions and terms of loans made to such members, shall pay special regard to lightening the financial burden and expediting the completion of such restoration and reconstruction.

SECTION 2: Dealings between Members and the Bank

Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other similar fiscal agency, and the Bank shall deal with members only by or through the same agencies.

SECTION 3: Limitations on Guarantees and Borrowings of the Bank

The total amount outstanding of guarantees, participations in loans and direct loans made by the Bank shall not be increased at any time, if by such increase the total would exceed one hundred percent of the unimpaired subscribed capital, reserves and surplus of the Bank.

SECTION 4: Conditions on which the Bank may Guarantee or Make Loans

The Bank may guarantee, participate in, or make loans to any member or any political sub-division thereof and any business, industrial, and agricultural enterprise in the territories of a member, subject to the following conditions:

- i. When the member in whose territories the project is located is not itself the borrower, the member or the central bank or some comparable agency of the member which is acceptable to the Bank, fully guarantees the repayment of the principal and the payment of interest and other charges on the loan,
- ii. The Bank is satisfied that in the prevailing market conditions the borrower would be unable otherwise to obtain the loan under conditions which in the opinion of the Bank are reasonable for the borrower.
- iii. A competent committee, as provided for in Article V, Section 7, has submitted a written report recommending the project after a careful study of the merits of the proposal.
- iv. In the opinion of the Bank the rate of interest and other charges are reasonable and such rate, charges and the schedule for repayment of principal are appropriate to the project,
- v. In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower, and, if the borrower is not a member, that the guarantor, will be in position to meet its obligations under the loan; and the Bank shall act prudently in the interests both of the particular member in whose territories the project is located and of the members as a whole,
- vi. In guaranteeing a loan made by other investors, the Bank receives suitable compensation for its risk.
- vii. Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

SECTION 5: Use of Loans Guaranteed, Participated in or Made by the Bank

- (a) The Bank shall impose no conditions that the proceeds of a loan shall be spent in the territories of any particular member or members.
- (b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.
- (c) In the case of loans made by the Bank, it shall open an account in the name of the borrower and the amount of the loan shall be credited to this account in the currency or currencies in which the loan is made. The borrower shall be permitted by the Bank to draw on this account only to meet expenses in connection with the project as they are actually incurred.

SECTION 6: Loans to the International Finance Corporation

- (a) The Bank may make, participate in, or guarantee loans to the International Finance Corporation, an affiliate of the Bank, for use in its lending operations. The total amount outstanding of such loans, participations and guarantees shall not be increased if, at the time or as a result thereof, the aggregate amount of debt (including the guarantee of any debt) incurred by the said Corporation from any source and then outstanding shall exceed an amount equal to four times its unimpaired subscribed capital and surplus.
- (b) The provisions of Article III, Sections 4 and 5(c) and of Article IV, Section 3 shall not apply to loans, participations and guarantees authorized by this Section.

ARTICLE IV OPERATIONS

SECTION 1: Methods of Making or Facilitating Loans

- (a) The Bank may make or facilitate loans which satisfy the general conditions of Article III in any of the following ways:
 - i. By making or participating in direct loans out of its own funds corresponding to its unimpaired paid-up capital and surplus and, subject to Section 6 of this Article, to its reserves.
 - ii. By making or participating in direct loans out of funds raised in the market of a member, or otherwise borrowed by the Bank.
 - iii. By guaranteeing in whole or in part loans made by private investors through the usual investment channels.
- (b) The Bank may borrow funds under (a)(ii) above or guarantee loans under (a) (iii) above only with the approval of the member in whose markets the funds are raised and the member in whose currency the loan is denominated, and only if those members agree that the proceeds may be exchanged for the currency of any other member without restriction.

SECTION 2: Availability and Transferability of Currencies

- (a) Currencies paid into the Bank under Article II, Section 7(i), shall be loaned only with the approval in each case of the member whose currency is involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.
- (b) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made with currencies referred to in (a) above shall be exchanged for the currencies of other members or reloaned only with the approval in each case of the members whose currencies are involved; provided, however, that if necessary, after the Bank's subscribed capital has been entirely called, such currencies shall, without restriction by the members whose currencies are offered, be used or exchanged for the currencies required to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to such contractual payments on loans guaranteed by the Bank.
- (c) Currencies received by the Bank from borrowers or guarantors in payment on account of principal of direct loans made by the Bank under Section 1(a)(ii) of this Article, shall be held and used, without restriction by the members, to make amortization payments, or to anticipate payment of or repurchase part or all of the Bank's own obligations.
- (d) All other currencies available to the Bank, including those raised in the market or otherwise borrowed under Section 1(a)(ii) of this Article, those obtained by the sale of gold, those received as payments of interest and other charges for direct loans made under Sections 1(a)(i) and (ii), and those received as payments of commissions and other charges under Section 1(a)(iii), shall be used or exchanged for other currencies or gold required in the operations of the Bank without restriction by the members whose currencies are offered.
- (e) Currencies raised in the markets of members by borrowers on loans guaranteed by the Bank under Section 1(a)(iii) of this Article, shall also be used or exchanged for other currencies without restriction by such members.

SECTION 3: Provision of Currencies for Direct Loans

The following provisions shall apply to direct loans under Sections 1(a)(i) and (ii) of this Article:

- (a) The Bank shall furnish the borrower with such currencies of members, other than the member in whose territories the project is located, as are needed by the borrower for expenditures to be made in the territories of such other members to carry out the purposes of the loan.
- (b) The Bank may, in exceptional circumstances when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

- (c) The Bank, if the project gives rise indirectly to an increased need for foreign exchange by the member in whose territories the borrower as part of the loan with an appropriate amount of gold project is located, may in exceptional circumstances provide the or foreign exchange not in excess of the borrower's local expenditure in connection with the purposes of the loan.
- (d) The Bank may, in exceptional circumstances, at the request of a member in whose territories a portion of the loan is spent, repurchase with gold or foreign exchange a part of that member's currency thus spent but in no case shall the part so repurchased exceed the amount by which the expenditure of the loan in those territories gives rise to an increased need for foreign exchange.

SECTION 4: Payment Provisions for Direct Loans

Loan contracts under Section 1(a)(i) or (ii) of this Article shall be made in accordance with the following payment provisions:

- (a) The terms and conditions of interest and amortization payments, maturity and dates of payment of each loan shall be determined by the Bank. The Bank shall also determine the rate and any other terms and conditions of commission to be charged in connection with such loan. In the case of loans made under Section 1(a)(ii) of this Article during the first ten years of the Bank's operations, this rate of commission shall be not less than one percent per annum and not greater than one and one-half percent per annum, and shall be charged on the outstanding portion of any such loan. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already made and to future loans, if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.
- (b) All loan contracts shall stipulate the currency or currencies in which payments under the contract shall be made to the Bank. At the option of the borrower, however, such payments may be made in gold, or subject to the agreement of the Bank, in the currency of a member other than that prescribed in the contract,
 - i. In the case of loans made under Section 1(a)(i) of this Article, the loan contracts shall provide that payments to the Bank of interest, other charges and amortization shall be made in the currency loaned, unless the member whose currency is loaned agrees that such payments shall be made in some other specified currency or currencies. These payments, subject to the provisions of Article II, Section 9(c), shall be equivalent to the value of such contractual payments at the time the loans were made, in terms of a currency specified for the purpose by the Bank by a three-fourths majority of the total voting power.
 - ii. In the case of loans made under Section 1(a)(ii) of this Article, the total amount outstanding and payable to the Bank in any one currency shall at no time exceed the total amount of the outstanding borrowings made by the Bank under Section 1(a)(ii) and payable in the same currency.

- (c) If a member suffers from an acute exchange stringency, so that the service of any loan contracted by that member or guaranteed by it or by one of its agencies cannot be provided in the stipulated manner, the member concerned may apply to the Bank for a relaxation of the conditions of payment. If the Bank is satisfied that some relaxation is in the interests of the particular member and of the operations of the Bank and of its members as a whole, it may take action under either, or both, of the following paragraphs with respect to the whole, or part, of the annual service:
- i. The Bank may, in its discretion, make arrangements with the member concerned to accept service payments on the loan in the member's currency for periods not to exceed three years upon appropriate terms regarding the use of such currency and the maintenance of its foreign exchange value; and for the repurchase of such currency on appropriate terms,
 - ii. The Bank may modify the terms of amortization or extend the life of the loan, or both.

SECTION 5: Guarantees

- (a) In guaranteeing a loan placed through the usual investment channels, the Bank shall charge a guarantee commission payable periodically on the amount of the loan outstanding at a rate determined by the Bank. During the first ten years of the Bank's operations, this rate shall be not less than one percent per annum and not greater than one and one-half percent per annum. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already guaranteed and to future loans if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.
- (b) Guarantee commissions shall be paid directly to the Bank by the borrower.
- (c) Guarantees by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.
- (d) The Bank shall have power to determine any other terms and conditions of the guarantee.

SECTION 6: Special Reserve

The amount of commissions received by the Bank under Sections 4 and 5 of this Article shall be set aside as a special reserve, which shall be kept available for meeting liabilities of the Bank in accordance with Section 7 of this Article. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Executive Directors may decide.

SECTION 7: Methods of Meeting Liabilities of the Bank in Case of Defaults

In cases of default on loans made, participated in, or guaranteed by the Bank:

- (a) The Bank shall make such arrangements as may be feasible to adjust the obligations under the loans, including arrangements under or analogous to those provided in Section 4(c) of this Article.
- (b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Section 1(a)(ii) and (iii) of this Article shall be charged:
 - i. first, against the special reserve provided in Section 6 of this Article.
 - ii. then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.
- (c) Whenever necessary to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it, the Bank may call an appropriate amount of the unpaid subscriptions of members in accordance with Article II, Sections 5 and 7. Moreover, if it believes that a default may be of long duration, the Bank may call an additional amount of such unpaid subscriptions not to exceed in any one year one percent of the total subscriptions of the members for the following purposes:
 - i. To redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default.
 - ii. To repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

SECTION 8: Miscellaneous Operations

In addition to the operations specified elsewhere in this Agreement, the Bank shall have the power:

- i. To buy and sell securities it has issued and to buy and sell securities which it has guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the member in whose territories the securities are to be bought or sold.
- ii. To guarantee securities in which it has invested for the purpose of facilitating their sale.
- iii. To borrow the currency of any member with the approval of that member.
- iv. To buy and sell such other securities as the Directors by a threefourths majority of the total voting power may deem proper for the investment of all or part of the special reserve under Section 6 of this Article.

In exercising the powers conferred by this Section, the Bank may deal with any person, partnership, association, corporation or other legal entity in the territories of any member.

SECTION 9: Warning to be Placed on Securities

Every security guaranteed or issued by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless expressly stated on the security.

SECTION 10: Political Activity Prohibited

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

ARTICLE V ORGANIZATION AND MANAGEMENT

SECTION 1: Structure of the Bank

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

SECTION 2: Board of Governors

- (a) All the powers of the Bank shall be vested in the Board of Governors consisting of one governor and one alternate appointed by each member in such manner as it may determine. Each governor and each alternate shall serve for five years, subject to the pleasure of the member appointing him, and may be reappointed. No Board shall select one of the Governors as chairman. alternate may vote except in the absence of his principal. The
- (b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:
 - i. Admit new members and determine the conditions of their admission;
 - ii. Increase or decrease the capital stock;
 - iii. Suspend a member;
 - iv. Decide appeals from interpretations of this agreement given by the Executive Directors;
 - v. Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character);
 - vi. Decide to suspend permanently the operations of the Bank and to distribute its assets;
 - vii. Determine the distribution of the net income of the Bank.
- (c) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Executive Directors. Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one-quarter of the total voting power.

- (d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.
- (e) The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.
- (f) The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.
- (g) Governors and alternates shall serve as such without compensation from the Bank, but the Bank shall pay them reasonable expenses incurred in attending meetings.
- (h) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the contract of service of the President.

SECTION 3: Voting

- (a) Each member shall have two hundred fifty votes plus one additional vote for each share of stock held.
- (b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast.

SECTION 4: Executive Directors

- (a) The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors.
- (b) There shall be twelve Executive Directors, who need not be governors, and of whom:
 - i. five shall be appointed, one by each of the five members having the largest number of shares;
 - ii. seven shall be elected according to Schedule B by all the Governors other than those appointed by the five members referred to in (i) above.

For the purpose of this paragraph, members means governments of countries whose names are set forth in Schedule A, whether they are original members or become members in accordance with Article II, Section 1(b). When governments of other countries become members, the Board of Governors may, by a four-fifths majority of the total voting power, increase the total number of directors by increasing the number of directors to be elected. Executive Directors shall be appointed or elected every two years.

- (c) Each executive director shall appoint an alternate with full power to act for him when he is not present. When the executive directors appointing them are present, alternates may participate in meetings but shall not vote.
- (d) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected for the remainder of the term by the governors who elected the former director. A majority of the votes cast shall be

required for election. While the office remains vacant, the alternate of the former director shall exercise his powers, except that of appointing an alternate.

- (e) The Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.
- (f) A quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.
- (g) Each appointed director shall be entitled to cast the number of votes allotted under Section 3 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted toward his election. All the votes which a director is entitled to cast shall be cast as a unit.
- (h) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.
- (i) The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates.

SECTION 5: President and Staff

- (a) The Executive Directors shall select a President who shall not be a governor or an executive director or an alternate for either. The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The President shall cease to hold office when the Executive Directors so decide.
- (b) The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.
- (c) The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.
- (d) In appointing the officers and staff the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

SECTION 6: Advisory Council

- (a) There shall be an Advisory Council of not less than seven persons selected by the Board of Governors including representatives of banking, commercial, industrial, labor, and agricultural interests, and with as wide a national representation as possible. In those fields where specialized international organizations exist, the members of the Council representative of those fields shall be selected in agreement with such

organizations. The Council shall advise the Bank on matters of general policy. The Council shall meet annually and on such other occasions as the Bank may request.

- (b) Councillors shall serve for two years and may be reappointed. They shall be paid their reasonable expenses incurred on behalf of the Bank.

SECTION 7: Loan Committees

The committees required to report on loans under Article III, Section 4, shall be appointed by the Bank. Each such committee shall include an expert selected by the governor representing the member in whose territories the project is located and one or more members of the technical staff of the Bank.

SECTION 8: Relationship to Other International Organizations

- (a) The Bank, within the terms of this Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article VIII.
- (b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.

SECTION 9: Location of Offices

- (a) The principal office of the Bank shall be located in the territory of the member holding the greatest number of shares.
- (b) The Bank may establish agencies or branch offices in the territories of any member of the Bank.

SECTION 10: Regional Offices and Councils

- (a) The Bank may establish regional offices and determine the location of, and the areas to be covered by, each regional office.
- (b) Each regional office shall be advised by a regional council representative of the entire area and selected in such manner as the Bank may decide.

SECTION 11: Depositories

- (a) Each member shall designate its central bank as a depository for all the Bank's holdings of its currency or, if it has no central bank, it shall designate such other institution as may be acceptable to the Bank.
- (b) The Bank may hold other assets, including gold, in depositories designated by the five members having the largest number of shares and in such other designated depositories as the Bank may select. Initially, at least one-half of the gold holdings of

the Bank shall be held in the depository designated by the member in whose territory the Bank has its principal office, and at least forty percent shall be held in the depositories designated by the remaining four members referred to above, each of such depositories to hold, initially, not less than the amount of gold paid on the shares of the member designating it. However, all transfers of gold by the Bank shall be made with due regard to the costs of transport and anticipated requirements of the Bank. In an emergency the Executive Directors may transfer all or any part of the Bank's gold holdings to any place where they can be adequately protected.

SECTION 12: Form of Holdings of Currency

The Bank shall accept from any member, in place of any part of the member's currency, paid in to the Bank under Article II, Section 7(i), or to meet amortization payments on loans made with such currency, and not needed by the Bank in its operations, notes or similar obligations issued by the Government of the member or the depository designated by such member, which shall be non-negotiable, non-interest-bearing and payable at their par value on demand by credit to the account of the Bank in the designated depository.

SECTION 13: Publication of Reports and Provision of Information

- (a) The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations.
- (b) The Bank may publish such other reports as it deems desirable to carry out its purposes.
- (c) Copies of all reports, statements and publications made under this section shall be distributed to members.

SECTION 14: Allocation of Net Income

- (a) The Board of Governors shall determine annually what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed.
- (b) If any part is distributed, up to two percent non-cumulative shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of the loans outstanding during the year made under Article IV, Section 1(a)(i), out of currency corresponding to its subscription. If two percent is paid as a first charge, any balance remaining to be distributed shall be paid to all members in proportion to their shares. Payments to each member shall be made in its own currency, or if that currency is not available in other currency acceptable to the member. If such payments are made in currencies other than the member's own currency, the transfer of the currency and its use by the receiving member after payment shall be without restriction by the members.

ARTICLE VI WITHDRAWAL AND SUSPENSION OF MEMBERSHIP: SUSPENSION OF OPERATIONS

SECTION 1: Right of Members to Withdraw

Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. Withdrawal shall become effective on the date such notice is received.

SECTION 2: Suspension of Membership

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

SECTION 3: Cessation of Membership in International Monetary Fund

Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.

SECTION 4: Settlement of Accounts with Governments Ceasing to be Members

- (a) When a government ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.
- (b) At the time a government ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with such government in accordance with the provisions of (c) and (d) below. For this purpose the repurchase price of the shares shall be the value shown by the books of the Bank on the day the government ceases to be a member.
- (c) The payment for shares repurchased by the Bank under this section shall be governed by the following conditions:
 - i. Any amount due to the government for its shares shall be withheld so long as the government, its central bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the

liability of the government resulting from its subscription for shares under Article II, Section 5(ii). In any event, no amount due to a member for its shares shall be paid until six months after the date upon which the government ceases to be a member.

- ii. Payments for shares may be made from time to time, upon their surrender by the government, to the extent by which the amount due as the repurchase price in (b) above exceeds the aggregate of liabilities on loans and guarantees in (c)(i) above until the former member has received the full repurchase price.
- iii. Payments shall be made in the currency of the country receiving payment or at the option of the Bank in gold.
- iv. If losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the government ceased to be a member, and the amount of such losses exceeds the amount of the reserve provided against losses on the date when the government ceased to be a member, such government shall be obligated to repay upon demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member government shall remain liable on any call for unpaid subscriptions under Article II, Section 5(ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

- (d) If the Bank suspends permanently its operations under Section 5(b) of this Article, within six months of the date upon which any government ceases to be a member, all rights of such government shall be determined by the provisions of Section 5 of this Article.

SECTION 5: Suspension of Operations and Settlement of Obligations

- (a) In an emergency the Executive Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.
- (b) The Bank may suspend permanently its operations in respect of new loans and guarantees by a vote of a majority of the Governors, exercising a majority of the total voting power. After such suspension of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation, and preservation of its assets and settlement of its obligations.
- (c) The liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their own currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
- (d) All creditors holding direct claims shall be paid out of the assets of the Bank, and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Executive Directors shall make such arrangements as are necessary, in their judgment, to insure a distribution to holders of contingent claims ratably with creditors holding direct claims.
- (e) No distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until

- i. all liabilities to creditors have been discharged or provided for, and
 - ii. a majority of the Governors, exercising a majority of the total voting power, have decided to make a distribution.
- (f) After a decision to make a distribution has been taken under (e) above, the Executive Directors may by a two-thirds majority vote make successive distributions of the assets of the Bank to members until all of the assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.
- (g) Before any distribution of assets is made, the Executive Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank,
- (h) The Executive Directors shall value the assets to be distributed as at the date of distribution and then proceed to distribute in the following manner:
- i. There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, insofar as they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.
 - ii. Any balance due to a member after payment has been made under (i) above shall be paid, in its own currency, insofar as it is held by the Bank, up to an amount equivalent in value to such balance.
 - iii. Any balance due to a member after payment has been made under (i) and (ii) above shall be paid in gold or currency acceptable to the member, insofar as they are held by the Bank, up to an amount equivalent in value to such balance.
 - iv. Any remaining assets held by the Bank after payments have been made to members under (i), (ii), and (iii) above shall be distributed pro rata among the members.
 - v. Any member receiving assets distributed by the Bank in accordance with (h) above, shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

ARTICLE VII STATUS, IMMUNITIES AND PRIVILEGES

SECTION 1: Purposes of the Article

To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.

SECTION 2: Status of the Bank

The Bank shall possess full juridical personality, and, in particular, the capacity:

- i. to contract;

- ii. to acquire and dispose of immovable and movable property;
- iii. to institute legal proceedings.

SECTION 3: Position of the Bank with Regard to Judicial Process

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4: Immunity of Assets from Seizure

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5: Immunity of Archives

The archives of the Bank shall be inviolable.

SECTION 6: Freedom of Assets from Restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7: Privilege for Communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8: Immunities and Privileges of Officers and Employees

All governors, executive directors, alternates, officers and employees of the Bank:

- i. shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;
- ii. not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

- iii. shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9: Immunities from Taxation

- (a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held:
 - i. which discriminates against such obligation or security solely because it is issued by the Bank; or
 - ii. if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held:
 - i. which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - ii. if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

SECTION 10: Application of Article

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

ARTICLE VIII AMENDMENTS

- (a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent of the total voting power, have

accepted the proposed amendments, the Bank shall certify the fact by formal communication addressed to all members.

- (b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying:
 - i. the right to withdraw from the Bank provided in Article VI, Section 1;
 - ii. the right secured by Article II, Section 3(c);
 - iii. the limitation on liability provided in Article II, Section 6.
- (c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

ARTICLE IX INTERPRETATION

- (a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an Executive Director, it shall be entitled to representation in accordance with Article V, Section 4(h).
- (b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.
- (c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE X APPROVAL DEEMED GIVEN

Whenever the approval of any member is required before any act may be done by the Bank, except in Article VIII, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

ARTICLE XI FINAL PROVISIONS

SECTION 1: Entry into Force

This Agreement shall enter into force when it has been signed on behalf of governments whose minimum subscriptions comprise not less than sixty-five percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2(a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

SECTION 2: Signature

- (a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.
- (b) Each government shall become a member of the Bank as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.
- (c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 1(b), of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.
- (d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of the price of each share in gold or United States dollars for the purpose of meeting administrative expenses of the Bank. This payment shall be credited on account of the payment to be made in accordance with Article II, Section 8(a). The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Bank when the initial meeting has been called under Section 3 of this Article. If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.
- (e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.
- (f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 1(b).
- (g) By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.
- (h) In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until

one hundred and eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period, the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

- (i) Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

SECTION 3: Inauguration of the Bank

- (a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member to whom the largest number of shares is allocated in Schedule A shall call the first meeting of the Board of Governors.
- (b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries, to which the largest number of shares are allocated in Schedule A, shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships which they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule B and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.
- (c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.
- (d) The Bank shall notify members when it is ready to commence operations.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 1(b).

[The schedule of subscriptions and the decisions of the Executive Directors regarding interpretation of the Articles, made under Article IX, are not reproduced here.]

CHAPTER THIRTEEN

Articles of Agreement of the International Monetary Fund

Washington, DC, 27 December 1945

INTRODUCTION

The International Monetary Fund (IMF) is one of the three key economic institutions or processes established at the end of Second World War (the other two being the World Bank and the General Agreement on Tariffs and Trade—the latter being the predecessor of the World Trade Organization). The IMF's mandate is to promote international monetary co-operation and, as an institutionalized system, to provide the machinery for consultation, co-operation and collaboration on international monetary matters. Specifically, it is to promote exchange stability, to maintain orderly exchange arrangements among members, to restrain competitive exchange depreciation and to eliminate restrictions on foreign exchange. The Fund maintains two departments for the purposes of providing financial assistance to members: the General Department; and the Special Drawing Rights Department. Membership of the Fund gives automatic right to special drawing right (SDR) transactions, but the rest of the operations of the Fund—the bulk of its activities—are carried out in the General Department.

Another important objective, and one that the Fund is more commonly known for, is the provision of its general resources to help members readjust difficulties in their balance of payments. It does this under 'adequate safeguards' generally known as conditionalities. These conditionalities usually include reductions in government or public expenditure, devaluation of the currency, more liberalization of trade and the privatization of economic activities in which the state is involved. In some cases it is difficult to reconcile the conditionalities with the objective to 'facilitate the expansion and balanced growth of international trade and...to contribute thereby to the promotion and maintenance of high levels of employment and real income' (article I).

The membership of the IMF was categorized into two: original members and others. The original members were those countries that were represented at the UN Monetary and Financial Conference and whose governments accepted membership before the end of 1945. The other members were admitted subsequently and are mainly developing countries and former colonies. Each member is allocated a quota denominated in special drawing rights to which it must subscribe fully. The quotas of the original members were

set at the inception of the Fund, but that of the subsequent members is determined by the Board of Governors. The Board of Governors is at the apex of the Fund's structure. It is made up of representatives—usually finance ministers—of member countries. The voting power of each member of the Board is based on the quota subscription. Next in line of authority is the Board of Directors, which is responsible for the day-to-day operations of the Fund. Five of the 21 Executive Directors are appointed by the top five contributors to the Fund—at the beginning of 2005 still the USA, Japan, Germany, the United Kingdom and France. Fifteen of the members are elected by the rest of the membership based on their voting powers. The last member, non-voting unless to cast a deciding vote, is the Managing Director, who is appointed by the Board. The Managing Director is the chief executive officer of the IMF, seeing to the daily working of the Fund, including staff management. Most important matters that go before the Board of Directors are decided by weighted voting, based on the voting powers of the appointing or electing member countries. The voting and administration of the Fund is one of the controversial topics surrounding the IMF. For one, it is difficult to conceive of enough members coming together in sufficient strength to outvote the top five, especially where some important issues are determined by a majority of 85%. Secondly, the Executive Directors are supposed to be employees of the Fund, but they are appointed or elected by the members and cast their votes based on the votes of the constituency of the appointing or electing members.

Among the Fund's main forms of assistance are those described as the regular facilities, as in shortterm stand-by arrangements or in extended fund facilities, which involve drawing down on a member's quota for balance-of-payment support and the purchase of other currencies. There are also concessional and other special facilities. Concessional assistance is offered mainly under the Poverty Reduction and Growth Facility (PRGF), but a second programme is the Heavily Indebted Poor Countries (HIPC) debt-relief initiative. Finally, the three special facilities provide assistance in cases of shortages of key staples and losses on major commodity exports or for precautionary financing.

The Articles were agreed at the United Nations Monetary and Financial Conference held at Bretton Woods in New Hampshire (USA) during July 1944, and the organization came into existence upon signature (by 29 countries) in December 1945. Agreed amendments have taken effect in July 1969, April 1978 and November 1992. By the beginning of 2005 there were 184 members.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND (AS AMENDED EFFECTIVE 11 NOVEMBER 1992)*

INTRODUCTORY ARTICLE

THE GOVERNMENTS ON WHOSE BEHALF THE PRESENT AGREEMENT IS SIGNED AGREE AS FOLLOWS:

- (i) The International Monetary Fund is established and shall operate in accordance with the provisions of this Agreement as originally adopted and subsequently amended.

- (ii) To enable the Fund to conduct its operations and transactions, the Fund shall maintain a General Department and a Special Drawing Rights Department. Membership in the Fund shall give the right to participation in the Special Drawing Rights Department.
- (iii) Operations and transactions authorized by this Agreement shall be conducted through the General Department, consisting in accordance with the provisions of this Agreement of the General Resources Account, the Special Disbursement Account, and the Investment Account; except that operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department.

ARTICLE I PURPOSES

The purposes of the International Monetary Fund are:

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- (v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
- (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

ARTICLE II MEMBERSHIP

Section 1: Original members

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before December 31, 1945.

Section 2: Other members

Membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governors. These terms, including the terms for subscriptions, shall be based on principles consistent with those applied to other countries that are already members.

ARTICLE III QUOTAS AND SUBSCRIPTIONS

Section 1: Quotas and payment of subscriptions

Each member shall be assigned a quota expressed in special drawing rights. The quotas of the members represented at the United Nations Monetary and Financial Conference which accept membership before December 31, 1945 shall be those set forth in Schedule A. The quotas of other members shall be determined by the Board of Governors. The subscription of each member shall be equal to its quota and shall be paid in full to the Fund at the appropriate depository.

Section 2: Adjustment of quotas

- (a) The Board of Governors shall at intervals of not more than five years conduct a general review, and if it deems it appropriate propose an adjustment, of the quotas of the members. It may also, if it thinks fit, consider at any other time the adjustment of any particular quota at the request of the member concerned.
- (b) The Fund may at any time propose an increase in the quotas of those members of the Fund that were members on August 31, 1975 in proportion to their quotas on that date in a cumulative amount not in excess of amounts transferred under Article V, Section 12(f)(i) and (j) from the Special Disbursement Account to the General Resources Account.
- (c) An eighty-five percent majority of the total voting power shall be required for any change in quotas.
- (d) The quota of a member shall not be changed until the member has consented and until payment has been made unless payment is deemed to have been made in accordance with Section 3(b) of this Article.

Section 3: Payments when quotas are changed

- (a) Each member which consents to an increase in its quota under Section 2(a) of this Article shall, within a period determined by the Fund, pay to the Fund twenty-five percent of the increase in special drawing rights, but the Board of Governors may prescribe that this payment may be made, on the same basis for all members, in whole or in part in the currencies of other members specified, with their concurrence, by the Fund, or in the member's own currency. A non-participant shall pay in the currencies of other members specified by the Fund, with their concurrence, a proportion of the increase corresponding to the proportion to be paid in special drawing rights by participants. The balance of the increase shall be paid by the member in its own

currency. The Fund's holdings of a member's currency shall not be increased above the level at which they would be subject to charges under Article V, Section 8(b)(ii), as a result of payments by other members under this provision.

- (b) Each member which consents to an increase in its quota under Section 2(b) of this Article shall be deemed to have paid to the Fund an amount of subscription equal to such increase.
 - (c) If a member consents to a reduction in its quota, the Fund shall, within sixty days, pay to the member an amount equal to the reduction. The payment shall be made in the member's currency and in such amount of special drawing rights or the currencies of other members specified, with their concurrence, by the Fund as is necessary to prevent the reduction of the Fund's holdings of the currency below the new quota, provided that in exceptional circumstances the Fund may reduce its holdings of the currency below the new quota by payment to the member in its own currency.
- * The document above is printed with kind permission of the International Monetary Fund. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Fund (<http://www.imf.org/>).
- (d) A seventy percent majority of the total voting power shall be required for any decision under (a) above, except for the determination of a period and the specification of currencies under that provision.

Section 4: Substitution of securities for currency

The Fund shall accept from any member, in place of any part of the member's currency in the General Resources Account which in the judgment of the Fund is not needed for its operations and transactions, notes or similar obligations issued by the member or the depository designated by the member under Article XIII, Section 2, which shall be non-negotiable, non-interest bearing and payable at their face value on demand by crediting the account of the Fund in the designated depository. This Section shall apply not only to currency subscribed by members but also to any currency otherwise due to, or acquired by, the Fund and to be placed in the General Resources Account.

ARTICLE IV OBLIGATIONS REGARDING EXCHANGE ARRANGEMENTS

Section 1: General obligations of members

Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, each member shall:

- (i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;
- (ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;
- (iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and
- (iv) follow exchange policies compatible with the undertakings under this Section.

Section 2: General exchange arrangements

- (a) Each member shall notify the Fund, within thirty days after the date of the second amendment of this Agreement, of the exchange arrangements it intends to apply in fulfillment of its obligations under Section 1 of this Article, and shall notify the Fund promptly of any changes in its exchange arrangements.
- (b) Under an international monetary system of the kind prevailing on January 1, 1976, exchange arrangements may include (i) the maintenance by a member of a value for its currency in terms of the special drawing right or another denominator, other than gold, selected by the member, or (ii) cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, or (iii) other exchange arrangements of a member's choice.
- (c) To accord with the development of the international monetary system, the Fund, by an eighty-five percent majority of the total voting power, may make provision for general exchange arrangements without limiting the right of members to have exchange arrangements of their choice consistent with the purposes of the Fund and the obligations under Section 1 of this Article.

Section 3: Surveillance over exchange arrangements

- (a) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1 of this Article.
- (b) In order to fulfill its functions under (a) above, the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies. Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member's exchange rate policies. The principles adopted by the Fund shall be consistent with cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, as well as with other exchange arrangements of a member's choice consistent with the purposes of the Fund and Section 1 of this Article. These principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members.

Section 4: Par values

The Fund may determine, by an eighty-five percent majority of the total voting power, that international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. The Fund shall make the determination on the basis of the underlying stability of the world economy, and for this purpose shall take into account price movements and rates of expansion in the economies of members. The determination shall be made in light of the evolution of the international monetary system, with particular reference to sources of liquidity, and, in order to ensure the effective operation of a system of par values, to arrangements under which both members in surplus and members in deficit in their balances of payments take prompt, effective, and symmetrical action to achieve adjustment, as well as to arrangements for intervention and the treatment of imbalances. Upon making such determination, the Fund shall notify members that the provisions of Schedule C apply.

Section 5: Separate currencies within a member's territories

- (a) Action by a member with respect to its currency under this Article shall be deemed to apply to the separate currencies of all territories in respect of which the member has accepted this Agreement under Article XXXI, Section 2(g) unless the member declares that its action relates either to the metropolitan currency alone, or only to one or more specified separate currencies, or to the metropolitan currency and one or more specified separate currencies.
- (b) Action by the Fund under this Article shall be deemed to relate to all currencies of a member referred to in (a) above unless the Fund declares otherwise.

ARTICLE V OPERATIONS AND TRANSACTIONS OF THE FUND

Section 1: Agencies dealing with the Fund

Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies.

Section 2: Limitation on the Fund's operations and transactions

- (a) Except as otherwise provided in this Agreement, transactions on the account of the Fund shall be limited to transactions for the purpose of supplying a member, on the initiative of such member, with special drawing rights or the currencies of other members from the general resources of the Fund, which shall be held in the General Resources Account, in exchange for the currency of the member desiring to make the purchase.
- (b) If requested, the Fund may decide to perform financial and technical services, including the administration of resources contributed by members, that are consistent with the purposes of the Fund. Operations involved in the performance of such

financial services shall not be on the account of the Fund. Services under this subsection shall not impose any obligation on a member without its consent.

Section 3: Conditions governing use of the Fund's general resources

- (a) The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.
- (b) A member shall be entitled to purchase the currencies of other members from the Fund in exchange for an equivalent amount of its own currency subject to the following conditions:
 - i. the member's use of the general resources of the Fund would be in accordance with the provisions of this Agreement and the policies adopted under them;
 - ii. the member represents that it has a need to make the purchase because of its balance of payments or its reserve position or developments in its reserves;
 - iii. the proposed purchase would be a reserve tranche purchase, or would not cause the Fund's holdings of the purchasing member's currency to exceed two hundred percent of its quota;
 - iv. the Fund has not previously declared under Section 5 of this Article, Article VI, Section 1, or Article XXVI, Section 2(a) that the member desiring to purchase is ineligible to use the general resources of the Fund.
- (c) The Fund shall examine a request for a purchase to determine whether the proposed purchase would be consistent with the provisions of this Agreement and the policies adopted under them, provided that requests for reserve tranche purchases shall not be subject to challenge.
- (d) The Fund shall adopt policies and procedures on the selection of currencies to be sold that take into account, in consultation with members, the balance of payments and reserve position of members and developments in the exchange markets, as well as the desirability of promoting over time balanced positions in the Fund, provided that if a member represents that it is proposing to purchase the currency of another member because the purchasing member wishes to obtain an equivalent amount of its own currency offered by the other member, it shall be entitled to purchase the currency of the other member unless the Fund has given notice under Article VII, Section 3 that its holdings of the currency have become scarce.
- (e)
 - i. Each member shall ensure that balances of its currency purchased from the Fund are balances of a freely usable currency or can be exchanged at the time of purchase for a freely usable currency of its choice at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).

- ii. Each member whose currency is purchased from the Fund or is obtained in exchange for currency purchased from the Fund shall collaborate with the Fund and other members to enable such balances of its currency to be exchanged, at the time of purchase, for the freely usable currencies of other members.
- iii. An exchange under (i) above of a currency that is not freely usable shall be made by the member whose currency is purchased unless that member and the purchasing member agree on another procedure.
- iv. A member purchasing from the Fund the freely usable currency of another member and wishing to exchange it at the time of purchase for another freely usable currency shall make the exchange with the other member if requested by that member. The exchange shall be made for a freely usable currency selected by the other member at the rate of exchange referred to in (i) above.
- (f) Under policies and procedures which it shall adopt, the Fund may agree to provide a participant making a purchase in accordance with this Section with special drawing rights instead of the currencies of other members.

Section 4: Waiver of conditions

The Fund may in its discretion, and on terms which safeguard its interests, waive any of the conditions prescribed in Section 3(b)(iii) and (iv) of this Article, especially in the case of members with a record of avoiding large or continuous use of the Fund's general resources. In making a waiver it shall take into consideration periodic or exceptional requirements of the member requesting the waiver. The Fund shall also take into consideration a member's willingness to pledge as collateral security acceptable assets having a value sufficient in the opinion of the Fund to protect its interests and may require as a condition of waiver the pledge of such collateral security.

Section 5: Ineligibility to use the Fund's general resources

Whenever the Fund is of the opinion that any member is using the general resources of the Fund in a manner contrary to the purposes of the Fund, it shall present to the member a report setting forth the views of the Fund and prescribing a suitable time for reply. After presenting such a report to a member, the Fund may limit the use of its general resources by the member. If no reply to the report is received from the member within the prescribed time, or if the reply received is unsatisfactory, the Fund may continue to limit the member's use of the general resources of the Fund or may, after giving reasonable notice to the member, declare it ineligible to use the general resources of the Fund.

Section 6: Other purchases and sales of special drawing rights by the Fund

- (a) The Fund may accept special drawing rights offered by a participant in exchange for an equivalent amount of the currencies of other members.

- (b) The Fund may provide a participant, at its request, with special drawing rights for an equivalent amount of the currencies of other members. The Fund's holdings of a member's currency shall not be increased as a result of these transactions above the level at which the holdings would be subject to charges under Section 8(b)(ii) of this Article.
- (c) The currencies provided or accepted by the Fund under this Section shall be selected in accordance with policies that take into account the principles of Section 3(d) or 7(i) of this Article. The Fund may enter into transactions under this Section only if a member whose currency is provided or accepted by the Fund concurs in that use of its currency.

Section 7: Repurchase by a member of its currency held by the Fund

- (a) A member shall be entitled to repurchase at any time the Fund's holdings of its currency that are subject to charges under Section 8(b) of this Article.
- (b) A member that has made a purchase under Section 3 of this Article will be expected normally, as its balance of payments and reserve position improves, to repurchase the Fund's holdings of its currency that result from the purchase and are subject to charges under Section 8(b) of this Article. A member shall repurchase these holdings if, in accordance with policies on repurchase that the Fund shall adopt and after consultation with the member, the Fund represents to the member that it should repurchase because of an improvement in its balance of payments and reserve position.
- (c) A member that has made a purchase under Section 3 of this Article shall repurchase the Fund's holdings of its currency that result from the purchase and are subject to charges under Section 8(b) of this Article not later than five years after the date on which the purchase was made. The Fund may prescribe that repurchase shall be made by a member in installments during the period beginning three years and ending five years after the date of a purchase. The Fund, by an eighty-five percent majority of the total voting power, may change the periods for repurchase under this subsection, and any period so adopted shall apply to all members.
- (d) The Fund, by an eighty-five percent majority of the total voting power, may adopt periods other than those that apply in accordance with (c) above, which shall be the same for all members, for the repurchase of holdings of currency acquired by the Fund pursuant to a special policy on the use of its general resources.
- (e) A member shall repurchase, in accordance with policies that the Fund shall adopt by a seventy percent majority of the total voting power, the Fund's holdings of its currency that are not acquired as a result of purchases and are subject to charges under Section 8(b)(ii) of this Article.
- (f) A decision prescribing that under a policy on the use of the general resources of the Fund the period for repurchase under (c) or (d) above shall be shorter than the one in effect under the policy shall apply only to holdings acquired by the Fund subsequent to the effective date of the decision.
- (g) The Fund, on the request of a member, may postpone the date of discharge of a repurchase obligation, but not beyond the maximum period under (c) or (d) above or under policies adopted by the Fund under (e) above, unless the Fund determines, by a seventy percent majority of the total voting power, that a longer period for repurchase

which is consistent with the temporary use of the general resources of the Fund is justified because discharge on the due date would result in exceptional hardship for the member.

- (h) The Fund's policies under Section 3(d) of this Article may be supplemented by policies under which the Fund may decide after consultation with a member to sell under Section 3(b) of this Article its holdings of the member's currency that have not been repurchased in accordance with this Section 7, without prejudice to any action that the Fund may be authorized to take under any other provision of this Agreement.
- (i) All repurchases under this Section shall be made with special drawing rights or with the currencies of other members specified by the Fund. The Fund shall adopt policies and procedures with regard to the currencies to be used by members in making repurchases that take into account the principles in Section 3(d) of this Article. The Fund's holdings of a member's currency that is used in repurchase shall not be increased by the repurchase above the level at which they would be subject to charges under Section 8(b)(ii) of this Article.
- (j)
 - i. If a member's currency specified by the Fund under (i) above is not a freely usable currency, the member shall ensure that the repurchasing member can obtain it at the time of the repurchase in exchange for a freely usable currency selected by the member whose currency has been specified. An exchange of currency under this provision shall take place at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).
 - ii. Each member whose currency is specified by the Fund for repurchase shall collaborate with the Fund and other members to enable repurchasing members, at the time of the repurchase, to obtain the specified currency in exchange for the freely usable currencies of other members,
 - iii. An exchange under (j)(i) above shall be made with the member whose currency is specified unless that member and the repurchasing member agree on another procedure,
 - iv. If a repurchasing member wishes to obtain, at the time of the repurchase, the freely usable currency of another member specified by the Fund under (i) above, it shall, if requested by the other member, obtain the currency from the other member in exchange for a freely usable currency at the rate of exchange referred to in (j)(i) above. The Fund may adopt regulations on the freely usable currency to be provided in an exchange.

Section 8: Charges

- (a)
 - i. The Fund shall levy a service charge on the purchase by a member of special drawing rights or the currency of another member held in the General Resources

Account in exchange for its own currency, provided that the Fund may levy a lower service charge on reserve tranche purchases than on other purchases. The service charge on reserve tranche purchases shall not exceed one-half of one percent,

- ii. The Fund may levy a charge for stand-by or similar arrangements. The Fund may decide that the charge for an arrangement shall be offset against the service charge levied under (i) above on purchases under the arrangement.

(b) The Fund shall levy charges on its average daily balances of a member's currency held in the General Resources Account to the extent that they

- i. have been acquired under a policy that has been the subject of an exclusion under Article XXX(c), or
- ii. exceed the amount of the member's quota after excluding any balances referred to in (i) above.

The rates of charge normally shall rise at intervals during the period in which the balances are held.

(c) If a member fails to make a repurchase required under Section 7 of this Article, the Fund, after consultation with the member on the reduction of the Fund's holdings of its currency, may impose such charges as the Fund deems appropriate on its holdings of the member's currency that should have been repurchased.

(d) A seventy percent majority of the total voting power shall be required for the determination of the rates of charge under (a) and (b) above, which shall be uniform for all members, and under (c) above.

(e) A member shall pay all charges in special drawing rights, provided that in exceptional circumstances the Fund may permit a member to pay charges in the currencies of other members specified by the Fund, after consultation with them, or in its own currency. The Fund's holdings of a member's currency shall not be increased as a result of payments by other members under this provision above the level at which they would be subject to charges under (b)(ii) above.

Section 9: Remuneration

(a) The Fund shall pay remuneration on the amount by which the percentage of quota prescribed under (b) or (c) below exceeds the Fund's average daily balances of a member's currency held in the General Resources Account other than balances acquired under a policy that has been the subject of an exclusion under Article XXX(c). The rate of remuneration, which shall be determined by the Fund by a seventy percent majority of the total voting power, shall be the same for all members and shall be not more than, nor less than four-fifths of, the rate of interest under Article XX, Section 3. In establishing the rate of remuneration, the Fund shall take into account the rates of charge under Article V, Section 8(b).

(b) The percentage of quota applying for the purposes of (a) above shall be:

- i. for each member that became a member before the second amendment of this Agreement, a percentage of quota corresponding to seventy-five percent of its quota on the date of the second amendment of this Agreement, and for each

member that became a member after the date of the second amendment of this Agreement, a percentage of quota calculated by dividing the total of the amounts corresponding to the percentages of quota that apply to the other members on the date on which the member became a member by the total of the quotas of the other members on the same date; plus

- ii. the amounts it has paid to the Fund in currency or special drawing rights under Article III, Section 3(a) since the date applicable under (b)(i) above; and minus
 - iii. the amounts it has received from the Fund in currency or special drawing rights under Article III, Section 3(c) since the date applicable under (b)(i) above.
- (c) The Fund, by a seventy percent majority of the total voting power, may raise the latest percentage of quota applying for the purposes of (a) above to each member to:
- i. a percentage, not in excess of one hundred percent, that shall be determined for each member on the basis of the same criteria for all members, or
 - ii. one hundred percent for all members.
- (d) Remuneration shall be paid in special drawing rights, provided that either the Fund or the member may decide that the payment to the member shall be made in its own currency.

Section 10: Computations

- (a) The value of the Fund's assets held in the accounts of the General Department shall be expressed in terms of the special drawing right.
- (b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement, except Article IV and Schedule C, shall be at the rates at which the Fund accounts for these currencies in accordance with Section 11 of this Article.
- (c) Computations for the determination of amounts of currency in relation to quota for the purpose of applying the provisions of this Agreement shall not include currency held in the Special Disbursement Account or in the Investment Account.

Section 11: Maintenance of value

- (a) The value of the currencies of members held in the General Resources Account shall be maintained in terms of the special drawing right in accordance with exchange rates under Article XIX, Section 7(a).
- (b) An adjustment in the Fund's holdings of a member's currency pursuant to this Section shall be made on the occasion of the use of that currency in an operation or transaction between the Fund and another member and at such other times as the Fund may decide or the member may request. Payments to or by the Fund in respect of an adjustment shall be made within a reasonable time, as determined by the Fund, after the date of adjustment, and at any other time requested by the member.

Section 12: Other operations and transactions

- (a) The Fund shall be guided in all its policies and decisions under this Section by the objectives set forth in Article VIII, Section 7 and by the objective of avoiding the management of the price, or the establishment of a fixed price, in the gold market.
- (b) Decisions of the Fund to engage in operations or transactions under (c), (d), and (e) below shall be made by an eighty-five percent majority of the total voting power.
- (c) The Fund may sell gold for the currency of any member after consulting the member for whose currency the gold is sold, provided that the Fund's holdings of a member's currency held in the General Resources Account shall not be increased by the sale above the level at which they would be subject to charges under Section 8(b)(ii) of this Article without the concurrence of the member, and provided that, at the request of the member, the Fund at the time of sale shall exchange for the currency of another member such part of the currency received as would prevent such an increase. The exchange of a currency for the currency of another member shall be made after consultation with that member, and shall not increase the Fund's holdings of that member's currency above the level at which they would be subject to charges under Section 8(b)(ii) of this Article. The Fund shall adopt policies and procedures with regard to exchanges that take into account the principles applied under Section 7(i) of this Article. Sales under this provision to a member shall be at a price agreed for each transaction on the basis of prices in the market.
- (d) The Fund may accept payments from a member in gold instead of special drawing rights or currency in any operations or transactions under this Agreement. Payments to the Fund under this provision shall be at a price agreed for each operation or transaction on the basis of prices in the market.
- (e) The Fund may sell gold held by it on the date of the second amendment of this Agreement to those members that were members on August 31, 1975 and that agree to buy it, in proportion to their quotas on that date. If the Fund intends to sell gold under (c) above for the purpose of (f)(ii) below, it may sell to each developing member that agrees to buy it that portion of the gold which, if sold under (c) above, would have produced the excess that could have been distributed to it under (f)(iii) below. The gold that would be sold under this provision to a member that has been declared ineligible to use the general resources of the Fund under Section 5 of this Article shall be sold to it when the ineligibility ceases, unless the Fund decides to make the sale sooner. The sale of gold to a member under this subsection (e) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold.
- (f) Whenever under (c) above the Fund sells gold held by it on the date of the second amendment of this Agreement, an amount of the proceeds equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and, except as the Fund may decide otherwise under (g) below, any excess shall be held in the Special Disbursement Account. The assets held in the Special Disbursement Account shall be held separately from the other accounts of the General Department, and may be used at any time:
 - i. to make transfers to the General Resources Account for immediate use in operations and transactions authorized by provisions of this Agreement other than this Section;

- ii. for operations and transactions that are not authorized by other provisions of this Agreement but are consistent with the purposes of the Fund. Under this subsection (f)(ii) balance of payments assistance may be made available on special terms to developing members in difficult circumstances, and for this purpose the Fund shall take into account the level of per capita income;
- iii. for distribution to those developing members that were members on August 31, 1975, in proportion to their quotas on that date, of such part of the assets that the Fund decides to use for the purposes of (ii) above as corresponds to the proportion of the quotas of these members on the date of distribution to the total of the quotas of all members on the same date, provided that the distribution under this provision to a member that has been declared ineligible to use the general resources of the Fund under Section 5 of this Article shall be made when the ineligibility ceases, unless the Fund decides to make the distribution sooner.

Decisions to use assets pursuant to (i) above shall be taken by a seventy percent majority of the total voting power, and decisions pursuant to (ii) and (iii) above shall be taken by an eighty-five percent majority of the total voting power.

- (g) The Fund may decide, by an eighty-five percent majority of the total voting power, to transfer a part of the excess referred to in (f) above to the Investment Account for use pursuant to the provisions of Article XII, Section 6(f).
- (h) Pending uses specified under (f) above, the Fund may invest a member's currency held in the Special Disbursement Account in marketable obligations of that member or in marketable obligations of international financial organizations. The income of investment and interest received under (f)(ii) above shall be placed in the Special Disbursement Account. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment.
- (i) The General Resources Account shall be reimbursed from time to time in respect of the expenses of administration of the Special Disbursement Account paid from the General Resources Account by transfers from the Special Disbursement Account on the basis of a reasonable estimate of such expenses.
- (j) The Special Disbursement Account shall be terminated in the event of the liquidation of the Fund and may be terminated prior to liquidation of the Fund by a seventy percent majority of the total voting power. Upon termination of the account because of the liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K. Upon termination prior to liquidation of the Fund, any assets in this account shall be transferred to the General Resources Account for immediate use in operations and transactions. The Fund, by a seventy percent majority of the total voting power, shall adopt rules and regulations for the administration of the Special Disbursement Account.

ARTICLE VI CAPITAL TRANSFERS

Section 1: Use of the Fund's general resources for capital transfers

- (a) A member may not use the Fund's general resources to meet a large or sustained outflow of capital except as provided in Section 2 of this Article, and the Fund may request a member to exercise controls to prevent such use of the general resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the general resources of the Fund.
- (b) Nothing in this Section shall be deemed:
 - i. to prevent the use of the general resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking, or other business; or
 - ii. to affect capital movements which are met out of a member's own resources, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

Section 2: Special provisions for capital transfers

A member shall be entitled to make reserve tranche purchases to meet capital transfers.

Section 3: Controls of capital transfers

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b) and in Article XIV, Section 2.

ARTICLE VII REPLENISHMENT AND SCARCE CURRENCIES

Section 1. Measures to replenish the Fund's holdings of currencies

The Fund may, if it deems such action appropriate to replenish its holdings of any member's currency in the General Resources Account needed in connection with its transactions, take either or both of the following steps:

- (i) propose to the member that, on terms and conditions agreed between the Fund and the member, the latter lend its currency to the Fund or that, with the concurrence of the member, the Fund borrow such currency from some other source either within or outside the territories of the member, but no member shall be under any obligation to make such loans to the Fund or to concur in the borrowing of its currency by the Fund from any other source;

- (ii) require the member, if it is a participant, to sell its currency to the Fund for special drawing rights held in the General Resources Account, subject to Article XIX, Section 4. In replenishing with special drawing rights, the Fund shall pay due regard to the principles of designation under Article XIX, Section 5.

Section 2: General scarcity of currency

If the Fund finds that a general scarcity of a particular currency is developing, the Fund may so inform members and may issue a report setting forth the causes of the scarcity and containing recommendations designed to bring it to an end. A representative of the member whose currency is involved shall participate in the preparation of the report.

Section 3: Scarcity of the Fund's holdings

- (a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 2 of this Article, shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation, and any other pertinent considerations. The Fund shall also issue a report concerning its action.
- (b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV and Schedule C, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question, and they shall be relaxed and removed as rapidly as conditions permit.
- (c) The authorization under (b) above shall expire whenever the Fund formally declares the currency in question to be no longer scarce.

Section 4: Administration of restrictions

Any member imposing restrictions in respect of the currency of any other member pursuant to the provisions of Section 3(b) of this Article shall give sympathetic consideration to any representations by the other member regarding the administration of such restrictions.

Section 5: Effect of other international agreements on restrictions

Members agree not to invoke the obligations of any engagements entered into with other members prior to this Agreement in such manner as will prevent the operation of the provisions of this Article.

ARTICLE V III GENERAL OBLIGATIONS OF MEMBERS

Section 1: Introduction

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2: Avoidance of restrictions on current payments

- (a) Subject to the provisions of Article VII, Section 3(b) and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.
- (b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3: Avoidance of discriminatory currency practices

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices, whether within or outside margins under Article IV or prescribed by or under Schedule C, except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 3 of that Article shall apply.

Section 4: Convertibility of foreign-held balances

- (a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents:
 - i. that the balances to be bought have been recently acquired as a result of current transactions; or
 - ii. that their conversion is needed for making payments for current transactions.

The buying member shall have the option to pay either in special drawing rights, subject to Article XIX, Section 4, or in the currency of the member making the request.

(b) The obligation in (a) above shall not apply when:

- i. the convertibility of the balances has been restricted consistently with Section 2 of this Article or Article VI, Section 3;
- ii. the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2;
- iii. the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them;
- iv. the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3(a); or
- v. the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5: Furnishing of information

(a) The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

- i. official holdings at home and abroad of (1) gold, (2) foreign exchange;
- ii. holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange;
- iii. production of gold;
- iv. gold exports and imports according to countries of destination and origin;
- v. total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin;
- vi. international balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items;
- vii. international investment position, i.e., investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information;
- viii. national income;
- ix. price indices, i.e., indices of commodity prices in wholesale and retail markets and of export and import prices;
- x. buying and selling rates for foreign currencies;
- xi. exchange controls, i.e., a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur; and
- xii. where official clearing arrangements exist, details of financial transactions, and of the length of time during which amounts awaiting clearance in respect of commercial and such arrears have been outstanding.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as

detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates.

- (c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.

Section 6: Consultation between members regarding existing international agreements

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish restrictions on exchange transactions, and there are other engagements between members entered into prior to this Agreement which conflict with the application of such restrictions, the parties to such engagements shall consult with one another with a view to making such mutually acceptable adjustments as may be necessary. The provisions of this Article shall be without prejudice to the operation of Article VII, Section 5.

Section 7: Obligation to collaborate regarding policies on reserve assets

Each member undertakes to collaborate with the Fund and with other members in order to ensure that the policies of the member with respect to reserve assets shall be consistent with the objectives of promoting better international surveillance of international liquidity and making the special drawing right the principal reserve asset in the international monetary system.

ARTICLE IX STATUS, IMMUNITIES, AND PRIVILEGES

Section 1: Purposes of Article

To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities, and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

Section 2: Status of the Fund

The Fund shall possess full juridical personality, and in particular, the capacity:

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property; and
- (iii) to institute legal proceedings.

Section 3: Immunity from judicial process

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

Section 4: Immunity from other action

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.

Section 5: Immunity of archives

The archives of the Fund shall be inviolable.

Section 6: Freedom of assets from restrictions

To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Section 7: Privilege for communications

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

Section 8: Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, Section 3(j), advisors of any of the foregoing persons, officers, and employees of the Fund:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;
- (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements, and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials, and employees of comparable rank of other members.

Section 9: Immunities from taxation

- (a) The Fund, its assets, property, income, and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers, or employees of the Fund who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held:
 - i. which discriminates against such obligation or security solely because of its origin; or
 - ii. if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Section 10: Application of Article

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.

ARTICLE X RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS

The Fund shall cooperate within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XXVIII.

ARTICLE XI RELATIONS WITH NON-MEMBER COUNTRIES

Section 1: Undertakings regarding relations with non-member countries

Each member undertakes:

- (i) not to engage in, nor to permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of this Agreement or the purposes of the Fund;
- (ii) not to cooperate with a non-member or with persons in a nonmember's territories in practices which would be contrary to the provisions of this Agreement or the purposes of the Fund; and

- (iii) to cooperate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of this Agreement or the purposes of the Fund.

Section 2: Restrictions on transactions with non-member countries

Nothing in this Agreement shall affect the right of any member to impose restrictions on exchange transactions with non-members or with persons in their territories unless the Fund finds that such restrictions prejudice the interests of members and are contrary to the purposes of the Fund.

ARTICLE XII ORGANIZATION AND MANAGEMENT

Section 1: Structure of the Fund

The Fund shall have a Board of Governors, an Executive Board, a Managing Director, and a staff, and a Council if the Board of Governors decides, by an eighty-five percent majority of the total voting power, that the provisions of Schedule D shall be applied.

Section 2: Board of Governors

- (a) All powers under this Agreement not conferred directly on the Board of Governors, the Executive Board, or the Managing Director shall be vested in the Board of Governors. The Board of Governors shall consist of one Governor and one Alternate appointed by each member in such manner as it may determine. Each Governor and each Alternate shall serve until a new appointment is made. No Alternate may vote except in the absence of his principal. The Board of Governors shall select one of the Governors as Chairman.
- (b) The Board of Governors may delegate to the Executive Board authority to exercise any powers of the Board of Governors, except the powers conferred directly by this Agreement on the Board of Governors.
- (c) The Board of Governors shall hold such meetings as may be provided for by the Board of Governors or called by the Executive Board. Meetings of the Board of Governors shall be called whenever requested by fifteen members or by members having one-quarter of the total voting power.
- (d) A quorum for any meeting of the Board of Governors shall be a majority of the Governors having not less than two-thirds of the total voting power.
- (e) Each Governor shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.
- (f) The Board of Governors may by regulation establish a procedure whereby the Executive Board, when it deems such action to be in the best interests of the Fund, may obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

- (g) The Board of Governors, and the Executive Board to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Fund.
- (h) Governors and Alternates shall serve as such without compensation from the Fund, but the Fund may pay them reasonable expenses incurred in attending meetings.
- (i) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and their Alternates and the salary and terms of the contract of service of the Managing Director.
- (j) The Board of Governors and the Executive Board may appoint such committees as they deem advisable. Membership of committees need not be limited to Governors or Executive Directors or their Alternates.

Section 3: Executive Board

- (a) The Executive Board shall be responsible for conducting the business of the Fund, and for this purpose shall exercise all the powers delegated to it by the Board of Governors.
- (b) The Executive Board shall consist of Executive Directors with the Managing Director as chairman. Of the Executive Directors:
 - i. five shall be appointed by the five members having the largest quotas; and
 - ii. fifteen shall be elected by the other members.

For the purpose of each regular election of Executive Directors, the Board of Governors, by an eighty-five percent majority of the total voting power, may increase or decrease the number of Executive Directors in (ii) above. The number of Executive Directors in (ii) above shall be reduced by one or two, as the case may be, if Executive Directors are appointed under (c) below, unless the Board of Governors decides, by an eighty-five percent majority of the total voting power, that this reduction would hinder the effective discharge of the functions of the Executive Board or of Executive Directors or would threaten to upset a desirable balance in the Executive Board.

- (c) If, at the second regular election of Executive Directors and thereafter, the members entitled to appoint Executive Directors under (b)(i) above do not include the two members, the holdings of whose currencies by the Fund in the General Resources Account have been, on the average over the preceding two years, reduced below their quotas by the largest absolute amounts in terms of the special drawing right, either one or both of such members, as the case may be, may appoint an Executive Director.
- (d) Elections of elective Executive Directors shall be conducted at intervals of two years in accordance with the provisions of Schedule E, supplemented by such regulations as the Fund deems appropriate. For each regular election of Executive Directors, the Board of Governors may issue regulations making changes in the proportion of votes required to elect Executive Directors under the provisions of Schedule E.
- (e) Each Executive Director shall appoint an Alternate with full power to act for him when he is not present. When the Executive Directors appointing them are present, Alternates may participate in meetings but may not vote.

- (f) Executive Directors shall continue in office until their successors are appointed or elected. If the office of an elected Executive Director becomes vacant more than ninety days before the end of his term, another Executive Director shall be elected for the remainder of the term by the members that elected the former Executive Director. A majority of the votes cast shall be required for election. While the office remains vacant, the Alternate of the former Executive Director shall exercise his powers, except that of appointing an Alternate.
- (g) The Executive Board shall function in continuous session at the principal office of the Fund and shall meet as often as the business of the Fund may require.
- (h) A quorum for any meeting of the Executive Board shall be a majority of the Executive Directors having not less than one-half of the total voting power.
- (i)
 - i. Each appointed Executive Director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.
 - ii. If the votes allotted to a member that appoints an Executive Director under (c) above were cast by an Executive Director together with the votes allotted to other members as a result of the last regular election of Executive Directors, the member may agree with each of the other members that the number of votes allotted to it shall be cast by the appointed Executive Director. A member making such an agreement shall not participate in the election of Executive Directors.
 - iii. Each elected Executive Director shall be entitled to cast the number of votes which counted towards his election.
 - iv. When the provisions of Section 5(b) of this Article are applicable, the votes which an Executive Director would otherwise be entitled to cast shall be increased or decreased correspondingly. All the votes which an Executive Director is entitled to cast shall be cast as a unit.
 - v. When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(b), and the member is not entitled to appoint an Executive Director, the member may agree with all the members that have elected an Executive Director that the number of votes allotted to that member shall be cast by such Executive Director, provided that, if no regular election of Executive Directors has been conducted during the period of the suspension, the Executive Director in whose election the member had participated prior to the suspension, or his successor elected in accordance with paragraph 3(c)(i) of Schedule L or with (f) above, shall be entitled to cast the number of votes allotted to the member. The member shall be deemed to have participated in the election of the Executive Director entitled to cast the number of votes allotted to the member.
- (j) The Board of Governors shall adopt regulations under which a member not entitled to appoint an Executive Director under (b) above may send a representative to attend any meeting of the Executive Board when a request made by, or a matter particularly affecting, that member is under consideration.

Section 4: Managing Director and staff

- (a) The Executive Board shall select a Managing Director who shall not be a Governor or an Executive Director. The Managing Director shall be chairman of the Executive Board, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The Managing Director shall cease to hold office when the Executive Board so decides.
- (b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.
- (c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall respect the international character of this duty and shall refrain from all attempts to influence any of the staff in the discharge of these functions.
- (d) In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

Section 5: Voting

- (a) Each member shall have two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights.
- (b) Whenever voting is required under Article V, Section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above adjusted
 - i. by the addition of one vote for the equivalent of each four hundred thousand special drawing rights of net sales of its currency from the general resources of the Fund up to the date when the vote is taken, or
 - ii. by the subtraction of one vote for the equivalent of each four hundred thousand special drawing rights of its net purchases under Article V, Section 3(b) and (f) up to the date when the vote is taken, provided that neither net purchases nor net sales shall be deemed at any time to exceed an amount equal to the quota of the member involved.
- (c) Except as otherwise specifically provided, all decisions of the Fund shall be made by a majority of the votes cast.

Section 6: Reserves, distribution of net income, and investment

- (a) The Fund shall determine annually what part of its net income shall be placed to general reserve or special reserve, and what part, if any, shall be distributed.
- (b) The Fund may use the special reserve for any purpose for which it may use the general reserve, except distribution.

- (c) If any distribution is made of the net income of any year, it shall be made to all members in proportion to their quotas.
- (d) The Fund, by a seventy percent majority of the total voting power, may decide at any time to distribute any part of the general reserve. Any such distribution shall be made to all members in proportion to their quotas.
- (e) Payments under (c) and (d) above shall be made in special drawing rights, provided that either the Fund or the member may decide that the payment to the member shall be made in its own currency.
- (f)
 - i. The Fund may establish an Investment Account for the purposes of this subsection (f). The assets of the Investment Account shall be held separately from the other accounts of the General Department.
 - ii. The Fund may decide to transfer to the Investment Account a part of the proceeds of the sale of gold in accordance with Article V, Section 12(g) and, by a seventy percent majority of the total voting power, may decide to transfer to the Investment Account, for immediate investment, currencies held in the General Resources Account. The amount of these transfers shall not exceed the total amount of the general reserve and the special reserve at the time of the decision.
 - iii. The Fund may invest a member's currency held in the Investment Account in marketable obligations of that member or in marketable obligations of international financial organizations. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment.
 - iv. The income of investment may be invested in accordance with the provisions of this subsection (f). Income not invested shall be held in the Investment Account or may be used for meeting the expenses of conducting the business of the Fund.
 - v. The Fund may use a member's currency held in the Investment Account to obtain the currencies needed to meet the expenses of conducting the business of the Fund.
 - vi. The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy percent majority of the total voting power. The Fund, by a seventy percent majority of the total voting power, shall adopt rules and regulations regarding administration of the Investment Account, which shall be consistent with (vii), (viii), and (ix) below.
 - vii. Upon termination of the Investment Account because of liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K, provided that a portion of these assets corresponding to the proportion of the assets transferred to this account under Article V, Section 12(g) to the total of the assets transferred to this account shall be deemed to be assets held in the Special Disbursement Account and shall be distributed in accordance with Schedule K, paragraph 2(a)(ii).
 - viii. Upon termination of the Investment Account prior to liquidation of the Fund, a portion of the assets held in this account corresponding to the proportion of the assets transferred to this account under Article V, Section 12(g) to the total of the assets transferred to the account shall be transferred to the Special Disbursement

Account if it has not been terminated, and the balance of the assets held in the Investment Account shall be transferred to the General Resources Account for immediate use in operations and transactions.

- ix. On a reduction of the amount of the investment by the Fund, a portion of the reduction corresponding to the proportion of the assets transferred to the Investment Account under Article V, Section 12(g) to the total of the assets transferred to this account shall be transferred to the Special Disbursement Account if it has not been terminated, and the balance of the reduction shall be transferred to the General Resources Account for immediate use in operations and transactions.

Section 7: Publication of reports

- (a) The Fund shall publish an annual report containing an audited statement of its accounts, and shall issue, at intervals of three months or less, a summary statement of its operations and transactions and its holdings of special drawing rights, gold, and currencies of members.
- (b) The Fund may publish such other reports as it deems desirable for carrying out its purposes.

Section 8: Communication of views to members

The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this Agreement. The Fund may, by a seventy percent majority of the total voting power, decide to publish a report made to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members. If the member is not entitled to appoint an Executive Director, it shall be entitled to representation in accordance with Section 3(j) of this Article. The Fund shall not publish a report involving changes in the fundamental structure of the economic organization of members.

ARTICLE XIII OFFICES AND DEPOSITORIES

Section 1: Location of offices

The principal office of the Fund shall be located in the territory of the member having the largest quota, and agencies or branch offices may be established in the territories of other members.

Section 2: Depositories

- (a) Each member shall designate its central bank as a depository for all the Fund's holdings of its currency, or if it has no central bank it shall designate such other institution as may be acceptable to the Fund.

- (b) The Fund may hold other assets, including gold, in the depositories designated by the five members having the largest quotas and in such other designated depositories as the Fund may select. Initially, at least one-half of the holdings of the Fund shall be held in the depository designated by the member in whose territories the Fund has its principal office and at least forty percent shall be held in the depositories designated by the remaining four members referred to above. However, all transfers of gold by the Fund shall be made with due regard to the costs of transport and anticipated requirements of the Fund. In an emergency the Executive Board may transfer all or any part of the Fund's gold holdings to any place where they can be adequately protected.

Section 3: Guarantee of the Fund's assets

Each member guarantees all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.

ARTICLE XIV TRANSITIONAL ARRANGEMENTS

Section 1: Notification to the Fund

Each member shall notify the Fund whether it intends to avail itself of the transitional arrangements in Section 2 of this Article, or whether it is prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept these obligations.

Section 2: Exchange restrictions

A member that has notified the Fund that it intends to avail itself of transitional arrangements under this provision may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund, and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the promotion of a stable system of exchange rates. In particular, members shall withdraw restrictions maintained under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the general resources of the Fund.

Section 3: Action of the Fund relating to restrictions

The Fund shall make annual reports on the restrictions in force under Section 2 of this Article. Any member retaining any restrictions inconsistent with Article VIII, Sections 2,

3, or 4 shall consult the Fund annually as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XXVI, Section 2(a).

ARTICLE XV SPECIAL DRAWING RIGHTS

Section 1: Authority to allocate special drawing rights

To meet the need, as and when it arises, for a supplement to existing reserve assets, the Fund is authorized to allocate special drawing rights to members that are participants in the Special Drawing Rights Department.

Section 2: Valuation of the special drawing right

The method of valuation of the special drawing right shall be determined by the Fund by a seventy percent majority of the total voting power, provided, however, that an eighty-five percent majority of the total voting power shall be required for a change in the principle of valuation or a fundamental change in the application of the principle in effect.

ARTICLE XVI GENERAL DEPARTMENT AND SPECIAL DRAWING RIGHTS DEPARTMENT

Section 1: Separation of operations and transactions

All operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department. All other operations and transactions on the account of the Fund authorized by or under this Agreement shall be conducted through the General Department. Operations and transactions pursuant to Article XVII, Section 2 shall be conducted through the General Department as well as the Special Drawing Rights Department.

Section 2: Separation of assets and property

All assets and property of the Fund, except resources administered under Article V, Section 2(b), shall be held in the General Department, provided that assets and property acquired under Article XX, Section 2 and Articles XXIV and XXV and Schedules H and I shall be held in the Special Drawing Rights Department. Any assets or property held in one Department shall not be available to discharge or meet the liabilities, obligations, or losses of the Fund incurred in the conduct of the operations and transactions of the other

Department, except that the expenses of conducting the business of the Special Drawing Rights Department shall be paid by the Fund from the General Department which shall be reimbursed in special drawing rights from time to time by assessments under Article XX, Section 4 made on the basis of a reasonable estimate of such expenses.

Section 3: Recording and information

All changes in holdings of special drawing rights shall take effect only when recorded by the Fund in the Special Drawing Rights Department. Participants shall notify the Fund of the provisions of this Agreement under which special drawing rights are used. The Fund may require participants to furnish it with such other information as it deems necessary for its functions.

ARTICLE XVII PARTICIPANTS AND OTHER HOLDERS OF SPECIAL DRAWING RIGHTS

Section 1: Participants

Each member of the Fund that deposits with the Fund an instrument setting forth that it undertakes all the obligations of a participant in the Special Drawing Rights Department in accordance with its law and that it has taken all steps necessary to enable it to carry out all of these obligations shall become a participant in the Special Drawing Rights Department as of the date the instrument is deposited, except that no member shall become a participant before the provisions of this Agreement pertaining exclusively to the Special Drawing Rights Department have entered into force and instruments have been deposited under this Section by members that have at least seventyfive percent of the total of quotas.

Section 2: Fund as a holder

The Fund may hold special drawing rights in the General Resources Account and may accept and use them in operations and transactions conducted through the General Resources Account with participants in accordance with the provisions of this Agreement or with prescribed holders in accordance with the terms and conditions prescribed under Section 3 of this Article.

Section 3: Other holders

The Fund may prescribe:

- (i) as holders, non-members, members that are non-participants, institutions that perform functions of a central bank for more than one member, and other official entities;
- (ii) the terms and conditions on which prescribed holders may be permitted to hold special drawing rights and may accept and use them in operations and transactions with participants and other prescribed holders; and

- (iii) the terms and conditions on which participants and the Fund through the General Resources Account may enter into operations and transactions in special drawing rights with prescribed holders.

An eighty-five percent majority of the total voting power shall be required for prescriptions under (i) above. The terms and conditions prescribed by the Fund shall be consistent with the provisions of this Agreement and the effective functioning of the Special Drawing Rights Department.

ARTICLE XVIII ALLOCATION AND CANCELLATION OF SPECIAL DRAWING RIGHTS

Section 1: Principles and considerations governing allocation and cancellation

- (a) In all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the longterm global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world.
- (b) The first decision to allocate special drawing rights shall take into account, as special considerations, a collective judgment that there is a global need to supplement reserves, and the attainment of a better balance of payments equilibrium, as well as the likelihood of a better working of the adjustment process in the future.

Section 2: Allocation and cancellation

- (a) Decisions of the Fund to allocate or cancel special drawing rights shall be made for basic periods which shall run consecutively and shall be five years in duration. The first basic period shall begin on the date of the first decision to allocate special drawing rights or such later date as may be specified in that decision. Any allocations or cancellations shall take place at yearly intervals.
- (b) The rates at which allocations are to be made shall be expressed as percentages of quotas on the date of each decision to allocate. The rates at which special drawing rights are to be cancelled shall be expressed as percentages of net cumulative allocations of special drawing rights on the date of each decision to cancel. The percentages shall be the same for all participants.
- (c) In its decision for any basic period the Fund may provide, notwithstanding (a) and (b) above, that:
 - i. the duration of the basic period shall be other than five years; or
 - ii. the allocations or cancellations shall take place at other than yearly intervals; or
 - iii. the basis for allocations or cancellations shall be the quotas or net cumulative allocations on dates other than the dates of decisions to allocate or cancel.
- (d) A member that becomes a participant after a basic period starts shall receive allocations beginning with the next basic period in which allocations are made after it

becomes a participant unless the Fund decides that the new participant shall start to receive allocations beginning with the next allocation after it becomes a participant. If the Fund decides that a member that becomes a participant during a basic period shall receive allocations during the remainder of that basic period and the participant was not a member on the dates established under (b) or (c) above, the Fund shall determine the basis on which these allocations to the participant shall be made.

- (e) A participant shall receive allocations of special drawing rights made pursuant to any decision to allocate unless:
 - i. the Governor for the participant did not vote in favor of the decision; and
 - ii. the participant has notified the Fund in writing prior to the first allocation of special drawing rights under that decision that it does not wish special drawing rights to be allocated to it under the decision. On the request of a participant, the Fund may decide to terminate the effect of the notice with respect to allocations of special drawing rights subsequent to the termination.
- (f) If on the effective date of any cancellation the amount of special drawing rights held by a participant is less than its share of the special drawing rights that are to be cancelled, the participant shall eliminate its negative balance as promptly as its gross reserve position permits and shall remain in consultation with the Fund for this purpose. Special drawing rights acquired by the participant after the effective date of the cancellation shall be applied against its negative balance and cancelled.

Section 3: Unexpected major developments

The Fund may change the rates or intervals of allocation or cancellation during the rest of a basic period or change the length of a basic period or start a new basic period, if at any time the Fund finds it desirable to do so because of unexpected major developments.

Section 4: Decisions on allocations and cancellations

- (a) Decisions under Section 2(a), (b), and (c) or Section 3 of this Article shall be made by the Board of Governors on the basis of proposals of the Managing Director concurred in by the Executive Board.
- (b) Before making any proposal, the Managing Director, after having satisfied himself that it will be consistent with the provisions of Section 1(a) of this Article, shall conduct such consultations as will enable him to ascertain that there is broad support among participants for the proposal. In addition, before making a proposal for the first allocation, the Managing Director shall satisfy himself that the provisions of Section 1(b) of this Article have been met and that there is broad support among participants to begin allocations; he shall make a proposal for the first allocation as soon after the establishment of the Special Drawing Rights Department as he is so satisfied.
- (c) The Managing Director shall make proposals:
 - i. not later than six months before the end of each basic period;
 - ii. if no decision has been taken with respect to allocation or cancellation for a basic period, whenever he is satisfied that the provisions of (b) above have been met;

- iii. when, in accordance with Section 3 of this Article, he considers that it would be desirable to change the rate or intervals of allocation or cancellation or change the length of a basic period or start a new basic period; or
 - iv. within six months of a request by the Board of Governors or the Executive Board; provided that, if under (i), (iii), or (iv) above the Managing Director ascertains that there is no proposal which he considers to be consistent with the provisions of Section 1 of this Article that has broad support among participants in accordance with (b) above, he shall report to the Board of Governors and to the Executive Board.
- (d) An eighty-five percent majority of the total voting power shall be required for decisions under Section 2(a), (b), and (c) or Section 3 of this Article except for decisions under Section 3 with respect to a decrease in the rates of allocation.

ARTICLE XIX OPERATIONS AND TRANSACTIONS IN SPECIAL DRAWING RIGHTS

Section 1: Use of special drawing rights

Special drawing rights may be used in the operations and transactions authorized by or under this Agreement.

Section 2: Operations and transactions between participants

- (a) A participant shall be entitled to use its special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article.
- (b) A participant, in agreement with another participant, may use its special drawing rights to obtain an equivalent amount of currency from the other participant.
- (c) The Fund, by a seventy percent majority of the total voting power, may prescribe operations in which a participant is authorized to engage in agreement with another participant on such terms and conditions as the Fund deems appropriate. The terms and conditions shall be consistent with the effective functioning of the Special Drawing Rights Department and the proper use of special drawing rights in accordance with this Agreement.
- (d) The Fund may make representations to a participant that enters into any operation or transaction under (b) or (c) above that in the judgment of the Fund may be prejudicial to the process of designation according to the principles of Section 5 of this Article or is otherwise inconsistent with Article XXII. A participant that persists in entering into such operations or transactions shall be subject to Article XXIII, Section 2(b).

Section 3: Requirement of need

- (a) In transactions under Section 2(a) of this Article, except as otherwise provided in (c) below, a participant will be expected to use its special drawing rights only if it has a need because of its balance of payments or its reserve position or developments in its reserves, and not for the sole purpose of changing the composition of its reserves.
- (b) The use of special drawing rights shall not be subject to challenge on the basis of the expectation in (a) above, but the Fund may make representations to a participant that fails to fulfill this expectation. A participant that persists in failing to fulfill this expectation shall be subject to Article XXIII, Section 2(b).
- (c) The Fund may waive the expectation in (a) above in any transactions in which a participant uses special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article that would promote reconstitution by the other participant under Section 6(a) of this Article; prevent or reduce a negative balance of the other participant; or offset the effect of a failure by the other participant to fulfill the expectation in (a) above.

Section 4: Obligation to provide currency

- (a) A participant designated by the Fund under Section 5 of this Article shall provide on demand a freely usable currency to a participant using special drawing rights under Section 2(a) of this Article. A participant's obligation to provide currency shall not extend beyond the point at which its holdings of special drawing rights in excess of its net cumulative allocation are equal to twice its net cumulative allocation or such higher limit as may be agreed between a participant and the Fund.
- (b) A participant may provide currency in excess of the obligatory limit or any agreed higher limit.

Section 5: Designation of participants to provide currency

- (a) The Fund shall ensure that a participant will be able to use its special drawing rights by designating participants to provide currency for specified amounts of special drawing rights for the purposes of Sections 2(a) and 4 of this Article. Designations shall be made in accordance with the following general principles supplemented by such other principles as the Fund may adopt from time to time:
 - i. A participant shall be subject to designation if its balance of payments and gross reserve position is sufficiently strong, but this will not preclude the possibility that a participant with a strong reserve position will be designated even though it has a moderate balance of payments deficit. Participants shall be designated in such manner as will promote over time a balanced distribution of holdings of special drawing rights among them.
 - ii. Participants shall be subject to designation in order to promote reconstitution under Section 6(a) of this Article, to reduce negative balances in holdings of special drawing rights, or to offset the effect of failures to fulfill the expectation in Section 3(a) of this Article.

- iii. In designating participants, the Fund normally shall give priority to those that need to acquire special drawing rights to meet the objectives of designation under (ii) above.
- (b) In order to promote over time a balanced distribution of holdings of special drawing rights under (a)(i) above, the Fund shall apply the rules for designation in Schedule F or such rules as may be adopted under (c) below.
- (c) The rules for designation may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted, the rules in force at the time of the review shall continue to apply.

Section 6: Reconstitution

- (a) Participants that use their special drawing rights shall reconstitute their holdings of them in accordance with the rules for reconstitution in Schedule G or such rules as may be adopted under (b) below.
- (b) The rules for reconstitution may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted or a decision is made to abrogate rules for reconstitution, the rules in force at the time of review shall continue to apply. A seventy percent majority of the total voting power shall be required for decisions to adopt, modify, or abrogate the rules for reconstitution.

Section 7: Exchange rates

- (a) Except as otherwise provided in (b) below, the exchange rates for transactions between participants under Section 2(a) and (b) of this Article shall be such that participants using special drawing rights shall receive the same value whatever currencies might be provided and whichever participants provide those currencies, and the Fund shall adopt regulations to give effect to this principle.
- (b) The Fund, by an eighty-five percent majority of the total voting power, may adopt policies under which in exceptional circumstances the Fund, by a seventy percent majority of the total voting power, may authorize participants entering into transactions under Section 2(b) of this Article to agree on exchange rates other than those applicable under (a) above.
- (c) The Fund shall consult a participant on the procedure for determining rates of exchange for its currency.
- (d) For the purpose of this provision the term participant includes a terminating participant.

ARTICLE XX SPECIAL DRAWING RIGHTS DEPARTMENT INTEREST AND CHARGES

Section 1: Interest

Interest at the same rate for all holders shall be paid by the Fund to each holder on the amount of its holdings of special drawing rights. The Fund shall pay the amount due to each holder whether or not sufficient charges are received to meet the payment of interest.

Section 2: Charges

Charges at the same rate for all participants shall be paid to the Fund by each participant on the amount of its net cumulative allocation of special drawing rights plus any negative balance of the participant or unpaid charges.

Section 3: Rate of interest and charges

The Fund shall determine the rate of interest by a seventy percent majority of the total voting power. The rate of charges shall be equal to the rate of interest.

Section 4: Assessments

When it is decided under Article XVI, Section 2 that reimbursement shall be made, the Fund shall levy assessments for this purpose at the same rate for all participants on their net cumulative allocations.

Section 5: Payment of interest, charges, and assessments

Interest, charges, and assessments shall be paid in special drawing rights. A participant that needs special drawing rights to pay any charge or assessment shall be obligated and entitled to obtain them, for currency acceptable to the Fund, in a transaction with the Fund conducted through the General Resources Account. If sufficient special drawing rights cannot be obtained in this way, the participant shall be obligated and entitled to obtain them with a freely usable currency from a participant which the Fund shall specify. Special drawing rights acquired by a participant after the date for payment shall be applied against its unpaid charges and cancelled.

ARTICLE XXI ADMINISTRATION OF THE GENERAL DEPARTMENT AND THE SPECIAL DRAWING RIGHTS DEPARTMENT

- (a) The General Department and the Special Drawing Rights Department shall be administered in accordance with the provisions of Article XII, subject to the following provisions:

- i. For meetings of or decisions by the Board of Governors on matters pertaining exclusively to the Special Drawing Rights Department only requests by, or the presence and the votes of, Governors appointed by members that are participants shall be counted for the purpose of calling meetings and determining whether a quorum exists or whether a decision is made by the required majority.
 - ii. For decisions by the Executive Board on matters pertaining exclusively to the Special Drawing Rights Department only Executive Directors appointed or elected by at least one member that is a participant shall be entitled to vote. Each of these Executive Directors shall be entitled to cast the number of votes allotted to the member which is a participant that appointed him or to the members that are participants whose votes counted towards his election. Only the presence of Executive Directors appointed or elected by members that are participants and the votes allotted to members that are participants shall be counted for the purpose of determining whether a quorum exists or whether a decision is made by the required majority. For the purposes of this provision, an agreement under Article XII, Section 3(i)(ii) by a member that is a participant shall entitle an appointed Executive Director to vote and cast the number of votes allotted to the member.
 - iii. Questions of the general administration of the Fund, including reimbursement under Article XVI, Section 2, and any question whether a matter pertains to both Departments or exclusively to the Special Drawing Rights Department shall be decided as if they pertained exclusively to the General Department. Decisions with respect to the method of valuation of the special drawing right, the acceptance and holding of special drawing rights in the General Resources Account of the General Department and the use of them, and other decisions affecting the operations and transactions conducted through both the General Resources Account of the General Department and the Special Drawing Rights Department shall be made by the majorities required for decisions on matters pertaining exclusively to each Department. A decision on a matter pertaining to the Special Drawing Rights Department shall so indicate.
- (b) In addition to the privileges and immunities that are accorded under Article IX of this Agreement, no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.
 - (c) A question of interpretation of the provisions of this Agreement on matters pertaining exclusively to the Special Drawing Rights Department shall be submitted to the Executive Board pursuant to Article XXIX(a) only on the request of a participant. In any case where the Executive Board has given a decision on a question of interpretation pertaining exclusively to the Special Drawing Rights Department only a participant may require that the question be referred to the Board of Governors under Article XXIX(b). The Board of Governors shall decide whether a Governor appointed by a member that is not a participant shall be entitled to vote in the Committee on Interpretation on questions pertaining exclusively to the Special Drawing Rights Department.
 - (d) Whenever a disagreement arises between the Fund and a participant that has terminated its participation in the Special Drawing Rights Department or between the Fund and any participant during the liquidation of the Special Drawing Rights Department with respect to any matter arising exclusively from participation in the

Special Drawing Rights Department, the disagreement shall be submitted to arbitration in accordance with the procedures in Article XXIX(c).

ARTICLE XXII GENERAL OBLIGATIONS OF PARTICIPANTS

In addition to the obligations assumed with respect to special drawing rights under other articles of this Agreement, each participant undertakes to collaborate with the Fund and with other participants in order to facilitate the effective functioning of the Special Drawing Rights Department and the proper use of special drawing rights in accordance with this Agreement and with the objective of making the special drawing right the principal reserve asset in the international monetary system.

SCHEDULE A QUOTAS

(In millions of United States dollars)

Australia	200
Belgium	225
Bolivia	10
Brazil	150
Canada	300
Chile	50
China	550
Colombia	50
Costa Rica	5
Cuba	50
Czechoslovakia	125
Denmark*	
Dominican Republic	5
Ecuador	5
Egypt	45
El Salvador	2.5
Ethiopia	6
France	450
Greece	40
Guatemala	5
Haiti	5
Honduras	2.5
Iceland	1
India	400
Iran	25
Iraq	8
Liberia	.5
Luxembourg	10
Mexico	90
Netherlands	275
New Zealand	50

Nicaragua 2
 Norway 50
 Panama .5
 Paraguay 2
 Peru 25
 Philippine Commonwealth 15
 Poland 125
 Union of South Africa 100
 Union of Soviet Socialist Republics 1200
 United Kingdom 1300
 United States 2750
 Uruguay 15
 Venezuela 15
 Yugoslavia 60

* The quota of Denmark shall be determined by the Fund after the Danish Government has declared its readiness to sign this Agreement but before signature takes place.

**SCHEDULE B TRANSITIONAL PROVISIONS WITH RESPECT
 TO REPURCHASE, PAYMENT OF ADDITIONAL
 SUBSCRIPTIONS, GOLD, AND CERTAIN OPERATIONAL
 MATTERS**

1. Repurchase obligations that have accrued pursuant to Article V, Section 7(b) before the date of the second amendment of this Agreement and that remain undischarged at that date shall be discharged not later than the date or dates at which the obligations had to be discharged in accordance with the provisions of this Agreement before the second amendment.
2. A member shall discharge with special drawing rights any obligation to pay gold to the Fund in repurchase or as a subscription that is outstanding at the date of the second amendment of this Agreement, but the Fund may prescribe that these payments may be made in whole or in part in the currencies of other members specified by the Fund. A non-participant shall discharge an obligation that must be paid in special drawing rights pursuant to this provision with the currencies of other members specified by the Fund.
3. For the purposes of 2 above 0.888 671 gram of fine gold shall be equivalent to one special drawing right, and the amount of currency payable under 2 above shall be determined on that basis and on the basis of the value of the currency in terms of the special drawing right at the date of discharge.
4. A member's currency held by the Fund in excess of seventy-five percent of the member's quota at the date of the second amendment of this Agreement and not subject to repurchase under 1 above shall be repurchased in accordance with the following rules:
 - i. Holdings that resulted from a purchase shall be repurchased in accordance with the policy on the use of the Fund's general resources under which the purchase was made.

- ii. Other holdings shall be repurchased not later than four years after the date of the second amendment of this Agreement.
- 5. Repurchases under 1 above that are not subject to 2 above, repurchases under 4 above, and any specification of currencies under 2 above shall be in accordance with Article V, Section 7(i).
- 6. All rules and regulations, rates, procedures, and decisions in effect at the date of the second amendment of this Agreement shall remain in effect until they are changed in accordance with the provisions of this Agreement.
- 7. To the extent that arrangements equivalent in effect to (a) and (b) below have not been completed before the date of the second amendment of this Agreement, the Fund shall
 - (a) sell up to 25 million ounces of fine gold held by it on August 31, 1975 to those members that were members on that date and that agree to buy it, in proportion to their quotas on that date. The sale to a member under this sub-paragraph (a) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold, and
 - (b) sell up to 25 million ounces of fine gold held by it on August 31, 1975 for the benefit of developing members that were members on that date, provided, however, that the part of any profits or surplus value of the gold that corresponds to the proportion of such a member's quota on August 31, 1975 to the total of the quotas of all members on that date shall be transferred directly to each such member. The requirements under Article V, Section 12(c) that the Fund consult a member, obtain a member's concurrence, or exchange a member's currency for the currencies of other members in certain circumstances shall apply with respect to currency received by the Fund as a result of sales of gold under this provision, other than sales to a member in return for its own currency, and placed in the General Resources Account.

Upon the sale of gold under this paragraph 7, an amount of the proceeds in the currencies received equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and other assets held by the Fund under arrangements pursuant to (b) above shall be held separately from the general resources of the Fund. Assets that remain subject to disposition by the Fund upon termination of arrangements pursuant to (b) above shall be transferred to the Special Disbursement Account.

SCHEDULE C PAR VALUES

- 1. The Fund shall notify members that par values may be established for the purposes of this Agreement, in accordance with Article IV, Sections 1, 3, 4, and 5 and this Schedule, in terms of the special drawing right, or in terms of such other common denominator as is prescribed by the Fund. The common denominator shall not be gold or a currency.
- 2. A member that intends to establish a par value for its currency shall propose a par value to the Fund within a reasonable time after notice is given under 1 above.

3. Any member that does not intend to establish a par value for its currency under 1 above shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.
4. The Fund shall concur in or object to a proposed par value within a reasonable period after receipt of the proposal. A proposed par value shall not take effect for the purposes of this Agreement if the Fund objects to it, and the member shall be subject to 3 above. The Fund shall not object because of the domestic social or political policies of the member proposing the par value.
5. Each member that has a par value for its currency undertakes to apply appropriate measures consistent with this Agreement in order to ensure that the maximum and the minimum rates for spot exchange transactions taking place within its territories between its currency and the currencies of other members maintaining par values shall not differ from parity by more than four and one-half percent or by such other margin or margins as the Fund may adopt by an eighty-five percent majority of the total voting power.
6. A member shall not propose a change in the par value of its currency except to correct, or prevent the emergence of, a fundamental disequilibrium. A change may be made only on the proposal of the member and only after consultation with the Fund.
7. When a change is proposed, the Fund shall concur in or object to the proposed par value within a reasonable period after receipt of the proposal. The Fund shall concur if it is satisfied that the change is necessary to correct, or prevent the emergence of, a fundamental disequilibrium. The Fund shall not object because of the domestic social or political policies of the member proposing the change. A proposed change in par value shall not take effect for the purposes of this Agreement if the Fund objects to it. If a member changes the par value of its currency despite the objection of the Fund, the member shall be subject to Article XXVI, Section 2. Maintenance of an unrealistic par value by a member shall be discouraged by the Fund.
8. The par value of a member's currency established under this Agreement shall cease to exist for the purposes of this Agreement if the member informs the Fund that it intends to terminate the par value. The Fund may object to the termination of a par value by a decision taken by an eighty-five percent majority of the total voting power. If a member terminates a par value for its currency despite the objection of the Fund, the member shall be subject to Article XXVI, Section 2. A par value established under this Agreement shall cease to exist for the purposes of this Agreement if the member terminates the par value despite the objection of the Fund, or if the Fund finds that the member does not maintain rates for a substantial volume of exchange transactions in accordance with 5 above, provided that the Fund may not make such finding unless it has consulted the member and given it sixty days notice of the Fund's intention to consider whether to make a finding.
9. If the par value of the currency of a member has ceased to exist under 8 above, the member shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.
10. A member for whose currency the par value has ceased to exist under 8 above may, at any time, propose a new par value for its currency.

11. Notwithstanding 6 above, the Fund, by a seventy percent majority of the total voting power, may make uniform proportionate changes in all par values if the special drawing right is the common denominator and the changes will not affect the value of the special drawing right. The par value of a member's currency shall, however, not be changed under this provision if, within seven days after the Fund's action, the member informs the Fund that it does not wish the par value of its currency to be changed by such action.

SCHEDULE D COUNCIL

1.
 - (a) Each member that appoints an Executive Director and each group of members that has the number of votes allotted to them cast by an elected Executive Director shall appoint to the Council one Councillor, who shall be a Governor, Minister in the government of a member, or person of comparable rank, and may appoint not more than seven Associates. The Board of Governors may change, by an eighty-five percent majority of the total voting power, the number of Associates who may be appointed. A Councillor or Associate shall serve until a new appointment is made or until the next regular election of Executive Directors, whichever shall occur sooner.
 - (b) Executive Directors, or in their absence their Alternates, and Associates shall be entitled to attend meetings of the Council, unless the Council decides to hold a restricted session. Each member and each group of members that appoints a Councillor shall appoint an Alternate who shall be entitled to attend a meeting of the Council when the Councillor is not present, and shall have full power to act for the Councillor.
2.
 - (a) The Council shall supervise the management and adaptation of the international monetary system, including the continuing operation of the adjustment process and developments in global liquidity, and in this connection shall review developments in the transfer of real resources to developing countries.
 - (b) The Council shall consider proposals pursuant to Article XXVIII(a) to amend the Articles of Agreement.
3.
 - (a) The Board of Governors may delegate to the Council authority to exercise any powers of the Board of Governors except the powers conferred directly by this Agreement on the Board of Governors.
 - (b) Each Councillor shall be entitled to cast the number of votes allotted under Article XII, Section 5 to the member or group of members appointing him. A Councillor appointed by a group of members may cast separately the votes allotted to each member in the group. If the number of votes allotted to a member cannot be cast by an Executive Director, the member may make arrangements with a Councillor for casting the number of votes allotted to the member.

- (c) The Council shall not take any action pursuant to powers delegated by the Board of Governors that is inconsistent with any action taken by the Board of Governors and the Executive Board shall not take any action pursuant to powers delegated by the Board of Governors that is inconsistent with any action taken by either the Board of Governors or the Council.
4. The Council shall select a Councillor as chairman, shall adopt regulations as may be necessary or appropriate to perform its functions, and shall determine any aspect of its procedure. The Council shall hold such meetings as may be provided for by the Council or called by the Executive Board.
- 5.
- (a) The Council shall have powers corresponding to those of the Executive Board under the following provisions: Article XII, Section 2(c), (f), (g), and (j); Article XVIII, Section 4(a) and Section 4(c)(iv); Article XXIII, Section 1; and Article XXVII, Section 1(a).
 - (b) For decisions by the Council on matters pertaining exclusively to the Special Drawing Rights Department, only Councillors appointed by a member that is a participant or a group of members at least one member of which is a participant shall be entitled to vote. Each of these Councillors shall be entitled to cast the number of votes allotted to the member which is a participant that appointed him or to the members that are participants in the group of members that appointed him, and may cast the votes allotted to a participant with which arrangements have been made pursuant to the last sentence of 3(b) above.
 - (c) The Council may by regulation establish a procedure whereby the Executive Board may obtain a vote of the Councillors on a specific question without a meeting of the Council when in the judgment of the Executive Board an action must be taken by the Council which should not be postponed until the next meeting of the Council and which does not warrant the calling of a special meeting.
 - (d) Article IX, Section 8 shall apply to Councillors, their Alternates, and Associates, and to any other person entitled to attend a meeting of the Council.
 - (e) For the purposes of (b) and 3(b) above, an agreement under Article XII, Section 3(i)(ii) by a member, or by a member that is a participant, shall entitle a Councillor to vote and cast the number of votes allotted to the member.
 - (f) When an Executive Director is entitled to cast the number of votes allotted to a member pursuant to Article XII, Section 3(i)(v), the Councillor appointed by the group whose members elected such Executive Director shall be entitled to vote and cast the number of votes allotted to such member. The member shall be deemed to have participated in the appointment of the Councillor entitled to vote and cast the number of votes allotted to the member.
6. The first sentence of Article XII, Section 2(a) shall be deemed to include a reference to the Council.

SCHEDULE E ELECTION OF EXECUTIVE DIRECTORS

1. The election of the elective Executive Directors shall be by ballot of the Governors eligible to vote.
2. In balloting for the Executive Directors to be elected, each of the Governors eligible to vote shall cast for one person all of the votes to which he is entitled under Article XII, Section 5(a). The fifteen persons receiving the greatest number of votes shall be Executive Directors, provided that no person who received less than four percent of the total number of votes that can be cast (eligible votes) shall be considered elected.
3. When fifteen persons are not elected in the first ballot, a second ballot shall be held in which there shall vote only (a) those Governors who voted in the first ballot for a person not elected, and (b) those Governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above nine percent of the eligible votes. If in the second ballot there are more candidates than the number of Executive Directors to be elected, the person who received the lowest number of votes in the first ballot shall be ineligible for election.
4. In determining whether the votes cast by a Governor are to be deemed to have raised the total of any person above nine percent of the eligible votes, the nine percent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number, and so on until nine percent is reached.
5. Any Governor, part of whose votes must be counted in order to raise the total of any person above four percent, shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed nine percent.
6. If, after the second ballot, fifteen persons have not been elected, further ballots shall be held on the same principles until fifteen persons have been elected, provided that after fourteen persons are elected, the fifteenth may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

SCHEDULE F DESIGNATION

During the first basic period the rules for designation shall be as follows:

- (a) Participants subject to designation under Article XIX, Section 5(a)(i) shall be designated for such amounts as will promote over time equality in the ratios of the participants' holdings of special drawing rights in excess of their net cumulative allocations to their official holdings of gold and foreign exchange.
- (b) The formula to give effect to (a) above shall be such that participants subject to designation shall be designated:
 - i. in proportion to their official holdings of gold and foreign exchange when the ratios described in (a) above are equal; and
 - ii. in such manner as gradually to reduce the difference between the ratios described in (a) above that are low and the ratios that are high.

SCHEDULE G RECONSTITUTION

1. During the first basic period the rules for reconstitution shall be as follows:

(a)

- i. A participant shall so use and reconstitute its holdings of special drawing rights that, five years after the first allocation and at the end of each calendar quarter thereafter, the average of its total daily holdings of special drawing rights over the most recent five-year period will be not less than thirty percent of the average of its daily net cumulative allocation of special drawing rights over the same period.
- ii. Two years after the first allocation and at the end of each calendar month thereafter the Fund shall make calculations for each participant so as to ascertain whether and to what extent the participant would need to acquire special drawing rights between the date of the calculation and the end of any five-year period in order to comply with the requirement in (a)(i) above. The Fund shall adopt regulations with respect to the bases on which these calculations shall be made and with respect to the timing of the designation of participants under Article XIX, Section 5(a)(ii), in order to assist them to comply with the requirement in (a)(i) above.
- iii. The Fund shall give special notice to a participant when the calculations under (a)(ii) above indicate that it is unlikely that the participant will be able to comply with the requirement in (a)(i) above unless it ceases to use special drawing rights for the rest of the period for which the calculation was made under (a)(ii) above.
- iv. A participant that needs to acquire special drawing rights to fulfill this obligation shall be obligated and entitled to obtain them, for currency acceptable to the Fund, in a transaction with the Fund conducted through the General Resources Account. If sufficient special drawing rights to fulfill this obligation cannot be obtained in this way, the participant shall be obligated and entitled to obtain them with a freely usable currency from a participant which the Fund shall specify.

(b) Participants shall also pay due regard to the desirability of pursuing over time a balanced relationship between their holdings of special drawing rights and their other reserves.

2. If a participant fails to comply with the rules for reconstitution, the Fund shall determine whether or not the circumstances justify suspension under Article XXIII, Section 2(b).

SCHEDULE H TERMINATION OF PARTICIPATION

1. If the obligation remaining after the setoff under Article XXIV, Section 2(b) is to the terminating participant and agreement on settlement between the Fund and the terminating participant is not reached within six months of the date of termination, the Fund shall redeem this balance of special drawing rights in equal half-yearly

installments within a maximum of five years of the date of termination. The Fund shall redeem this balance as it may determine, either (a) by the payment to the terminating participant of the amounts provided by the remaining participants to the Fund in accordance with Article XXIV, Section 5, or (b) by permitting the terminating participant to use its special drawing rights to obtain its own currency or a freely usable currency from a participant specified by the Fund, the General Resources Account, or any other holder.

2. If the obligation remaining after the setoff under Article XXIV, Section 2(b) is to the Fund and agreement on settlement is not reached within six months of the date of termination, the terminating participant shall discharge this obligation in equal half-yearly installments within three years of the date of termination or within such longer period as may be fixed by the Fund. The terminating participant shall discharge this obligation, as the Fund may determine, either (a) by the payment to the Fund of a freely usable currency, or (b) by obtaining special drawing rights, in accordance with Article XXIV, Section 6, from the General Resources Account or in agreement with a participant specified by the Fund or from any other holder, and the setoff of these special drawing rights against the installment due.
3. Installments under either 1 or 2 above shall fall due six months after the date of termination and at intervals of six months thereafter.
4. In the event of the Special Drawing Rights Department going into liquidation under Article XXV within six months of the date a participant terminates its participation, the settlement between the Fund and that government shall be made in accordance with Article XXV and Schedule I.

SCHEDULE I ADMINISTRATION OF LIQUIDATION OF THE SPECIAL DRAWING RIGHTS DEPARTMENT

1. In the event of liquidation of the Special Drawing Rights Department, participants shall discharge their obligations to the Fund in ten half-yearly installments, or in such longer period as the Fund may decide is needed, in a freely usable currency and the currencies of participants holding special drawing rights to be redeemed in any installment to the extent of such redemption, as determined by the Fund. The first half-yearly payment shall be made six months after the decision to liquidate the Special Drawing Rights Department.
2. If it is decided to liquidate the Fund within six months of the date of the decision to liquidate the Special Drawing Rights Department, the liquidation of the Special Drawing Rights Department shall not proceed until special drawing rights held in the General Resources Account have been distributed in accordance with the following rule:

After the distributions made under 2(a) and (b) of Schedule K, the Fund shall apportion its special drawing rights held in the General Resources Account among all members that are participants in proportion to the amounts due to each participant after the distribution under 2(b). To determine the amount due to each member for the purpose of apportioning the remainder of its holdings of each currency under 2(d) of Schedule K, the Fund shall deduct the distribution of special drawing rights made under this rule.

3. With the amounts received under 1 above, the Fund shall redeem special drawing rights held by holders in the following manner and order:
 - (a) Special drawing rights held by governments that have terminated their participation more than six months before the date the Board of Governors decides to liquidate the Special Drawing Rights Department shall be redeemed in accordance with the terms of any agreement under Article XXIV or Schedule H.
 - (b) Special drawing rights held by holders that are not participants shall be redeemed before those held by participants, and shall be redeemed in proportion to the amount held by each holder.
 - (c) The Fund shall determine the proportion of special drawing rights held by each participant in relation to its net cumulative allocation. The Fund shall first redeem special drawing rights from the participants with the highest proportion until this proportion is reduced to that of the second highest proportion; the Fund shall then redeem the special drawing rights held by these participants in accordance with their net cumulative allocations until the proportions are reduced to that of the third highest proportion; and this process shall be continued until the amount available for redemption is exhausted.
4. Any amount that a participant will be entitled to receive in redemption under 3 above shall be set off against any amount to be paid under 1 above.
5. During liquidation the Fund shall pay interest on the amount of special drawing rights held by holders, and each participant shall pay charges on the net cumulative allocation of special drawing rights to it less the amount of any payments made in accordance with 1 above. The rates of interest and charges and the time of payment shall be determined by the Fund. Payments of interest and charges shall be made in special drawing rights to the extent possible. A participant that does not hold sufficient special drawing rights to meet any charges shall make the payment with a currency specified by the Fund. Special drawing rights received as charges in amounts needed for administrative expenses shall not be used for the payment of interest, but shall be transferred to the Fund and shall be redeemed first and with the currencies used by the Fund to meet its expenses.
6. While a participant is in default with respect to any payment required by 1 or 5 above, no amounts shall be paid to it in accordance with 3 or 5 above.
7. If after the final payments have been made to participants each participant not in default does not hold special drawing rights in the same proportion to its net cumulative allocation, those participants holding a lower proportion shall purchase from those holding a higher proportion such amounts in accordance with arrangements made by the Fund as will make the proportion of their holdings of special drawing rights the same. Each participant in default shall pay to the Fund its own currency in an amount equal to its default. The Fund shall apportion this currency and residual claims among participants in proportion to the amount of special drawing rights held by each and these special drawing rights shall be cancelled. The Fund shall then close the books of the Special Drawing Rights Department and all of the Fund's liabilities arising from the allocations of special drawing rights and the administration of the Special Drawing Rights Department shall cease.

8. Each participant whose currency is distributed to other participants under this Schedule guarantees the unrestricted use of such currency at all times for the purchase of goods or for payments of sums due to it or to persons in its territories. Each participant so obligated agrees to compensate other participants for any loss resulting from the difference between the value at which the Fund distributed its currency under this Schedule and the value realized by such participants on disposal of its currency.

SCHEDULE J SETTLEMENT OF ACCOUNTS WITH MEMBERS WITHDRAWING

1. The settlement of accounts with respect to the General Resources Account shall be made according to 1 to 6 of this Schedule. The Fund shall be obligated to pay to a member withdrawing an amount equal to its quota, plus any other amounts due to it from the Fund, less any amounts due to the Fund, including charges accruing after the date of its withdrawal; but no payment shall be made until six months after the date of withdrawal. Payments shall be made in the currency of the withdrawing member, and for this purpose the Fund may transfer to the General Resources Account holdings of the member's currency in the Special Disbursement Account or in the Investment Account in exchange for an equivalent amount of the currencies of other members in the General Resources Account selected by the Fund with their concurrence.
2. If the Fund's holdings of the currency of the withdrawing member are not sufficient to pay the net amount due from the Fund, the balance shall be paid in a freely usable currency, or in such other manner as may be agreed. If the Fund and the withdrawing member do not reach agreement within six months of the date of withdrawal, the currency in question held by the Fund shall be paid forthwith to the withdrawing member. Any balance due shall be paid in ten half-yearly installments during the ensuing five years. Each such installment shall be paid, at the option of the Fund, either in the currency of the withdrawing member acquired after its withdrawal or in a freely usable currency.
3. If the Fund fails to meet any installment which is due in accordance with the preceding paragraphs, the withdrawing member shall be entitled to require the Fund to pay the installment in any currency held by the Fund with the exception of any currency which has been declared scarce under Article VII, Section 3.
4. If the Fund's holdings of the currency of a withdrawing member exceed the amount due to it, and if agreement on the method of settling accounts is not reached within six months of the date of withdrawal, the former member shall be obligated to redeem such excess currency in a freely usable currency. Redemption shall be made at the rates at which the Fund would sell such currencies at the time of withdrawal from the Fund. The withdrawing member shall complete redemption within five years of the date of withdrawal, or within such longer period as may be fixed by the Fund, but shall not be required to redeem in any half-yearly period more than one-tenth of the Fund's excess holdings of its currency at the date of withdrawal plus further acquisitions of the currency during such half-yearly period. If the withdrawing member does not fulfill this obligation, the Fund may in an orderly manner liquidate in any market the amount of currency which should have been redeemed.

5. Any member desiring to obtain the currency of a member which has withdrawn shall acquire it by purchase from the Fund, to the extent that such member has access to the general resources of the Fund and that such currency is available under 4 above.
6. The withdrawing member guarantees the unrestricted use at all times of the currency disposed of under 4 and 5 above for the purchase of goods or for payment of sums due to it or to persons within its territories. It shall compensate the Fund for any loss resulting from the difference between the value of its currency in terms of the special drawing right on the date of withdrawal and the value realized in terms of the special drawing right by the Fund on disposal under 4 and 5 above.
7. If the withdrawing member is indebted to the Fund as the result of transactions conducted through the Special Disbursement Account under Article V, Section 12(f)(ii), the indebtedness shall be discharged in accordance with the terms of the indebtedness.
8. If the Fund holds the withdrawing member's currency in the Special Disbursement Account or in the Investment Account, the Fund may in an orderly manner exchange in any market for the currencies of members the amount of the currency of the withdrawing member remaining in each account after use under 1 above, and the proceeds of the exchange of the amount in each account shall be kept in that account. Paragraph 5 above and the first sentence of 6 above shall apply to the withdrawing member's currency.
9. If the Fund holds obligations of the withdrawing member in the Special Disbursement Account pursuant to Article V, Section 12(h), or in the Investment Account, the Fund may hold them until the date of maturity or dispose of them sooner. Paragraph 8 above shall apply to the proceeds of such disinvestment.
10. In the event of the Fund going into liquidation under Article XXVII, Section 2 within six months of the date on which the member withdraws, the accounts between the Fund and that government shall be settled in accordance with Article XXVII, Section 2 and Schedule K.

SCHEDULE K ADMINISTRATION OF LIQUIDATION

1. In the event of liquidation the liabilities of the Fund other than the repayment of subscriptions shall have priority in the distribution of the assets of the Fund. In meeting each such liability the Fund shall use its assets in the following order:
 - (a) the currency in which the liability is payable;
 - (b) gold;
 - (c) all other currencies in proportion, so far as may be practicable, to the quotas of the members.
2. After the discharge of the Fund's liabilities in accordance with 1 above, the balance of the Fund's assets shall be distributed and apportioned as follows:
 - (a)
 - i. The Fund shall calculate the value of gold held on August 31, 1975 that it continues to hold on the date of the decision to liquidate. The calculation shall be made in accordance with 9 below and also on the basis of one special

drawing right per 0.888 671 gram of fine gold on the date of liquidation. Gold equivalent to the excess of the former value over the latter shall be distributed to those members that were members on August 31, 1975 in proportion to their quotas on that date,

- ii. The Fund shall distribute any assets held in the Special Disbursement Account on the date of the decision to liquidate to those members that were members on August 31, 1975 in proportion to their quotas on that date. Each type of asset shall be distributed proportionately to members.

(b) The Fund shall distribute its remaining holdings of gold among the members whose currencies are held by the Fund in amounts less than their quotas in the proportions, but not in excess of, the amounts by which their quotas exceed the Fund's holdings of their currencies.

(c) The Fund shall distribute to each member one-half the Fund's holdings of its currency but such distribution shall not exceed fifty percent of its quota.

(d) The Fund shall apportion the remainder of its holdings of gold and each currency

- i. among all members in proportion to, but not in excess of, the amounts due to each member after the distributions under (b) and (c) above, provided that distribution under 2(a) above shall not be taken into account for determining the amounts due, and
- ii. any excess holdings of gold and currency among all the members in proportion to their quotas.

3. Each member shall redeem the holdings of its currency apportioned to other members under 2(d) above, and shall agree with the Fund within three months after a decision to liquidate upon an orderly procedure for such redemption.
4. If a member has not reached agreement with the Fund within the three-month period referred to in 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members. Each currency apportioned to a member which has not reached agreement shall be used, so far as possible, to redeem its currency apportioned to the members which have made agreements with the Fund under 3 above.
5. If a member has reached agreement with the Fund in accordance with 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members which have made agreements with the Fund under 3 above. Each amount so redeemed shall be redeemed in the currency of the member to which it was apportioned.
6. After carrying out the steps in the preceding paragraphs, the Fund shall pay to each member the remaining currencies held for its account.
7. Each member whose currency has been distributed to other members under 6 above shall redeem such currency in the currency of the member requesting redemption, or in such other manner as may be agreed between them. If the members involved do not otherwise agree, the member obligated to redeem shall complete redemption within five years of the date of distribution, but shall not be required to redeem in any half-yearly period more than one-tenth of the amount distributed to each other member. If the member does not fulfill this obligation, the amount of currency which should have been redeemed may be liquidated in an orderly manner in any market.

8. Each member whose currency has been distributed to other members under 6 above guarantees the unrestricted use of such currency at all times for the purchase of goods or for payment of sums due to it or to persons in its territories. Each member so obligated agrees to compensate other members for any loss resulting from the difference between the value of its currency in terms of the special drawing right on the date of the decision to liquidate the Fund and the value in terms of the special drawing right realized by such members on disposal of its currency.
9. The Fund shall determine the value of gold under this Schedule on the basis of prices in the market.
10. For the purposes of this Schedule, quotas shall be deemed to have been increased to the full extent to which they could have been increased in accordance with Article III, Section 2(b) of this Agreement.

SCHEDULE L SUSPENSION OF VOTING RIGHTS

In the case of a suspension of voting rights of a member under Article XXVI, Section 2(b), the following provisions shall apply:

1. The member shall not:
 - (a) participate in the adoption of a proposed amendment of this Agreement, or be counted in the total number of members for that purpose, except in the case of an amendment requiring acceptance by all members under Article XXVIII(b) or pertaining exclusively to the Special Drawing Rights Department;
 - (b) appoint a Governor or Alternate Governor, appoint or participate in the appointment of a Councillor or Alternate Councillor, or appoint, elect, or participate in the election of an Executive Director.
2. The number of votes allotted to the member shall not be cast in any organ of the Fund. They shall not be included in the calculation of the total voting power, except for purposes of the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department.
3.
 - (a) The Governor and Alternate Governor appointed by the member shall cease to hold office.
 - (b) The Councillor and Alternate Councillor appointed by the member, or in whose appointment the member has participated, shall cease to hold office, provided that, if such Councillor was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended, another Councillor and Alternate Councillor shall be appointed by such other members under Schedule D, and, pending such appointment, the Councillor and Alternate Councillor shall continue to hold office, but for a maximum of thirty days from the date of suspension.
 - (c) The Executive Director appointed or elected by the member, or in whose election the member has participated, shall cease to hold office, unless such Executive Director was entitled to cast the number of votes allotted to other members whose voting rights have not been suspended. In the latter case:

- i. if more than ninety days remain before the next regular election of Executive Directors, another Executive Director shall be elected for the remainder of the term by such other members by a majority of the votes cast; pending such election, the Executive Director shall continue to hold office, but for a maximum of thirty days from the date of suspension;
 - ii. if not more than ninety days remain before the next regular election of Executive Directors, the Executive Director shall continue to hold office for the remainder of the term.
- 4. The member shall be entitled to send a representative to attend any meeting of the Board of Governors, the Council, or the Executive Board, but not any meeting of their committees, when a request made by, or a matter particularly affecting, the member is under consideration.

CHAPTER FOURTEEN

Marshall Plan

Boston, MA, 5 June 1947

INTRODUCTION

If any lessons were learned from the Second World War, the primary one was that not attending to economic crisis could lead eventually to violence or war. Adolf Hitler took advantage of the Great Depression and the economic crisis that engulfed Germany, Europe and the world to plunge Europe into war and a global catastrophe. To prevent another opportunist from repeating that tragedy would mean that the economic conditions of Europe must be attended to right after the defeat of the Nazis. Furthermore, the importance of a stable, viable and prosperous Europe for the USA could not be overemphasized. This was the motivation for the US Secretary of State, George C. Marshall, to develop, propose and advocate a programme for the reconstruction of Europe that came to be known as the Marshall Plan or, following its enactment, the European Recovery Program.

The Plan was first unveiled at the commencement lunch for honorary degree recipients at the University of Harvard (Massachusetts, USA) on 5 June 1947, although the text was made available at the State Department on 4 June. The Plan took cognisance of the destruction of cities, factories, mines, general infrastructure, banks and other financial services and of the loss of confidence in the respective local currencies during the War. Furthermore, commercial relations, especially the exchange between the agrarian sector and the industrial or commercial sectors, were threatened. A number of specific remedies were therefore proposed. First, the USA would provide substantial food aid to Europe, as the continent could not produce enough to feed itself and nor did it have enough money to buy sufficient quantities of food. Secondly, there must be policies to revive the economies of Europe, to be initiated and led by the citizens of each European country. In other words, the USA's assistance under the Marshall Plan was made available to all European countries, irrespective of ideology, location or the side the country fought on during the War. The policy was 'directed not against any country or doctrine but against hunger, poverty, desperation and chaos'. In reality, it was not expected that the USSR and its allies would accept the conditions of openness that the Plan entailed nor US supervision.

An important feature of the Plan was that the countries of Europe were to play a leading role and to accept ownership of the Plan. The details were to be worked out by

European leaders and officials of the US Government. A Committee of European Economic Co-operation (CEEC) was formed. It drew up a plan for European recovery, requiring the US funds to the amount of US \$19,100m. This ultimately led to the passing of the Economic Co-operation Act 1948, authorizing funding for the European Recovery Program. An independent agency called the Economic Cooperation Administration, headed by a businessman, Paul Hoffman, was established to oversee the implementation of the Marshall Plan and the provisions of the Economic Co-operation Act.

Some specific examples of the working of the Plan include: the use of \$50 m. for medicine to combat tuberculosis; money to build a harbour in North Borneo (now Sabah, Malaysia) to help the United Kingdom to receive the exports of all-important rubber; subsidies to the Ford Motor Company, to replace machinery needed to produce heavy equipment and vehicles for export; over 3,000 Europeans visiting the USA for six-month periods to learn new techniques in industry and agriculture; funds for cod-fishing equipment for Portugal; money to France to buy propellers for aircraft production; and \$6.5 m. for an alcohol plant in Scotland (United Kingdom), which reduced British imports and helped with the production of plastic, rayon and pharmaceutical production. Rapid European recovery and the current economic stature of the countries of Western Europe is eloquent evidence of the monumental success of the Marshall Plan.

The text of the speech is taken from the Congressional Record (30 June 1947).

THE MARSHALL PLAN*

I need not tell you, gentlemen, that the world situation is very serious. That must be apparent to all intelligent people. I think one difficulty is that the problem is one of such enormous complexity that the very mass of facts presented to the public by press and radio make it exceedingly difficult for the man in the street to reach a clear appraisal of the situation. Furthermore, the people of this country are distant from the troubled areas of the earth and it is hard for them to comprehend the plight and consequent reaction of the long-suffering peoples, and the effect of those reactions on their governments in connection with our efforts to promote peace in the world.

In considering the requirements for the rehabilitation of Europe the physical loss of life, the visible destruction of cities, factories, mines, and railroads was correctly estimated, but it has become obvious during recent months that this visible destruction was probably less serious than the dislocation of the entire fabric of European economy. For the past 10 years conditions have been highly abnormal. The feverish maintenance of the war effort engulfed all aspects of national economics. Machinery has fallen into disrepair or is entirely obsolete. Under the arbitrary and destructive Nazi rule, virtually every possible enterprise was geared into the German war machine. Long-standing commercial ties, private institutions, banks, insurance companies and shipping companies disappeared, through the loss of capital, absorption through nationalization or by simple destruction. In many countries, confidence in the local currency has been severely shaken. The breakdown of the business structure of Europe during the war was complete. Recovery has been seriously retarded by the fact that two years after the close of hostilities a peace settlement with Germany and Austria has not been agreed upon. But even given a more prompt solution of these difficult problems, the rehabilitation of the

economic structure of Europe quite evidently will require a much longer time and greater effort than had been foreseen.

There is a phase of this matter which is both interesting and serious. The farmer has always produced the foodstuffs to exchange with the city dweller for the other necessities of life. This division of labor is the basis of modern civilization. At the present time it is threatened with breakdown. The town and city industries are not producing adequate goods to exchange with the food-producing farmer. Raw materials and fuel are in short supply. Machinery is lacking or worn out. The farmer or the peasant cannot find the goods for sale which he desires to purchase. So the sale of his farm produce for money which he cannot use seems to him unprofitable transaction. He, therefore, has withdrawn many fields from crop cultivation and is using them for grazing. He feeds more grain to stock and finds for himself and his family an ample supply of food, however short he may be on clothing and the other ordinary gadgets of civilization. Meanwhile people in the cities are short of food and fuel. So the governments are forced to use their foreign money and credits to procure these necessities abroad. This process exhausts funds which are urgently needed for reconstruction. Thus a very serious situation is rapidly developing which bodes no good for the world. The modern system of the division of labor upon which the exchange of products is based is in danger of breaking down.

The truth of the matter is that Europe's requirements for the next three or four years of foreign food and other essential products—principally from America—are so much greater than her present ability to pay that she must have substantial additional help, or face economic, social, and political deterioration of a very grave character.

The remedy lies in breaking the vicious circle and restoring the confidence of the European people in the economic future of their own countries and of Europe as a whole. The manufacturer and the farmer throughout wide areas must be able and willing to exchange their products for currencies the continuing value of which is not open to question.

Aside from the demoralizing effect on the world at large and the possibilities of disturbances arising as a result of the desperation of the people concerned, the consequences to the economy of the United States should be apparent to all. It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace. Our policy is directed not against any country or doctrine but against hunger, poverty, desperation, and chaos. Its purpose should be the revival of working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist. Such assistance, I am convinced, must not be on a piecemeal basis as various crises develop. Any assistance that this Government may render in the future should provide a cure rather than a mere palliative. Any government that is willing to assist in the task of recovery will find full cooperation, I am sure, on the part of the United States Government. Any government which maneuvers to block the recovery of other countries cannot expect help from us. Furthermore, governments, political parties, or groups which seek to perpetuate human misery in order to profit therefrom, politically or otherwise, will encounter the opposition of the United States.

It is already evident that, before the United States Government can proceed much further in its efforts to alleviate the situation and help start the European world on its way to recovery, there must be some agreement among the countries of Europe as to the

requirements of the situation and the part those countries themselves will take in order to give proper effect to whatever action might be undertaken by this Government. It would be neither fitting nor efficacious for this Government to undertake to draw up unilaterally a program designed to place Europe on its feet economically. This is the business of the Europeans. The initiative, I think, must come from Europe. The role of this country should consist of friendly aid in the drafting of a European program so far as it may be practical for us to do so. The program should be a joint one, agreed to by a number, if not all European nations.

An essential part of any successful action on the part of the United States is an understanding on the part of the people of America of the character of the problem and the remedies to be applied. Political passion and prejudice should have no part. With foresight, and a willingness on the part of our people to face up to the vast responsibilities which history has clearly placed upon our country, the difficulties I have outlined can and will be overcome.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated. Enquiries about the legislative enactment of the Plan should be made to the Congress of the United States, or via the the website of legislative information (thomas.loc.gov).

CHAPTER FIFTEEN

Treaty Establishing the European Community or Treaty of Rome

Rome, 25 March 1957

INTRODUCTION

The instruments that established the European Community were the 1951 Treaty of Paris (the European Coal and Steel Community—which formally expired in 2002) and two Treaties of Rome in 1957 (the European Economic Community and the European Atomic Energy Community—Euratom). These were developed and modified, notably by the Treaty of Brussels in 1965 (which created a single Commission and Council for the three Communities by merger) and the Single European Act, which entered into force in 1987 (providing for a single market). The Treaty of Maastricht or Treaty on European Union, which was signed in 1992 and entered into force on 1 November 1993, added a political dimension to the European Community (which the Communities were formally renamed), thereby introducing the concept and name of the European Union (EU). However, the European Community (EC) remains the legal entity that signs treaties, etc. (until the adoption of any constitutional treaty). The 1997 Treaty of Amsterdam, which came into force on 1 May 1999, amended, reorganized and consolidated the founding treaties and their revisions. Most recently, the Treaty of Nice, signed on 26 February 2001 and taking effect from 1 February 2003 consolidated all the documents, although it formally remained a revision of the Treaty of Rome (see below). The key legal landmarks in the evolution of the Community or the Union since the three founding treaties, therefore, are: the Single European Act 1987, the Treaty of Maastricht, the Treaty of Amsterdam and the Treaty of Nice. There were further amendments agreed by the 2003 Treaty of Accession, which took effect on 1 May 2004, accounting for the admission of 10 new member countries and a new constitutional treaty is still being debated (the consolidated document up to the Treaty of Nice is introduced here).

The European Community project is the biggest, most advanced and most influential customs union in the world. Membership grew from six countries in the 1950s to the present 25. With the interest shown by Turkey and other countries in Europe and Central Asia, it is entirely conceivable that that membership could grow. The EC has standing and voice in almost all major international organizations and conferences. The main principles of the Community include the establishment of a common market supported by

an economic and monetary union. This has been the strongest front of the whole European Union project. Notwithstanding the absence of Denmark, Sweden and the United Kingdom, the monetary union can be said to be complete, with the functioning of a viable common currency and a central bank. The internal market was previously completed in 1992, with the removal, at least in principle, of remaining restrictions on the freedom of movement of goods, persons, services and capital.

To achieve these goals, a number of institutions have been set up. Most prominent of these is the Council of Ministers, which meets periodically to discuss particular issues. The Council is effectively the supreme legislative and policy body of the Community. It follows in the step of the six-monthly Heads of Government Conferences. The leadership of the Council changes every six months. The Commission is the executive and bureaucratic engine of the Community. It is divided into Directorates, each headed by a Director-General. The staff of the Commission is to be independent and consists mainly of technocrats seeing to the implementation of the laws and policies of the Community. The Court of Justice is the next important institution. It adjudicates on the treaty and derivative laws of the Community. One of its landmark decisions was in the *Enel* case (*Costa v. Enel*, 6/64 1964 ECR 585), where the Court held that the Community had its own jurisprudence, independent of the laws of the member states. The European Parliament is the next institution. Until the Amsterdam revision, it was largely a debating and an advisory or consultative body. Now the Parliament has power to initiate legislation and to veto or delay legislation. It is still not a fully fledged legislature as in national political systems. The Court of Auditors, the European Environment Agency, the European Investment Bank and other, less prominent institutions also play important, albeit limited or specialized, roles, in the Community structure.

Some particular sectors of the EC scheme have attracted a lot of attention. These include the Common Agricultural Policy (CAP), competition policy and trade relations with the United States. Title II (articles 32–38) covers agriculture and trade in agricultural products. The CAP is predicated on the common market for agricultural products. The goals of the CAP are the increase in agricultural productivity, ensuring a fair standard of living for the agricultural community, stabilization of the market, continuous supplies and reasonable prices for consumers. This is the basis for the gigantic subsidies provided by the EC to the agricultural sector. It is to ensure regular stable supplies and stable, ‘competitive’ prices. This, then, prices out agricultural produce from other countries, particularly developing countries. There are plans to reform the CAP, but that is facing serious difficulties in light of ‘the fact that in the Member states agriculture constitutes a sector closely linked with the economy [including politics] as a whole’, as it says in article 33(2)(c). Competition law and policy should ordinarily be able to deal with the inefficiencies of the CAP, but articles 36 and 37 largely exclude the application of competition law to agricultural production and trade in agricultural products. So, where any action is to be taken in the field of agriculture, it is for more protection ‘of enterprises handicapped by structural or natural conditions’.

Competition policy is founded on articles 81–89 of the Treaty. Agreements, decisions or concerted practices by businesses or related undertakings that aim at manipulating trade and that affect trade within the Community are prohibited. If two or more undertakings agree or act in concert in a way that contributes to improvement in production, distribution or technical or economic progress and, at the same time, benefits

consumers without eliminating or restricting competition, they would be exempted from the stringent competition provisions. In addition, businesses whose share of the common market for the particular product is more than 40%–50% are prohibited from abusing their dominance. An abuse of dominant position occurs, for example, where a business limits production, markets a technical development that prejudices consumers, or imposes unfair purchase or selling practices or other unfair trading conditions. The competition law in the Community is predicated on the ‘substantial lessening of competition’ policy, this means that mergers, combinations, decisions or activities that are deemed to reduce competition would be frowned upon and stopped. This, in a way, contrasts with US anti-trust law, which is largely based on promoting the ultimate welfare of the consumer. It is not surprising, therefore, that the two biggest economies and markets in the world clash over transatlantic mergers and combinations (as was seen in the failure of the General Electric and Honeywell merger in 2001).

However, competition ethos is not the only point of unease in the economic relations between the EC and the USA. In fact, there is more agreement on competition issues than on trade simpliciter. Under title XX of Part Three and Part four of the Treaty, the Community accords special treatment to some overseas countries or non-European territories of the members. This and the historical relations between many African, Caribbean and Pacific countries and some European countries had led to some preferential treatment to the primary exports of these countries into the common market. Another issue is the varying attitudes to biotechnology products between western Europe and the USA. These two points offer the most poignant centres of friction in EC-US trade relations. This is verified by the number of cases that the two sides have been involved in at the World Trade Organization dispute resolution body.

As described above, the Treaty of Rome that established what became the European Community was first signed on 25 March 1957 and took effect on 1 January 1958. The latest revision and consolidation of the document was effected by the Treaty of Nice, which was signed by the then 15 member nations in February 2001 and came into effect on 1 February 2003. On 1 May 2004 a further 10 nations acceded to the Community and the Union.

TREATY ESTABLISHING THE EUROPEAN COMMUNITY (AS AMENDED AND REVISED IN THE CONSOLIDATED TREATY OF NICE, 2001)*

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS(2),

DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,

RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating,

HAVE DECIDED to create a EUROPEAN COMMUNITY and to this end have designated as their Plenipotentiaries:

[List of plenipotentiaries not reproduced here.]

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WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

PART ONE: PRINCIPLES

Article 1

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.

Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-

inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Article 3

1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:
 - (a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
 - (b) a common commercial policy;
 - (c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
 - (d) measures concerning the entry and movement of persons as provided for in Title IV;
 - (e) a common policy in the sphere of agriculture and fisheries;
 - (f) a common policy in the sphere of transport;
 - (g) a system ensuring that competition in the internal market is not distorted;
 - (h) the approximation of the laws of Member States to the extent required for the functioning of the common market;
 - (i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;
 - (j) a policy in the social sphere comprising a European Social Fund;
 - (k) the strengthening of economic and social cohesion;
 - (l) a policy in the sphere of the environment;
 - (m) the strengthening of the competitiveness of Community industry;
 - (n) the promotion of research and technological development;
 - (o) encouragement for the establishment and development of trans-European networks;
 - (p) a contribution to the attainment of a high level of health protection;
 - (q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
 - (r) a policy in the sphere of development cooperation;
 - (s) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
 - (t) a contribution to the strengthening of consumer protection;
 - (u) measures in the spheres of energy, civil protection and tourism.
2. In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 4

1. For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the Community shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

Article 5

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

Article 6

Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Article 7

1. The tasks entrusted to the Community shall be carried out by the following institutions:
 - a EUROPEAN PARLIAMENT,
 - a COUNCIL,
 - a COMMISSION,
 - a COURT OF JUSTICE,
 - a COURT OF AUDITORS.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 8

A European system of central banks (hereinafter referred to as “ESCB”) and a European Central Bank (hereinafter referred to as “ECB”) shall be established in accordance with the procedures laid down in this Treaty; they shall act within the limits of the powers conferred upon them by this Treaty and by the Statute of the ESCB and of the ECB (hereinafter referred to as “Statute of the ESCB”) annexed thereto.

Article 9

A European Investment Bank is hereby established, which shall act within the limits of the powers conferred upon it by this Treaty and the Statute annexed thereto.

Article 10

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community’s tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

Article 11

1. Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.
2. Authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. When enhanced cooperation relates to an area covered by the procedure referred to in Article 251 of this Treaty, the assent of the European Parliament shall be required.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

3. The acts and decisions necessary for the implementation of enhanced cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided in this Article and in Articles 43 to 45 of the Treaty on European Union.

Article 11a

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 11 shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Commission shall take a decision on it, and on such specific arrangements as it may deem necessary.

Article 12

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.

Article 13

1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.

Article 14

1. The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to the other provisions of this Treaty.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.
3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

Article 15

When drawing up its proposals with a view to achieving the objectives set out in Article 14, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.

Article 16

Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

PART TWO: CITIZENSHIP OF THE UNION

Article 17

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Article 18

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.
2. If action by the Community should prove necessary to attain this objective and this Treaty has not provided the necessary powers, the Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. The Council shall act in accordance with the procedure referred to in Article 251.
3. Paragraph 2 shall not apply to provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.

Article 19

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that

State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 20

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

Article 21

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.

Article 22

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this part. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights laid down in this part, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

PART THREE: COMMUNITY POLICIES

Title I: Free Movement of Goods

Article 23

1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. The provisions of Article 25 and of Chapter 2 of this title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 24

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

Chapter 1: The customs union

Article 25

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 26

Common Customs Tariff duties shall be fixed by the Council acting by a qualified majority on a proposal from the Commission.

Article 27

In carrying out the tasks entrusted to it under this chapter the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the Community in so far as they lead to an improvement in the competitive capacity of undertakings;

- (c) the requirements of the Community as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Community.

Chapter 2: Prohibition of quantitative restrictions between Member States

Article 28

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 29

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 30

The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 31

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.
The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.
2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.
3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps

should be taken in applying the rules contained in this article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

Title II: Agriculture

Article 32

1. The common market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.
2. Save as otherwise provided in Articles 33 to 38, the rules laid down for the establishment of the common market shall apply to agricultural products.
3. The products subject to the provisions of Articles 33 to 38 are listed in Annex I to this Treaty.
4. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 33

1. The objectives of the common agricultural policy shall be:
 - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to stabilise markets;
 - (d) to assure the availability of supplies;
 - (e) to ensure that supplies reach consumers at reasonable prices.
2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
 - (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
 - (b) the need to effect the appropriate adjustments by degrees;
 - (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article 34

1. In order to attain the objectives set out in Article 33, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
 - (b) compulsory coordination of the various national market organisations;
 - (c) a European market organisation.
2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 33, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.
- The common organisation shall be limited to pursuit of the objectives set out in Article 33 and shall exclude any discrimination between producers or consumers within the Community.
- Any common price policy shall be based on common criteria and uniform methods of calculation.
3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article 35

To enable the objectives set out in Article 33 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

Article 36

The provisions of the chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 37(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33.

The Council may, in particular, authorise the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

Article 37

1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.
2. Having taken into account the work of the Conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the

national organisations by one of the forms of common organisation provided for in Article 34(1), and for implementing the measures specified in this title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this title.

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organisations by the common organisation provided for in Article 34(1) if:
 - (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
 - (b) such an organisation ensures conditions for trade within the Community similar to those existing in a national market.
4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Community.

Article 38

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

Title III: Free Movement Of Persons, Services And Capital

Chapter 1: Workers

Article 39

1. Freedom of movement for workers shall be secured within the Community.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
4. The provisions of this article shall not apply to employment in the public service.

Article 40

The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 39, in particular:

- (a) by ensuring close cooperation between national employment services;
- (b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 41

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article 42

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

The Council shall act unanimously throughout the procedure referred to in Article 251.

Chapter 2: Right of establishment

Article 43

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

Article 44

1. In order to attain freedom of establishment as regards a particular activity, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by means of directives.
2. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:
 - (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

- (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;
- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 33(2);
- (f) by effecting the progressive abolition of restrictions on free dom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 45

The provisions of this chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this chapter shall not apply to certain activities.

Article 46

1. The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. The Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the abovementioned provisions.

Article 47

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
2. For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.
3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 48

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

“Companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Chapter 3: Services

Article 49

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Article 50

Services shall be considered to be “services” within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

“Services” shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 51

1. Freedom to provide services in the field of transport shall be governed by the provisions of the title relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 52

1. In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority.
2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 53

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 54

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality

or residence to all persons providing services within the meaning of the first paragraph of Article 49.

Article 55

The provisions of Articles 45 to 48 shall apply to the matters covered by this chapter.

Chapter 4: Capital and payments

Article 56

1. Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
2. Within the framework of the provisions set out in this chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Article 57

1. The provisions of Article 56 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving direct investment—including in real estate—establishment, the provision of financial services or the admission of securities to capital markets.
2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other chapters of this Treaty, the Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving direct investment—including investment in real estate—establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalisation of the movement of capital to or from third countries.

Article 58

1. The provisions of Article 56 shall be without prejudice to the right of Member States:
 - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
 - (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital

movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.
3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56.

Article 59

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

Article 60

1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.
2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

Title IV: Visas, Asylum, Immigration and other Policies Related to Free Movement of Persons

Article 61

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the

provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31 (e) of the Treaty on European Union;

- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;
- (c) measures in the field of judicial cooperation in civil matters as provided for in Article 65;
- (d) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;
- (e) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

Article 62

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 1. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
- 2. measures on the crossing of the external borders of the Member States which shall establish:
 - (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
 - (b) rules on visas for intended stays of no more than three months, including:
 - i. the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - ii. the procedures and conditions for issuing visas by Member States;
 - iii. a uniform format for visas;
 - iv. rules on a uniform visa;
- 3. measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article 63

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:

- (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
- (b) minimum standards on the reception of asylum seekers in Member States,
- (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
- (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;

2. measures on refugees and displaced persons within the following areas:

- (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,
- (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

3. measures on immigration policy within the following areas:

- (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,
- (b) illegal immigration and illegal residence, including repatriation of illegal residents;

4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.

Article 64

1. This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.

Article 65

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:
 - the system for cross-border service of judicial and extrajudicial documents,
 - cooperation in the taking of evidence,
 - the recognition and enforcement of decisions in civil and commercial cases,
 - including decisions in extrajudicial cases;
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Article 66

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this title, as well as between those departments and the Commission.

Article 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.
2. After this period of five years:
 - the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council,
 - the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.
3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b)(i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.
4. By derogation from paragraph 2, measures referred to in Article 62(2)(b)(ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251: the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this article, Community legislation defining the common rules and basic principles governing these issues, the measures provided for in Article 65 with the exception of aspects relating to family law.

Article 68

1. Article 234 shall apply to this title under the following circumstances and conditions: where a question on the interpretation of this title or on the validity or interpretation of acts of the institutions of the Community based on this title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.
3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the institutions of the Community based on this title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.

Article 69

The application of this title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

Title V: Transport

Article 70

The objectives of this Treaty shall, in matters governed by this title, be pursued by Member States within the framework of a common transport policy.

Article 71

1. For the purpose of implementing Article 70, and taking into account the distinctive features of transport, the Council shall, acting in accordance with the procedure

referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate provisions.

2. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market.

Article 72

Until the provisions referred to in Article 71(1) have been laid down, no Member State may, without the unanimous approval of the Council, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article 73

Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 74

Any measures taken within the framework of this Treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 75

1. In the case of transport within the Community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be abolished.
2. Paragraph 1 shall not prevent the Council from adopting other measures pursuant to Article 71(1).

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

Article 76

1. The imposition by a Member State, in respect of transport operations carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.
2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article 77

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this article.

Article 78

The provisions of this title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

Article 79

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters without prejudice to the powers of the Economic and Social Committee.

Article 80

1. The provisions of this title shall apply to transport by rail, road and inland waterway.
2. The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport. The procedural provisions of Article 71 shall apply.

Title VI: Common Rules on Competition, Taxation and Approximation of Laws

Chapter 1: Rules on competition

SECTION 1: RULES APPLYING TO UNDERTAKINGS

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or

economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 83

1. The appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82 shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.
2. The regulations or directives referred to in paragraph 1 shall be designed in particular:
 - (a) to ensure compliance with the prohibitions laid down in Article 81(1) and in Article 82 by making provision for fines and periodic penalty payments;
 - (b) to lay down detailed rules for the application of Article 81(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
 - (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 81 and 82;
 - (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
 - (e) to determine the relationship between national laws and the provisions contained in this section or adopted pursuant to this article.

Article 84

Until the entry into force of the provisions adopted in pursuance of Article 83, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the common market in accordance with the law of their country and with the provisions of Article 81, in particular paragraph 3, and of Article 82.

Article 85

1. Without prejudice to Article 84, the Commission shall ensure the application of the principles laid down in Articles 81 and 82. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.
2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

Article 86

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

SECTION 2: AIDS GRANTED BY STATES

Article 87

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 88

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 and 227, refer the matter to the Court of Justice direct. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 87 or from the regulations provided for in Article 89, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 89

The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 87 and 88 and may in particular determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure.

Chapter 2: Tax provisions

Article 90

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article 91

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article 92

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council acting by a qualified majority on a proposal from the Commission.

Article 93

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 14.

Chapter 3: Approximation of laws

Article 94

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.

Article 95

1. By way of derogation from Article 94 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 14. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.
4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
5. Moreover, without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure,

it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.
8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.
9. By way of derogation from the procedure laid down in Articles 226 and 227, the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.
10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 30, provisional measures subject to a Community control procedure.

Article 96

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, acting by a qualified majority, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.

Article 97

1. Where there is a reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 96, a Member State desiring to proceed therewith shall consult the

Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

2. If a State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, pursuant to Article 96, to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, the provisions of Article 96 shall not apply.

Title VII: Economic and Monetary Policy

Chapter 1: Economic policy

Article 98

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 99(2). The Member States and the Community shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4.

Article 99

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 98.
2. The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community.

On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Council may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned. The Council may, acting by a qualified majority on a proposal from the Commission, decide to make its recommendations public.

The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

5. The Council, acting in accordance with the procedure referred to in Article 252, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 of this Article.

Article 100

1. Without prejudice to any other procedures provided for in this Treaty, the Council, acting by a qualified majority on a proposal from the Commission, may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, acting by a qualified majority on a proposal from the Commission, may grant, under certain conditions, Community financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

Article 101

1. Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States (hereinafter referred to as “national central banks”) in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.
2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 102

1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.
2. The Council, acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.

Article 103

1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.
2. If necessary, the Council, acting in accordance with the procedure referred to in Article 252, may specify definitions for the application of the prohibition referred to in Article 101 and in this Article.

Article 104

1. Member States shall avoid excessive government deficits.
2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:
 - (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless: either the ratio has declined substantially and continuously and reached a level that comes close to the reference value, or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
 - (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to this Treaty.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment

expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Committee provided for in Article 114 shall formulate an opinion on the report of the Commission.
5. If the Commission considers that an excessive deficit in a Member State exists or may occur, the Commission shall address an opinion to the Council.
6. The Council shall, acting by a qualified majority on a recommendation from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.
7. Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.
8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.
9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 226 and 227 may not be exercised within the framework of paragraphs 1 to 9 of this Article.
11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
to require the Member State concerned to make a non-interestbearing deposit of an appropriate size with the Community until the excessive deficit has, in the view of the Council, been corrected, to impose fines of an appropriate size.
The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been

abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions referred to in paragraphs 7 to 9, 11 and 12, the Council shall act on a recommendation from the Commission by a majority of two thirds of the votes of its members weighted in accordance with Article 205(2), excluding the votes of the representative of the Member State concerned.
14. Further provisions relating to the implementation of the procedure described in this article are set out in the Protocol on the excessive deficit procedure annexed to this Treaty.

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, before 1 January 1994, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

Chapter 2: Monetary policy

Article 105

1. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4.
2. The basic tasks to be carried out through the ESCB shall be:
 - to define and implement the monetary policy of the Community, to conduct foreign-exchange operations consistent with the provisions of Article 111,
 - to hold and manage the official foreign reserves of the Member States,
 - to promote the smooth operation of payment systems.
3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.
4. The ECB shall be consulted:
 - on any proposed Community act in its fields of competence,
 - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 107(6).

The ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.
6. The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 106

1. The ECB shall have the exclusive right to authorise the issue of banknotes within the Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.
2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

Article 107

1. The ESCB shall be composed of the ECB and of the national central banks.
2. The ECB shall have legal personality.
3. The ESCB shall be governed by the decision-making bodies of the ECB which shall be the Governing Council and the Executive Board.
4. The Statute of the ESCB is laid down in a Protocol annexed to this Treaty.
5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required.
6. The Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB.

Article 108

When exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies and the governments of the Member

States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Article 109

Each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation including the statutes of its national central bank is compatible with this Treaty and the Statute of the ESCB.

Article 110

1. In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:
 - make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 107(6),
 - take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB,
 - make recommendations and deliver opinions.
2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
 - Recommendations and opinions shall have no binding force.
 - A decision shall be binding in its entirety upon those to whom it is addressed.
 - Articles 253, 254 and 256 shall apply to regulations and decisions adopted by the ECB.
 - The ECB may decide to publish its decisions, recommendations and opinions.
3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 107(6), the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 111

1. By way of derogation from Article 300, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the ecu in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ecu within the exchange-rate system. The President of the Council

shall inform the European Parliament of the adoption, adjustment or abandonment of the ecu central rates.

2. In the absence of an exchange-rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.
3. By way of derogation from Article 300, where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the Community with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.

4. Subject to paragraph 1, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 and 105.
5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

Chapter 3: Institutional provisions

Article 112

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.
2.
 - (a) The Executive Board shall comprise the President, the Vice-President and four other members.
 - (b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

Article 113

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB.
The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.
2. The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.
3. The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.
The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

Article 114

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, a Monetary Committee with advisory status is hereby set up.

It shall have the following tasks:

to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission, to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,

without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 116(2), 117(6), 119, 120, 121(2) and 122(1),

to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States and the Commission shall each appoint two members of the Monetary Committee.

2. At the start of the third stage, an Economic and Financial Committee shall be set up.
The Monetary Committee provided for in paragraph 1 shall be dissolved.
The Economic and Financial Committee shall have the following tasks:

to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,

to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,

without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 105(6), 106(2), 107(5) and (6), 111, 119, 120(2) and (3), 122(2), 123(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council,

to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the ECB shall each appoint no more than two members of the Committee.

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.
4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles 122 and 123, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

Article 115

For matters within the scope of Articles 99(4), 104 with the exception of paragraph 14, 111, 121, 122 and 123(4) and (5), the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

Chapter 4: Transitional provisions

Article 116

1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.
2. Before that date:

(a) each Member State shall:

adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 56 and in Articles 101 and 102(1),

adopt, if necessary, with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;

(b) the Council shall, on the basis of a report from the Commission, assess the progress made with regard to economic and monetary convergence, in particular with regard to price stability and sound public finances, and the progress made with the implementation of Community law concerning the internal market.

3. The provisions of Articles 101, 102(1), 103(1) and 104 with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.

The provisions of Articles 100(2), 104(1), (9) and (11), 105, 106, 108, 111, 112, 113 and 114(2) and (4) shall apply from the beginning of the third stage.

4. In the second stage, Member States shall endeavour to avoid excessive government deficits.

5. During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 109.

Article 117

1. At the start of the second stage, a European Monetary Institute (hereinafter referred to as "EMI") shall be established and take up its duties; it shall have legal personality and be directed and managed by a Council, consisting of a President and the Governors of the national central banks, one of whom shall be Vice-President.

The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognised standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President.

The Statute of the EMI is laid down in a Protocol annexed to this Treaty.

2. The EMI shall:

strengthen cooperation between the national central banks, strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability, monitor the functioning of the European Monetary System, hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,

take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI, facilitate the use of the ecu and oversee its

development, including the smooth functioning of the ecu clearing system.

3. For the preparation of the third stage, the EMI shall:

prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage, promote the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence,

prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB, promote the efficiency of cross-border payments, supervise the technical preparation of ecu banknotes.

At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in the third stage. This framework shall be submitted for decision to the ECB at the date of its establishment.

4. The EMI, acting by a majority of two thirds of the members of its Council, may:

formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State,

submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System, make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.

5. The EMI, acting unanimously, may decide to publish its opinions and its recommendations.

6. The EMI shall be consulted by the Council regarding any proposed Community act within its field of competence. Within the limits and under the conditions set out by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence.

7. The Council may, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the EMI, confer upon the EMI other tasks for the preparation of the third stage.

8. Where this Treaty provides for a consultative role for the ECB, references to the ECB shall be read as referring to the EMI before the establishment of the ECB.

9. During the second stage, the term "ECB" used in Articles 230, 232, 233, 234, 237 and 288 shall be read as referring to the EMI.

Article 118

The currency composition of the ecu basket shall not be changed.

From the start of the third stage, the value of the ecu shall be irrevocably fixed in accordance with Article 123(4).

Article 119

1. Where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the common market or the progressive implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of this Treaty. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Committee referred to in Article 114, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council, acting by a qualified majority, shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:
 - (a) a concerted approach to or within any other international organisations to which Member States may have recourse;
 - (b) measures needed to avoid deflection of trade where the State which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
 - (c) the granting of limited credits by other Member States, subject to their agreement.
3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the State which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council acting by a qualified majority.
4. Subject to Article 122(6), this article shall cease to apply from the beginning of the third stage.

Article 120

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) is not immediately taken, the Member State concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the common market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.
2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 119.
3. After the Commission has delivered an opinion and the Committee referred to in Article 114 has been consulted, the Council may, acting by a qualified majority, decide that the State concerned shall amend, suspend or abolish the protective measures referred to above.
4. Subject to Article 122(6), this article shall cease to apply from the beginning of the third stage.

Article 121

1. The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 108 and 109 of this Treaty and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,

the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104(6), the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State, the durability of convergence achieved by the Member State and of its participation in the exchange-rate mechanism of the European Monetary System being reflected in the longterm interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to this Treaty. The reports of the Commission and the EMI shall also take account of the development of the ecu, the results of the integration of markets, the situation and

development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. On the basis of these reports, the Council, acting by a qualified majority on a recommendation from the Commission, shall assess:

for each Member State, whether it fulfils the necessary conditions for the adoption of a single currency; whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency, and recommend its findings to the Council, meeting in the composition of the Heads of State or Government. The European Parliament shall be consulted and forward its opinion to the Council, meeting in the composition of the Heads of State or Government.

3. Taking due account of the reports referred to in paragraph 1 and the opinion of the European Parliament referred to in paragraph 2, the Council, meeting in the composition of the Heads of State or Government, shall, acting by a qualified majority, not later than 31 December 1996:

decide, on the basis of the recommendations of the Council referred to in paragraph 2, whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency,

decide whether it is appropriate for the Community to enter the third stage,

and if so:

set the date for the beginning of the third stage.

4. If, by the end of 1997, the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999. Before 1 July 1998, the Council, meeting in the composition of the Heads of State or Government, after a repetition of the procedure provided for in paragraphs 1 and 2, with the exception of the second indent of paragraph 2, taking into account the reports referred to in paragraph 1 and the opinion of the European Parliament, shall, acting by a qualified majority and on the basis of the recommendations of the Council referred to in paragraph 2, confirm which Member States fulfil the necessary conditions for the adoption of a single currency.

Article 122

1. If the decision has been taken to set the date in accordance with Article 121(3), the Council shall, on the basis of its recommendations referred to in Article 121(2), acting by a qualified majority on a recommendation from the Commission, decide whether any, and if so which, Member States shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as "Member States with a derogation".

If the Council has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, in accordance with Article 121(4), those

Member States which do not fulfil the conditions shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as “Member States with a derogation”.

2. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance with the procedure laid down in Article 121(1). After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in Article 121(1), and abrogate the derogations of the Member States concerned.
3. A derogation referred to in paragraph 1 shall entail that the following articles do not apply to the Member State concerned: Articles 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(2)(b). The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.
4. In Articles 105(1), (2) and (3), 106, 110, 111 and 112(2)(b), “Member States” shall be read as “Member States without a derogation”.
5. The voting rights of Member States with a derogation shall be suspended for the Council decisions referred to in the articles of this Treaty mentioned in paragraph 3. In that case, by way of derogation from Articles 205 and 250(1), a qualified majority shall be defined as two thirds of the votes of the representatives of the Member States without a derogation weighted in accordance with Article 205(2), and unanimity of those Member States shall be required for an act requiring unanimity.
6. Articles 119 and 120 shall continue to apply to a Member State with a derogation.

Article 123

1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 121(3), or, as the case may be, immediately after 1 July 1998:

the Council shall adopt the provisions referred to in Article 107(6),
the governments of the Member States without a derogation shall appoint, in accordance with the procedure set out in Article 50 of the Statute of the ESCB, the President, the Vice-President and the other members of the Executive Board of the ECB. If there are Member States with a derogation, the number of members of the Executive Board may be smaller than provided for in Article 11.1 of the Statute of the ESCB, but in no circumstances shall it be less than four.

As soon as the Executive Board is appointed, the ESCB and the ECB shall be established and shall prepare for their full operation as described in this Treaty and the Statute of the ESCB. The full exercise of their powers shall start from the first day of the third stage.

2. As soon as the ECB is established, it shall, if necessary, take over tasks of the EMI. The EMI shall go into liquidation upon the establishment of the ECB; the modalities of liquidation are laid down in the Statute of the EMI.
3. If and as long as there are Member States with a derogation, and without prejudice to Article 107(3) of this Treaty, the General Council of the ECB referred to in Article 45 of the Statute of the ESCB shall be constituted as a third decision-making body of the ECB.
4. At the starting date of the third stage, the Council shall, acting with the unanimity of the Member States without a derogation, on a proposal from the Commission and after consulting the ECB, adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu shall be substituted for these currencies, and the ecu will become a currency in its own right. This measure shall by itself not modify the external value of the ecu. The Council, acting by a qualified majority of the said Member States, on a proposal from the Commission and after consulting the ECB, shall take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States. The second sentence of Article 122(5) shall apply.
5. If it is decided, according to the procedure set out in Article 122(2), to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB, adopt the rate at which the ecu shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ecu as the single currency in the Member State concerned.

Article 124

1. Until the beginning of the third stage, each Member State shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field.
2. From the beginning of the third stage and for as long as a Member State has a derogation, paragraph 1 shall apply by analogy to the exchange-rate policy of that Member State.

Title VIII: Employment

Article 125

Member States and the Community shall, in accordance with this title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 2 of the Treaty on European Union and in Article 2 of this Treaty.

Article 126

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 125 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community adopted pursuant to Article 99(2).
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 128.

Article 127

1. The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities.

Article 128

1. The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2).
3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.
4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.
5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.

Article 129

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

Article 130

The Council, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

to monitor the employment situation and employment policies in the Member States and the Community, without prejudice to Article 207, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 128.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Title IX: Common Commercial Policy

Article 131

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Article 132

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

Article 133

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.
5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far

as such agreements comply with Community law and other relevant international agreements.

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

Article 134

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

Title X: Customs Cooperation

Article 135

Within the scope of application of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

Title XI: Social Policy, Education, Vocational Training and Youth

Chapter 1: Social provisions

Article 136

The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Community and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy.

They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.

Article 137

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
 - (a) improvement in particular of the working environment to protect workers' health and safety;
 - (b) working conditions;
 - (c) social security and social protection of workers;
 - (d) protection of workers where their employment contract is terminated;
 - (e) the information and consultation of workers;
 - (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;

- (g) conditions of employment for third-country nationals legally residing in Community territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the Council:

- (a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this article.

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, by agreement, the Member State concerned being required to management and labour have introduced the necessary measures take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

- 4. The provisions adopted pursuant to this article: shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof, shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.
- 5. The provisions of this article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article 138

1. The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.
3. If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.
4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 139

1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.
2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2). In that case, it shall act unanimously.

Article 140

With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this article, the Commission shall consult the Economic and Social Committee.

Article 141

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:
 - (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 142

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

Article 143

The Commission shall draw up a report each year on progress in achieving the objectives of Article 136, including the demographic situation in the Community. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.

Article 144

The Council, after consulting the European Parliament, shall establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The tasks of the Committee shall be:

to monitor the social situation and the development of social protection policies in the Member States and the Community, to promote exchanges of information, experience and good practice between Member States and with the Commission, without prejudice to Article 207, to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Article 145

The Commission shall include a separate chapter on social developments within the Community in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

Chapter 2: The European Social Fund

Article 146

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Community, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article 147

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

Article 148

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing decisions relating to the European Social Fund.

Chapter 3: Education, vocational training and youth

Article 149

1. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.
2. Community action shall be aimed at: developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
promoting cooperation between educational establishments,
developing exchanges of information and experience on issues common to the education systems of the Member States,
encouraging the development of youth exchanges and of exchanges of socioeducational instructors,
encouraging the development of distance education.
3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.
4. In order to contribute to the achievement of the objectives referred to in this Article, the Council:
acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
acting by a qualified majority on a proposal from the Commission, shall adopt recommendations.

Article 150

1. The Community shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.
2. Community action shall aim to:

facilitate adaptation to industrial changes, in particular through vocational training and retraining,
 improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,
 facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people, stimulate cooperation on training between educational or training establishments and firms,
 develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.
4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this article, excluding any harmonisation of the laws and regulations of the Member States.

Title XII: Culture

Article 151

1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
 - improvement of the knowledge and dissemination of the culture and history of the European peoples,
 - conservation and safeguarding of cultural heritage of European significance,
 - non-commercial cultural exchanges,
 - artistic and literary creation, including in the audiovisual sector.
3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.
5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:
 - acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.
 - The Council shall act unanimously throughout the procedure referred to in Article

251, acting unanimously on a proposal from the Commission, shall adopt recommendations.

Title XIII: Public Health

Article 152

1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education. The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Community shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.
4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this article through adopting:
 - (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
 - (b) by way of derogation from Article 37, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
 - (c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt recommendations for the purposes set out in this article.

5. Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

Title XIV: Consumer Protection

Article 153

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.
3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
 - (b) measures which support, supplement and monitor the policy pursued by the Member States.
4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).
5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

Title XV: Trans-European Networks

Article 154

1. To help achieve the objectives referred to in Articles 14 and 158 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the Community shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community.

Article 155

1. In order to achieve the objectives referred to in Article 154, the Community:
shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,

shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,

may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

The Community's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 154. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.
3. The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 156

The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

Title XVI: Industry

Article 157

1. The Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

speeding up the adjustment of industry to structural changes, encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings, encouraging an environment favourable to cooperation between undertakings,

fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination.
3. The Community shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of this Treaty. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1.

This title shall not provide a basis for the introduction by the Community of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

Title XVII: Economic and Social Cohesion

Article 158

In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

Article 159

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 160

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 161

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.

Article 162

Implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 and 148 respectively shall continue to apply.

Title XVIII: Research and Technological Development

Article 163

1. The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other chapters of this Treaty.
2. For this purpose the Community shall, throughout the Community, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.
3. All Community activities under this Treaty in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this title.

Article 164

In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of Community research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community.

Article 165

1. The Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community policy are mutually consistent.
2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 166

1. A multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee.

The framework programme shall:

establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 and fix the relevant priorities,

indicate the broad lines of such activities,

fix the maximum overall amount and the detailed rules for Community financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.
3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.
4. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

Article 167

For the implementation of the multiannual framework programme the Council shall:

determine the rules for the participation of undertakings, research centres and universities,

lay down the rules governing the dissemination of research results.

Article 168

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible Community participation.

The Council shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

Article 169

In implementing the multiannual framework programme, the Community may make provision, in agreement with the Member States concerned, for participation in research

and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 170

In implementing the multiannual framework programme the Community may make provision for cooperation in Community research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

Article 171

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

Article 172

The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

Article 173

At the beginning of each year the Commission shall send a report to the European Parliament and to the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

Title XIX: Environment

Article 174

1. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,

promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.

3. In preparing its policy on the environment, the Community shall take account of:

available scientific and technical data,
environmental conditions in the various regions of the Community,
the potential benefits and costs of action or lack of action,
the economic and social development of the Community as a whole
and the balanced development of its regions.

4. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 175

1. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.
2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:
 - (a) provisions primarily of a fiscal nature;
 - (b) measures affecting:
 - town and country planning,

quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, land use, with the exception of waste management;

- (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the first subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.

4. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:
- temporary derogations, and/or
 - financial support from the Cohesion Fund set up pursuant to Article 161.

Article 176

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

Title XX: Development Cooperation

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:
- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
 - the smooth and gradual integration of the developing countries into the world economy,
 - the campaign against poverty in the developing countries.
2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.
2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.
3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

Article 180

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.
2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 181

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations.

The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Title XXI: Economic, Financial and Technical Cooperation with Third Countries

Article 181a

1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.
3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

PART FOUR: ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article 182

The Member States agree to associate with the Community the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the "countries and territories") are listed in Annex II to this Treaty.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 183

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the Community, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 187.

Article 184

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of this Treaty.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 25.
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.
The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.
4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.
5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 185

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 184(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the

Commission to propose to the other Member States the measures needed to remedy the situation.

Article 186

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

Article 187

The Council, acting unanimously, shall, on the basis of the experience acquired under the association of the countries and territories with the Community and of the principles set out in this Treaty, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Community.

Article 188

The provisions of Articles 182 to 187 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this Treaty.

PART FIVE: INSTITUTIONS OF THE COMMUNITY

Title I: Provisions Governing the Institutions

Chapter 1: The institutions

SECTION 1: THE EUROPEAN PARLIAMENT

Article 189

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.

The number of Members of the European Parliament shall not exceed 732.

Article 190

1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.
2. The number of representatives elected in each Member State shall be as follows:

Belgium 25
 Denmark 16
 Germany 99
 Greece 25
 Spain 64
 France 87
 Ireland 15
 Italy 87
 Luxembourg 6
 Netherlands 31
 Austria 21
 Portugal 25
 Finland 16
 Sweden 22
 United Kingdom 87.

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3. Representatives shall be elected for a term of five years.
4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Article 191

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The Council, acting in accordance with the procedure referred to in Article 251, shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

Article 192

In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the

procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions.

The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.

Article 193

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

Article 194

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly.

Article 195

1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.
The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.
3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.
4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

Article 196

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary session at the request of a majority of its Members or at the request of the Council or of the Commission.

Article 197

The European Parliament shall elect its President and its officers from among its Members.

Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

Article 198

Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast.

The Rules of Procedure shall determine the quorum.

Article 199

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

Article 200

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Article 201

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 214. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

SECTION 2: THE COUNCIL

Article 202

To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:

- ensure coordination of the general economic policies of the Member States,
- have power to take decisions,

- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament.

Article 203

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.

The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.

Article 204

The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.

Article 205

1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members.
2. Where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows:

Belgium 5
Denmark 3
Germany 10
Greece 5
Spain 8
France 10
Ireland 3
Italy 10
Luxembourg 2
Netherlands 5
Austria 4
Portugal 5
Finland 3
Sweden 4
United Kingdom 10.

For their adoption, acts of the Council shall require at least:
62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
62 votes in favour, cast by at least 10 members, in other cases.

3. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Article 206

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

Article 207

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.
2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy,

who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by a qualified majority.

The Council shall decide on the organisation of the General Secretariat.

3. The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

Article 208

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

Article 209

The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.

Article 210

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the Court of First Instance. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

SECTION 3: THE COMMISSION

Article 211

In order to ensure the proper functioning and development of the common market, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied,

- formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary,

- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty,

exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

Article 212

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.

Article 213

1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

The number of Members of the Commission may be altered by the Council, acting unanimously.

Only nationals of Member States may be Members of the Commission.

The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.

2. The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.

Article 214

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.

Their term of office shall be renewable.

2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.

Article 215

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member appointed by the Council, acting by a qualified majority. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President.

Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced or until the Council has decided that the vacancy need not be filled, as provided for in the second paragraph of this Article.

Article 216

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.

Article 217

1. The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.
2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.
3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.
4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.

Article 218

1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.
2. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these Rules are published.

Article 219

The Commission shall act by a majority of the number of Members provided for in Article 213.

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

SECTION 4: E COURT OF JUSTICE

Article 220

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.

In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in Article 225a in order to exercise, in certain specific areas, the judicial competence laid down in this Treaty.

Article 221

The Court of Justice shall consist of one judge per Member State.

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice. When provided for in the Statute, the Court of Justice may also sit as a full Court.

Article 222

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.

Article 223

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.

Article 224

The Court of First Instance shall comprise at least one judge per Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court of First Instance to be assisted by Advocates-General.

The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. He may be reelected.

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service.

The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of this Treaty relating to the Court of Justice shall apply to the Court of First Instance.

Article 225

1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.

Decisions given by the Court of First Instance under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

Article 225a

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.

The decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

The members of the judicial panels shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The judicial panels shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority.

Unless the decision establishing the judicial panel provides otherwise, the provisions of this Treaty relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

Article 226

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Article 227

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

Article 228

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227.

Article 229

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of this Treaty, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in such regulations.

Article 229a

Without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice in disputes relating to the application of acts adopted on the basis of this Treaty which create Community industrial property rights. The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements.

Article 230

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors and by the ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 231

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

Article 232

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.

Article 233

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 288.

This article shall also apply to the ECB.

Article 234

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Article 235

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288.

Article 236

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of employment.

Article 237

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 226;
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 230;
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 230, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under this Treaty and the Statute of the ESCB. In this connection the powers of the Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 226. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Treaty, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

Article 238

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

Article 239

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

Article 240

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 241

Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 230, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 230 in order to invoke before the Court of Justice the inapplicability of that regulation.

Article 242

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 243

The Court of Justice may in any cases before it prescribe any necessary interim measures.

Article 244

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 256.

Article 245

The Statute of the Court of Justice shall be laid down in a separate Protocol.

The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, may amend the provisions of the Statute, with the exception of Title I.

SECTION 5: E COURT OF AUDITORS**Article 246**

The Court of Auditors shall carry out the audit.

Article 247

1. The Court of Auditors shall consist of one national from each Member State.
2. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.
3. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, acting by a qualified majority after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each

Member State. The term of office of the Members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

4. The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

5. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
6. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

7. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.
8. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.
9. The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors.

Article 248

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Community activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community, on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Community, any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Community expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Community expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union. majority.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Community.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council, acting by a qualified majority.

Chapter 2: Provisions common to several institutions

Article 249

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force.

Article 250

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 251(4) and (5).
2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

Article 251

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:
 - if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended, if the European Parliament does not propose any amendments, may adopt the proposed act,
 - shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.
 If, within three months of such communication, the European Parliament:
 - (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

- (b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;
 - (c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
 4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.
 5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
 6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
 7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Article 252

Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

- (a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.
- (b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

- (c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

- (d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

- (e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

- (f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

- (g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

Article 253

Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

Article 254

1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.
2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European Union. They shall enter into force on the date

specified in them or, in the absence thereof, on the 20th day following that of their publication.

3. Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.

Article 255

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.
2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.
3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

Article 256

Decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Chapter 3: The Economic and Social Committee

Article 257

An Economic and Social Committee is hereby established. It shall have advisory status.

The Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.

Article 258

The number of members of the Economic and Social Committee shall not exceed 350.

The number of members of the Committee shall be as follows:

Belgium 12

Denmark 9

Germany 24

Greece 12

Spain 21

France 24

Ireland 9

Italy 24

Luxembourg 6

Netherlands 12

Austria 12

Portugal 12

Finland 9

Sweden 12

United Kingdom 24.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.

The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

Article 259

1. The members of the Committee shall be appointed for four years, on proposals from the Member States. The Council, acting by a qualified majority, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable.
2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

Article 260

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

Article 261

The Committee shall include specialised sections for the principal fields covered by this Treaty.

These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.

Article 262

The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

The Committee may be consulted by the European Parliament.

Chapter 4: The Committee of the Regions

Article 263

A committee, hereinafter referred to as “the Committee of the Regions”, consisting of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly, is hereby established with advisory status.

The number of members of the Committee of the Regions shall not exceed 350.

The number of members of the Committee shall be as follows:

Belgium 12

Denmark 9

Greece 12

Germany 24

Spain 21

France 24

Ireland 9

Italy 24

Luxembourg 6

Netherlands 12

Austria 12

Portugal 12

Finland 9

Sweden 12

United Kingdom 24.

The members of the Committee and an equal number of alternate members shall be appointed for four years, on proposals from the respective Member States. Their term of office shall be renewable. The Council, acting by a qualified majority, shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in the first paragraph on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.

Article 264

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

Article 265

The Committee of the Regions shall be consulted by the Council or by the Commission where this Treaty so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate.

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to Article 262, the Committee of the Regions shall be informed by the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

The Committee of the Regions may be consulted by the European Parliament.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

Chapter 5: The European Investment Bank

Article 266

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to this Treaty. The Council acting unanimously, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the European Investment Bank, may amend Articles 4, 11 and 12 and Article 18(5) of the Statute of the Bank.

Article 267

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Community Financial Instruments.

Title II: Financial Provisions

Article 268

All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

Administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

The revenue and expenditure shown in the budget shall be in balance.

Article 269

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 270

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.

Article 271

The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.

In accordance with conditions to be laid down pursuant to Article 279, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 279.

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 272

1. The financial year shall run from 1 January to 31 December.
2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.
3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:
 - (a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;
 - (b) with regard to the proposed modifications: where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted, where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected,

where, pursuant to one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament

that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.
7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.
8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.
9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from: the trend, in terms of volume, of the gross national product within the Community, the average variation in the budgets of the Member States, and the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate. Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

Article 273

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Article 274

The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

Article 275

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

Article 276

1. The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 275, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1), second subparagraph and any relevant special reports by the Court of Auditors.
2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.
3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Article 277

The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279.

Article 278

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Article 279

1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:
 - (a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
 - (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors.

2. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

Article 280

1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this article, which shall act as a deterrent and be such as to afford effective protection in the Member States.
2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of this Treaty, the Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. The Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this article.

PART SIX: GENERAL AND FINAL PROVISIONS

Article 281

The Community shall have legal personality.

Article 282

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission.

Article 283

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of those Communities.

Article 284

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article 285

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community.
2. The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

Article 286

1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.
2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.

Article 287

The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 288

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.

Article 289

The seat of the institutions of the Community shall be determined by common accord of the governments of the Member States.

Article 290

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.

Article 291

The Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities. The same shall apply to the European Central Bank, the European Monetary Institute, and the European Investment Bank.

Article 292

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

Article 293

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

- the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals,
- the abolition of double taxation within the Community,
- the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries,
- the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.

Article 294

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 48, without prejudice to the application of the other provisions of this Treaty.

Article 295

This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

Article 296

1. The provisions of this Treaty shall not preclude the application of the following rules:
 - (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.
2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

Article 297

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 298

If measures taken in the circumstances referred to in Articles 296 and 297 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaty.

By way of derogation from the procedure laid down in Articles 226 and 227, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 296 and 297. The Court of Justice shall give its ruling *in camera*.

Article 299

1. This Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
2. The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the present Treaty to those regions, including common policies.

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Community programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost

regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies.

3. The special arrangements for association set out in part four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.

This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

4. The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.
5. The provisions of this Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
6. Notwithstanding the preceding paragraphs:

- (a) this Treaty shall not apply to the Faeroe Islands;
- (b) this Treaty shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

Article 300

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.

By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time limit for the assent.

4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.
5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.
6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.
7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.

Article 301

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

Article 302

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.

The Commission shall also maintain such relations as are appropriate with all international organisations.

Article 303

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

Article 304

The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.

Article 305

1. The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.
2. The provisions of this Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community.

Article 306

The provisions of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of this Treaty.

Article 307

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

Article 308

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

Article 309

1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with Article 7(3) of the Treaty on European Union, these voting rights shall also be suspended with regard to this Treaty.
2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has been determined in accordance with Article 7(2) of that Treaty, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken in accordance with paragraph 2 in response to changes in the situation which led to their being imposed.
4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).

This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.

Article 310

The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

Article 311

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.

Article 312

This Treaty is concluded for an unlimited period.

FINAL PROVISIONS

Article 313

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The Instruments of ratification shall be deposited with the Government of the Italian Republic.

This Treaty shall enter into force on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

Article 314

This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.

[List of signatories not reproduced here. Austria, Denmark, Greece, Finland, Ireland, Portugal, Spain, Sweden and the United Kingdom subsequently became signatories. This text does not take account of some changes made in 2004 to adapt to the joining of a further 10 countries.]

CHAPTER SIXTEEN

UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards

New York, NY, 10 June 1958

INTRODUCTION

The New York Convention is to regulate the recognition and enforcement of foreign arbitration awards—that is, an award awarded by a country other than the one in which it is sought to be recognized and enforced. Each contracting party is to acknowledge and, where required, enforce arbitral awards in its territory in accordance with the enforcing state's procedural rules. However, the rules of enforcement must not be unnecessarily burdensome and certainly not more onerous than those applied to the enforcement of domestic awards.

The following steps must be taken in a bid to receive recognition and to enforce the externally obtained award: There must be an authenticated or certified copy of the award, the original or certified copy of the agreement to go to arbitration and, if these documents are not written in the official language of the country where enforcement is sought, translations by a certified translator or a diplomatic or consular agent. These procedures are clearly aimed at minimizing or avoiding the presentation of fraudulent documents. The party against whom the enforcement is sought can challenge the recognition and enforcement on the forgoing documentary grounds. It can also fight off the enforcement of the award on grounds that the parties lacked legal capacity, that there was no adherence to the principles of natural justice and procedural fairness, that the arbitral body lacked jurisdiction or that the award was challenged in the 'home court' and suspended or set aside. The competent court in the country where the award is to be enforced may also refuse recognition and enforcement if it concludes that, under its laws, the subject matter of the difference in the legal persons and issues cannot be settled by arbitration or that the recognition and enforcement of the award would be contrary to its public policy.

The Convention came into force on 7 June 1959. By 2004 there were 134 parties to the agreement.

UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS*

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - (a) The duly authenticated original award or a duly certified copy thereof;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive an interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

ARTICLE VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of

which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- (c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare

that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

CHAPTER SEVENTEEN

Agreement Establishing the Inter-American Development Bank

Washington, DC, 8 April 1959

INTRODUCTION

This is perhaps the first of those agreements that established banks to assist with the development of particular regions of the world. To a large extent, the structure and content of this Agreement's provisions served as the model for subsequent regional banks, particularly the Asian and African Development Banks. The Bank's functions are: to promote investment in both public and private sectors; to finance development activities; to provide technical assistance for the preparation, evaluation, financing and implementation of development plans and projects; and to co-operate with member countries in programming development policies that would ensure the efficient use of resources.

Membership of the Inter-American Development Bank (IADB) was opened to members of the Organization of American States and to non-regional members who are also members of the IMF. The representatives of the members form the Board of Governors. The Board of Governors is vested with all the powers of the Bank, although it may delegate its powers to the Board of Executive Directors. However, it cannot delegate: its powers over membership; adjustments of the authorized capital; election of a President; approval of the financial statements of the Bank; the determination of reserves and the possible distribution of net profits; authorizing co-operation agreements with other international organizations; amendments of the Agreements; or the winding up of the activities of the Bank. Next in line of authority, therefore, is the Board of Executive Directors. One Executive Director is appointed by the member that has the largest subscription to the shares of the Bank (the USA). The rest of the Executive Directors are elected by the Board of Governors, with the overwhelming majority (no fewer than 10) being elected by the regional members of the Bank and the rest (no fewer than three) elected by the representatives of the non-regional members. All Executive Directors serve for a renewable period of three years. The Board of Executive Directors determines the administrative organization of the Bank, including staffing. It also approves the budget for the Bank. The chief executive officer of the Bank is the President, elected by the Board of Governors. Under the guidance of the Executive Directors, the President sees to

the ordinary business of the Bank. He chairs the Board of Executive Directors and appoints, manages and disciplines staff.

The resources of the Bank are divided into two categories. The ordinary resources include the authorized ordinary capital, money raised by borrowing, repayment of loans and related charges granted from the ordinary resources. The second source of the Bank's resources is what is described as the Fund, and from which special operations are financed. Special operations include the making of loans on terms and conditions that are suitable for the special circumstances of the particular country or project. The Fund, although managed by the Bank, is specifically supervised by a Vice-President appointed for that purpose. The operations and records of the two sources of funding are kept separate at all times. The extensive provisions made for the Fund are not exactly replicated in subsequent agreements that established regional banks.

The Bank, like all the other regional banks, except the European Bank for Reconstruction and Development, is not permitted to take account of the politics of members in carrying out its operations. The Executive Directors, the President and his staff are to be independent and not subject to any outside authority. The same cannot be guaranteed for the Governors, since they are political representatives in the first place. In granting or participating in loans and the guarantee of loans or any other operations, the Bank is to consider the ability of the member or the entity granted the loans to repay and the possibility of getting the money from other sources on reasonable terms. Such a loan also depends on the presentation of a detailed proposal and its evaluation by the Bank staff and, if the project is a private one, on the guarantee of the loan by the government of the country where the project is located. The Bank is to ensure that the loan it granted or guaranteed is used for the purposes for which it was granted in the first place. As with all banks, the IADB is required to operate on efficiency principles, but also with an eye on the development of the region.

The Agreement came into force on 30 December 1959, and the Bank started with 17 members. Cuba signed the original treaty, but never ratified it and, therefore, did not become a member of the Bank. The Republic of Korea (South Korea) joined in March 2005, becoming the 47th member country.

AGREEMENT ESTABLISHING THE INTER-AMERICAN DEVELOPMENT BANK (AS AMENDED UNTIL 31 JULY 1995)*

The countries on whose behalf this Agreement is signed agree to create the Inter-American Development Bank, which shall operate in accordance with the following provisions:

ARTICLE I PURPOSE AND FUNCTIONS

Section 1: Purpose

The purpose of the Bank shall be to contribute to the acceleration of the process of economic development of the member countries, individually and collectively.

Section 2: Functions

- a) To implement its purpose, the Bank shall have the following functions:
- i) to promote the investment of public and private capital for development purposes;
 - ii) to utilize its own capital, funds raised by it in financial markets, and other available resources, for financing the development of the member countries, giving priority to those loans and guarantees that will contribute most effectively to their economic growth;
 - iii) to encourage private investment in projects, enterprises, and activities contributing to economic development and to supplement private investment when private capital is not available on reasonable terms and conditions;
 - iv) to cooperate with the member countries to orient their development policies toward a better utilization of their resources, in a manner consistent with the objectives of making their economies more complementary and of fostering the orderly growth of their foreign trade; and
 - v) to provide technical assistance for the preparation, financing, and implementation of development plans and projects, including the study of priorities and the formulation of specific project proposals.
- b) In carrying out its functions, the Bank shall cooperate as far as possible with national and international institutions and with private sources supplying investment capital.

ARTICLE II MEMBERSHIP IN AND CAPITAL OF THE BANK

Section 1: Membership

- a) The original members of the Bank shall be those members of the Organization of American States which, by the date specified in Article XV, Section 1 (a), shall accept membership in the Bank.
- b) Membership shall be open to other members of the Organization of American States at such times and in accordance with such terms as the Bank may determine.

Section 2: Authorized Capital

- a) The authorized capital stock of the Bank, together with the initial resources of the Fund for Special Operations established in Article IV (hereinafter called the Fund), shall total one billion dollars (\$1,000,000,000) in terms of United States dollars of the weight and fineness in effect on January 1, 1959. Of this sum, eight hundred fifty million dollars (\$850,000,000) shall constitute the authorized capital stock of the Bank and shall be divided into 85,000 shares having a par value of \$10,000 each, which shall be available for subscription by members in accordance with Section 3 of this article.
- b) The authorized capital stock shall be divided into paid-in shares and callable shares. The equivalent of four hundred million dollars (\$400,000, 000) shall be paid in, and four hundred fifty million dollars (\$450,000,000) shall be callable for the purposes specified in Section 4(a)(ii) of this article.

- c) The capital stock indicated in (a) of this section shall be increased by five hundred million dollars (\$500,000,000) in terms of United States dollars of the weight and fineness existing on January 1, 1959, provided that:
 - i) the date for payment of all subscriptions established in accordance with Section 4 of this article shall have passed; and
 - ii) a regular or special meeting of the Board of Governors, held as soon as possible after the date referred to in subparagraph (i) of this paragraph, shall have approved the above-mentioned increase of five hundred million dollars (\$500,000,000) by a three-fourths majority of the total voting power of the member countries.
- d) The increase in capital stock provided for in the preceding paragraph shall be in the form of callable capital.
- e) Notwithstanding the provisions of paragraphs (c) and (d) of this section, the authorized capital stock may be increased when the Board of Governors deems it advisable and in a manner agreed upon by a two-thirds majority of the total number of governors representing not less than three fourths of the total voting power of the member countries.

Section 3: Subscription of Shares

- a) Each member shall subscribe to shares of the capital stock of the Bank. The number of shares to be subscribed by the original members shall be those set forth in Annex A of this Agreement, which specifies the obligation of each member as to both paid-in and callable capital. The number of shares to be subscribed by other members shall be determined by the Bank.
- b) In case of an increase in capital pursuant to Section 2, paragraph (c) or (e) of this article, each member shall have a right to subscribe, under such conditions as the Bank shall decide, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank. No member, however, shall be obligated to subscribe to any part of such increased capital.
- c) Shares of stock initially subscribed by original members shall be issued at par. Other shares shall be issued at par unless the Bank decides in special circumstances to issue them on other terms.
- d) The liability of the member countries on shares shall be limited to
- e) Shares of stock shall not be pledged or encumbered in any manner, and they shall be transferable only to the Bank. the unpaid portion of their issue price.

Section 4: Payment of Subscriptions

- a) Payment of the subscriptions to the capital stock of the Bank as set forth in Annex A shall be made as follows:
 - i) Payment of the amount subscribed by each country to the paid-in capital stock of the Bank shall be made in three installments, the first of which shall be 20 per cent, and the second and third each 40 per cent, of such amount. The first installment shall be paid by each country at any time on or after the date on which this Agreement is

signed, and the instrument of acceptance or ratification deposited, on its behalf in accordance with Article XV, Section 1, but not later than September 30, 1960. The remaining two installments shall be paid on such dates as are determined by the Bank, but not sooner than September 30, 1961, and September 30, 1962, respectively.

Of each installment, 50 per cent shall be paid in gold and/ or dollars and 50 per cent in the currency of the member.

- ii) The callable portion of the subscription for capital shares of the Bank shall be subject to call only when required to meet the obligations of the Bank created under Article III, Section

* The document above is printed with kind permission of the InterAmerican Development Bank. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Bank (<http://www.iadb.org/>).

4(ii) and (iii) on borrowings of funds for inclusion in the Bank's ordinary capital resources or guarantees chargeable to such resources. In the event of such a call, payment may be made at the option of the member either in gold, in United States dollars, or in the currency required to discharge the obligations of the Bank for the purpose for which the call is made.

Calls on unpaid subscriptions shall be uniform in percentage on all shares.

- b) Each payment of a member in its own currency under paragraph (a)(i) of this section shall be in such amount as, in the opinion of the Bank, is equivalent to the full value in terms of United States dollars of the weight and fineness in effect on January 1, 1959, of the portion of the subscription being paid. The initial payment shall be in such amount as the member considers appropriate hereunder but shall be subject to such adjustment, to be effected within 60 days of the date on which the payment was due, as the Bank shall determine to be necessary to constitute the full dollar value equivalent as provided in this paragraph.
- c) Unless otherwise determined by the Board of Governors by a three-fourths majority of the total voting power of the member countries, the liability of members for payment of the second and third installments of the paid-in portion of their subscriptions to the capital stock shall be conditional upon payment of not less than 90 per cent of the total obligations of the members due for:
 - i) the first and second installments, respectively, of the paid-in portion of the subscriptions; and
 - ii) the initial payment and all prior calls on the subscription quotas to the Fund.

Section 5: Ordinary Capital Resources

As used in this Agreement, the term "ordinary capital resources" of the Bank shall be deemed to include the following:

- i) authorized capital, including both paid-in and callable shares, subscribed pursuant to Section 2 and 3 of this article;
- ii) all funds raised by borrowings under the authority of Article VII, Section 1(i) to which the commitment set forth in Section 4(a)(ii) of this article is applicable;
- iii) all funds received in repayment of loans made with the resources indicated in (i) and (ii) of this section; and
- iv) all income derived from loans made from the afore-mentioned funds or from guarantees to which the commitment set forth in Section 4(a)(ii) of this article is applicable.

ARTICLE III OPERATIONS

Section 1: Use of Resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions enumerated in Article I of this Agreement.

Section 2: Ordinary and Special Operations

- a) The operations of the Bank shall be divided into ordinary operations and special operations.
- b) The ordinary operations shall be those financed from the Bank's ordinary capital resources, as defined in Article II, Section 5, and shall relate exclusively to loans made, participated in, or guaranteed by the Bank which are repayable only in the respective currency or currencies in which the loans were made. Such operations shall be subject to the terms and conditions that the Bank deems advisable, consistent with the provisions of this Agreement.
- c) The special operations shall be those financed from the resources of the Fund in accordance with the provisions of Article IV.

Section 3: Basic Principle of Separation

- a) The ordinary capital resources of the Bank as defined in Article II, Section 5, shall at all times and in all respects be held, used, obligated, invested, or otherwise disposed of entirely separate from the sources of the Fund, as defined in Article IV, Section 3(h).

The financial statements of the Bank shall show the ordinary operations of the Bank and the operations of the Fund separately, and the Bank shall establish such other administrative rules as may be necessary to ensure the effective separation of the two types of operations.

The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of operations for which the resources of the Fund were originally used or committed.
- b) Expenses pertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses pertaining directly to special operations shall

be charged to the resources of the Fund. Other expenses shall be charged as the Bank determines.

Section 4: Methods of Making or Guaranteeing Loans

Subject to the conditions stipulated in this article, the Bank may make or guarantee loans to any member, or any agency or political subdivision thereof, and to any enterprise in the territory of a member, in any of the following ways.

- i) by making or participating indirect loans with funds corresponding to the unimpaired paid-in capital and, except as provided in Section 13 of this article, to its reserves and undistributed surplus; or with the unimpaired resources of the Fund;
- ii) by making or participating in direct loans with funds raised by the Bank in capital markets, or borrowed or acquired in any other manner for inclusion in the ordinary capital resources of the Bank or the resources of the Fund; and
- iii) by guaranteeing in whole or in part loans made, except in special cases, by private investors.

Section 5: Limitations on Ordinary Operations

- a) The total amount outstanding of loans and guarantees made by the Bank in its ordinary operations shall not at any time exceed the total amount of the unimpaired subscribed capital of the Bank, plus the unimpaired reserves and surplus included in the ordinary capital resources of the Bank, as defined in Article II, Section 5, exclusive of income assigned to the special reserve established pursuant to Section 13 of this article and other income assigned by decision of the Board of Governors to reserves not available for loans or guarantees.
- b) In the case of loans made out of funds borrowed by the Bank to which the obligations provided for in Article II, Section 4(a)(ii) are applicable, the total amount of principal outstanding and payable to the Bank in a specific currency shall at no time exceed the total amount of principal of the outstanding borrowings by the Bank that are payable in the same currency.

Section 6: Direct Loan Financing

In making direct loans or participating in them, the Bank may provide financing in any of the following ways:

- a) By furnishing the borrower currencies of members, other than the currency of the member in whose territory the project is to be carried out, that are necessary to meet the foreign exchange costs of the project.
- b) By providing financing to meet expenses related to the purposes of the loan in the territories of the member in which the project is to be carried out. Only in special cases, particularly when the project indirectly gives rise to an increase in the demand for foreign exchange in that country, shall the financing granted by the Bank to meet local expenses be provided in gold or in currencies other than that of such member; in

such cases, the amount of the financing granted by the Bank for this purpose shall not exceed a reasonable portion of the local expenses incurred by the borrower.

Section 7: Rules and Conditions for Making or Guaranteeing Loans

- a) The Bank may make or guarantee loans subject to the following rules and conditions:
 - i) the applicant for the loan shall have submitted a detailed proposal and the staff of the Bank shall have presented a written report recommending the proposal after a study of its merits. In special circumstances, the Board of Executive Directors, by a majority of the total voting power of the member countries, may require that a proposal be submitted to the Board for decision in the absence of such a report;
 - ii) in considering a request for a loan or a guarantee, the Bank shall take into account the ability of the borrower to obtain the loan from private sources of financing on terms which, in the opinion of the Bank, are reasonable for the borrower, taking into account all pertinent factors;
 - iii) in making or guaranteeing a loan, the Bank shall pay due regard to prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract;
 - iv) in the opinion of the Bank, the rate of interest, other charges and the schedule for repayment of principal are appropriate for the project in question;
 - v) in guaranteeing a loan made by other investors, the Bank shall receive suitable compensation for its risk; and
 - vi) loans made or guaranteed by the Bank shall be principally for financing specific projects, including those forming part of a national or regional development program. However, the Bank may make or guarantee over-all loans to development institutions or similar agencies of the members in order that the latter may facilitate the financing of specific development projects whose individual financing requirements are not, in the opinion of the Bank, large enough to warrant the direct supervision of the Bank,
- b) The Bank shall not finance any undertaking in the territory of a member if that member objects to such financing.

Section 8: Optional Conditions for Making or Guaranteeing Loans

- a) In the case of loans or guarantees of loans to nongovernmental entities, the Bank may, when it deems it advisable, require that the member in whose territory the project is to be carried out, or a public institution or a similar agency of the member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan.
- b) The Bank may attach such other conditions to the making of loans or guarantees as it deems appropriate, taking into account both the interests of the members directly involved in the particular loan or guarantee proposal and the interests of the members as a whole.

Section 9: Use of Loans Made or Guaranteed by the Bank

- a) Except as provided in Article V, Section 1, the Bank shall impose no condition that the proceeds of a loan shall be spent in the territory of any particular country nor that such proceeds shall not be spent in the territories of any particular member or members.
- b) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed, or participated in by the Bank are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency.

Section 10: Payment Provisions for Direct Loans

Direct loan contracts made by the Bank in conformity with Section 4(i) or (ii) of this article shall establish:

- a) All the terms and conditions of each loan, including among others, provision for payment of principal, interest and other charges, maturities, and dates of payment; and
- b) The currency or currencies in which payments shall be made to the Bank.

Section 11: Guarantees

- a) In guaranteeing a loan the Bank shall charge a guarantee fee, at a rate determined by the Bank, payable periodically on the amount of the loan outstanding.
- b) Guarantee contracts concluded by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.
- c) In issuing guarantees, the Bank shall have power to determine any other terms and conditions.

Section 12: Special Commission

On all loans, participations, or guarantees made out of or by commitment of the ordinary capital resources of the Bank, the latter shall charge a special commission. The special commission, payable periodically, shall be computed on the amount outstanding on each loan, participation, or guarantee and shall be at the rate of one per cent per annum, unless the Bank, by a two-thirds majority of the total voting power of the member countries, decides to reduce the rate of commission.

Section 13: Special Reserve

The amount of commissions received by the Bank under Section 12 of this article shall be set aside as a special reserve, which shall be kept for meeting liabilities of the Bank in accordance with Article VII, Section 3(b)(i). The special reserve shall be held in such

liquid form, permitted under this Agreement, as the Board of Executive Directors may decide.

ARTICLE IV FUND FOR SPECIAL OPERATIONS

Section 1: Establishment, Purpose, and Functions

A Fund for Special Operations is established for the making of loans on terms and conditions appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects.

The Fund, whose administration shall be entrusted to the Bank, shall have the purpose and functions set forth in Article I of this Agreement.

Section 2: Applicable Provisions

The Fund shall be governed by the provisions of the present article and all other provisions of this Agreement, excepting those inconsistent with the provisions of the present article and those expressly applying only to the ordinary operations of the Bank.

Section 3: Resources

- a) The original members of the Bank shall contribute to the resources of the Fund in accordance with the provisions of this section.
- b) Members of the Organization of American States that join the Bank after the date specified in Article XV, Section 1(a) shall contribute to the Fund with such quotas, and under such terms, as may be determined by the Bank.
- c) The Fund shall be established with initial resources in the amount of one hundred fifty million dollars (\$150, 000, 000) in terms of United States dollars of the weight and fineness in effect on January 1, 1959, which shall be contributed by the original members of the Bank in accordance with the quotas specified in Annex B.
- d) Payment of the quotas shall be made as follows:
 - i) Fifty per cent of its quota shall be paid by each member at any time on or after the date on which this Agreement is signed, and the instrument of acceptance or ratification deposited, on its behalf in accordance with Article XV, Section 1, but not later than September 30, 1960.
 - ii) The remaining 50 per cent shall be paid at any time subsequent to one year after the Bank has begun operations, in such amounts and at such times as are determined by the Bank; provided, however, that the total amount of all quotas shall be made due and payable not later than the date fixed for payment of the third installment of the subscriptions to the paid-in capital stock of the Bank.
 - iii) The payments required under this section shall be distributed among the members in proportion to their quotas and shall be made one half in gold and/or United States dollars, and one half in the currency of the contributing member.

- e) Each payment of a member in its own currency under the preceding paragraph shall be in such amount as, in the opinion of the Bank, is equivalent to the full value, in terms of United States dollars of the weight and fineness in effect on January 1, 1959, of the portion of the quota being paid. The initial payment shall be in such amount as the member considers appropriate hereunder but shall be subject to such adjustment, to be effected within 60 days of the date on which payment was due, as the Bank shall determine to be necessary to constitute the full dollar value equivalent as provided in this paragraph.
- f) Unless otherwise determined by the Board of Governors by a three-fourths majority of the total voting power of the member countries, the liability of members for payment of any call on the unpaid portion of their subscription quotas to the Fund shall be conditional upon payment of not less than 90 per cent of the total obligations of the members for:
 - i) the initial payment and all prior calls on such quota subscriptions to the Fund: and
 - ii) any installments due on the paid-in portion of the subscriptions to the capital stock of the Bank.
- g) The resources of the Fund shall be increased through additional contributions by the members when the Board of Governors considers it advisable by a three-fourths majority of the total voting power of the member countries. The provisions of Article II, Section 3(b), shall apply to such increases, in terms of the proportion between the quota in effect for each member and the total amount of the resources of the Fund contributed by members,
- h) As used in this Agreement, the term “resources of the Fund” shall be deemed to include the following:
 - i) contributions by members pursuant to paragraphs (c) and (g) of this section;
 - ii) all funds raised by borrowing to which the commitment stipulated in Article II, Section 4(a)(ii) is not applicable, i. e., those that are specifically chargeable to the resources of the Fund;
 - iii) all funds received in repayment of loans made from the resources mentioned above;
 - iv) all income derived from operations using or committing any of the resources mentioned above; and
 - v) any other resources at the disposal of the Fund.

Section 4: Operations

- a) The operations of the Fund shall be those financed from its own resources, as defined in Section 3(h) of the present article.
- b) Loans made with resources of the Fund may be partially or wholly repayable in the currency of the member in whose territory the project being financed will be carried out. The part of the loan not repayable in the currency of the member shall be paid in the currency or currencies in which the loan was made.

Section 5: Limitation on Liability

In the operations of the Fund, the financial liability of the Bank shall be limited to the resources and reserves of the Fund, and the liability of members shall be limited to the unpaid portion of their respective quotas that has become due and payable.

Section 6: Limitation on Disposition of Quotas

The rights of members of the Bank resulting from their contributions to the Fund may not be transferred or encumbered, and members shall have no right of reimbursement of such contributions except in cases of loss of the status of membership or of termination of the operations of the Fund.

Section 7: Discharge of Fund Liabilities on Borrowings

Payments in satisfaction of any liability on borrowings of funds for inclusion in the resources of the Fund shall be charged:

- i) first, against any reserve established for this purpose; and
- ii) then, against any other funds available in the resources of the Fund.

Section 8: Administration

- a) Subject to the provisions of this Agreement, the authorities of the Bank shall have full powers to administer the Fund.
- b) There shall be a Vice President of the Bank in charge of the Fund. The Vice President shall participate in the meetings of the Board of Executive Directors of the Bank, without vote, whenever matters relating to the Fund are discussed.
- c) In the operations of the Fund the Bank shall utilize to the fullest extent possible the same personnel, experts, installations, offices, equipment, and services as it uses for its ordinary operations.
- d) The Bank shall publish a separate annual report showing the results of the Fund's financial operations, including profits or losses. At the annual meeting of the Board of Governors there shall be at least one session devoted to consideration of this report. In addition, the Bank shall transmit to the members a quarterly summary of the Fund's operations.

Section 9: Voting

- a) In making decisions concerning operations of the Fund, each member country of the Bank shall have the voting power in the Board of Governors accorded to it pursuant to Article VIII, Section 4(a) and (b), and each Director shall have the voting power in the Board of Executive Directors accorded to him pursuant to Article VIII, Section 4(a) and (c).
- b) All decisions of the Bank concerning the operations of the Fund shall be adopted by a two-thirds majority of the total voting power of the member countries, unless otherwise provided in this article.

Section 10: Distribution of Net Profits

The Board of Governors of the Bank shall determine what portion of the net profits of the Fund shall be distributed among the members after making provision for reserves. Such net profits shall be shared in proportion to the quotas of the members.

Section 11: Withdrawal of Contributions

- a) No country may withdraw its contribution and terminate its relations with the Fund while it is still a member of the Bank.
- b) The provisions of Article IX, Section 3, with respect to the settlement of accounts with countries that terminate their membership in the Bank also shall apply to the Fund.

Section 12: Suspension and Termination

The provisions of Article X also shall apply to the Fund with substitution of terms relating to the Fund and its resources and respective creditors for those relating to the Bank and its ordinary capital resources and respective creditors.

ARTICLE V CURRENCIES

Section 1: Use of Currencies

- a) The currency of any member held by the Bank, either in its ordinary capital resources or in the resources of the Fund, however acquired, may be used by the Bank and by any recipient from the Bank, without restriction by the member, to make payments for goods and services produced in the territory of such member.
- b) Members may not maintain or impose restrictions of any kind upon the use by the Bank or by any recipient from the Bank, for payments in any country, of the following:
 - i) gold and dollars received by the Bank in payment of the 50 per cent portion of each member's subscription to shares of the Bank's portion of each member's subscription to shares of the Bank's capital and of the 50 per cent portion of each member's quota for contribution to the Fund, pursuant to the provisions of Article II and Article IV, respectively;
 - ii) currencies of members purchased with the gold and dollar funds referred to in (i) of this paragraph;
 - iii) currencies obtained by borrowings, pursuant to the provisions of Article VII, Section 1(i), for inclusion in the ordinary capital resources of the Bank;
 - iv) gold and dollars received by the Bank in payment on account of principal, interest, and other charges, of loans made from the gold and dollar funds referred to in (i) of this paragraph; currencies received in payment of principal, interest, and other charges, of loans made from currencies referred to in (ii) and (iii) of this paragraph; and currencies received in payment of commissions and fees on all guarantees made by the Bank; and

- v) currencies, other than the member's own currency, received from the Bank pursuant to Article VII, Section 4(c) and Article IV, Section 10, in distribution of net profits.
- c) A member's currency held by the Bank, either in its ordinary capital resources or in the resources of the Fund, not covered by paragraph (b) of this section, also may be used by the Bank or any recipient from the Bank for payments in any country without restriction of any kind, unless the member notifies the Bank of its desire that such currency or a portion thereof be restricted to the uses specified in paragraph (a) of this section.
- d) Members may not place any restrictions on the holding and use by the Bank, for making amortization payments or anticipating payment of, or repurchasing part or all of, the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made from borrowed funds included in the ordinary capital resources of the Bank.
- e) Gold or currency held by the Bank in its ordinary capital resources or in the resources of the Fund shall not be used by the Bank to purchase other currencies unless authorized by a two-thirds majority of the total voting power of the member countries.

Section 2: Valuation of Currencies

Whenever it shall become necessary under this Agreement to value any currency in terms of another currency, or in terms of gold, such valuation shall be determined by the Bank after consultation with the International Monetary Fund.

Section 3: Maintenance of Value of the Currency Holdings of the Bank

- a) Whenever the par value in the International Monetary Fund of a member's currency is reduced or the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value of all the currency of the member held by the Bank in its ordinary capital resources, or in the resources of the Fund, excepting currency derived from borrowings by the Bank. The standard of value for this purpose shall be the United States dollar of the weight and fineness in effect on January 1, 1959.
- b) Whenever the par value in the International Monetary Fund of a member's currency is increased or the foreign exchange value of such member's currency has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency which is held by the Bank in its ordinary capital resources or in the resources of the Fund, excepting currency derived from borrowings by the Bank. The standard of value for this purpose shall be the same as that established in the preceding paragraph.
- c) The provisions of this section may be waived by the Bank when a uniform proportionate change in the par value of the currencies of all the Bank's members is made by the International Monetary Fund.

Section 4: Methods of Conserving Currencies

The Bank shall accept from any member promissory notes or similar securities issued by the government of the member, or by the depository designated by such member, in lieu of any part of the currency of the member representing the 50 per cent portion of its subscription to the Bank's authorized capital and the 50 per cent portion of its subscription to the resources of the Fund, which, pursuant to the provisions of Article II and Article IV, respectively, are payable by each member in its national currency, provided such currency is not required by the Bank for the conduct of its operations. Such promissory notes or securities shall be non-negotiable, non-interest-bearing, and payable to the Bank at their par value on demand.

ARTICLE VI TECHNICAL ASSISTANCE

Section 1: Provision of Technical Advice and Assistance

The Bank may, at the request of any member or members, or of private firms that may obtain loans from it, provide technical advice and assistance in its field of activity, particularly on:

- i) the preparation, financing, and execution of development plans and projects, including the consideration of priorities, and the formulation of loan proposals on specific national or regional development projects; and
- ii) the development and advanced training, through seminars and other forms of instruction, of personnel specializing in the formulation and implementation of development plans and projects.

Section 2: Cooperative Agreements on Technical Assistance

In order to accomplish the purposes of this article, the Bank may enter into agreements on technical assistance with other national or international institutions, either public or private.

Section 3: Expenses

- a) The Bank may arrange with member countries or firms receiving technical assistance, for reimbursement of the expenses of furnishing such assistance on terms which the Bank deems appropriate.
- b) The expenses of providing technical assistance not paid by the recipients shall be met from the net income of the Bank or of the Fund. However, during the first three years

of the Bank's operations, up to three per cent, in total, of the initial resources of the Fund may be used to meet such expenses.

ARTICLE VII MISCELLANEOUS POWERS AND DISTRIBUTION OF PROFITS

Section 1: Miscellaneous Powers of the Bank

In addition to the powers specified elsewhere in this Agreement, the Bank shall have the power to:

- i) borrow funds and in that connection to furnish such collateral or other security therefor as the Bank shall determine, provided that, before making a sale of its obligations in the markets of a country, the Bank shall have obtained the approval of that country and of the member in whose currency the obligations are denominated. In addition, in the case of borrowings of funds to be included in the Bank's ordinary capital resources, the Bank shall obtain agreement of such countries that the proceeds may be exchanged for the currency of any other country without restriction;
- ii) buy and sell securities it has issued or guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the country in whose territories the securities are to be bought or sold;
- iii) with the approval of a two-thirds majority of the total voting power of the member countries, invest funds not needed in its operations in such obligations as it may determine;
- iv) guarantee securities in its portfolio for the purpose of facilitating their sale; and
- v) exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Section 2: Warning to be Placed on Securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government, unless it is in fact the obligation of a particular government, in which case it shall so state.

Section 3: Methods of Meeting Liabilities of the Bank in Case of Defaults

- a) The Bank, in the event of actual or threatened default on loans made or guaranteed by the Bank using its ordinary capital resources, shall take such action as it deems appropriate with respect to modifying the terms of the loan, other than the currency of repayment.
- b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Article III, Section 4(ii) and (iii) chargeable against the ordinary capital resources of the Bank shall be charged:
 - i) first, against the special reserve provided for in Article III, Section 13; and

- ii) then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus, and funds corresponding to the capital paid in for shares.
- c) Whenever necessary to meet contractual payments of interest, other charges, or amortization on the Bank's borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it chargeable to its ordinary capital resources, the Bank may call upon the members to pay an appropriate amount of their callable capital subscriptions, in accordance with Article II, Section 4(a)(ii). Moreover, if the Bank believes that a default may be of long duration, it may call an additional part of such subscriptions not to exceed in any one year one per cent of the total subscriptions of the members, for the following purposes:
 - i) to redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default; and
 - ii) to repurchase, or otherwise discharge its liability on, all or part of its own outstanding obligations.

Section 4: Distribution of Net Profits and Surplus

- a) The Board of Governors may determine periodically what part of the net profits and of the surplus shall be distributed. Such distributions may be made only when the reserves have reached a level which the Board of Governors considers adequate.
- b) The distributions referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member.
- c) Payments shall be made in such manner and in such currency or currencies as the Board of Governors shall determine. If such payments are made to a member in currencies other than its own, the transfer of such currencies and their use by the receiving country shall be without restriction by any member.

ARTICLE VIII ORGANIZATION AND MANAGEMENT

Section 1: Structure of the Bank

The Bank shall have a Board of Governors, a Board of Executive Directors, a President, an Executive Vice President, a Vice President in charge of the Fund, and such other officers and staff as may be considered necessary.

Section 2: Board of Governors

- a) All the powers of the Bank shall be vested in the Board of Governors. Each member shall appoint one governor and one alternate, who shall serve for five years, subject to termination of appointment at any time, or to reappointment, at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. The Board shall select one of the governors as Chairman, who shall hold office until the next regular meeting of the Board.

- b) The Board of Governors may delegate to the Board of Executive Directors all its powers except power to:
 - i) admit new members and determine the conditions of their admission;
 - ii) increase or decrease the authorized capital stock of the Bank and contributions to the Fund;
 - iii) elect the President of the Bank and determine his remuneration;
 - iv) suspend a member, pursuant to Article IX, Section 2;
 - v) determine the remuneration of the executive directors and their alternates;
 - vi) hear and decide any appeals from interpretations of this Agreement given by the Board of Executive Directors;
 - vii) authorize the conclusion of general agreements for cooperation with other international organizations;
 - viii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the institution;
 - ix) determine the reserves and the distribution of the net profits of the Bank and of the Fund;
 - x) select outside auditors to certify to the general balance sheet and the statement of profit and loss of the institution;
 - xi) amend this Agreement; and
 - xii) decide to terminate the operations of the Bank and to distribute its assets.
- c) The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Executive Directors under paragraph (b) above.
- d) The Board of Governors shall, as a general rule, hold a meeting annually. Other meetings may be held when the Board of Governors so provides or when called by the Board of Executive Directors. Meetings of the Board of Governors also shall be called by the Board of Executive Directors whenever requested by five members of the Bank or by members having one fourth of the total voting power of the member countries.
- e) A quorum for any meeting of the Board of Governors shall be an absolute majority of the total number of governors, representing not less than two thirds of the total voting power of the member countries.
- f) The Board of Governors may establish a procedure whereby the Board of Executive Directors, when it deems such action appropriate, may submit a specific question to a vote of the governors without calling a meeting of the Board of Governors.
- g) The Board of Governors, and the Board of Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.
- h) Governors and alternates shall serve as such without compensation from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings of the Board of Governors.

Section 3: Board of Executive Directors

- a) The Board of Executive Directors shall be responsible for the conduct of the operations of the Bank, and for this purpose may exercise all the powers delegated to it by the Board of Governors.

- b) There shall be seven executive directors, who shall not be governors, and of whom:
 - i) one shall be appointed by the member having the largest number of shares in the Bank;
 - ii) six shall be elected by the governors of the remaining members pursuant to the provisions of Annex C of this Agreement.

Executive directors shall be appointed or elected for terms of three years and may be reappointed or re-elected for successive terms. They shall be persons of recognized competence and wide experience in economic and financial matters.

- c) Each executive director shall appoint an alternate who shall have full power to act for him when he is not present. Directors and alternates shall be citizens of the member countries. None of the elected directors and their alternates may be of the same citizenship. Alternates may participate in meetings but may vote only when they are acting in place of their principals.
- d) Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than 180 days before the end of his term, a successor shall be elected for the remainder of the term by the governors who elected the former director. An absolute majority of the votes cast shall be required for election. While the office remains vacant, the alternate shall have all the powers of the former director except the power to appoint an alternate.
- e) The Board of Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.
- f) A quorum for any meeting of the Board of Executive Directors shall be an absolute majority of the total number of directors representing not less than two thirds of the total voting power of the member countries.
- g) A member of the Bank may send a representative to attend any meeting of the Board of Executive Directors when a matter especially affecting that member is under consideration. Such right of representation shall be regulated by the Board of Governors.
- h) The Board of Executive Directors may appoint such committees as it deems advisable. Membership of such committees need not be limited to governors, directors, or alternates.
- i) The Board of Executive Directors shall determine the basic organization of the Bank, including the number and general responsibilities of the chief administrative and professional positions of the staff, and shall approve the budget of the Bank.

Section 4: Voting

- a) Each member country shall have 135 votes plus one vote for each share of capital stock of the Bank held by that country.
- b) In voting in the Board of Governors, each governor shall be entitled to cast the votes of the member country which he represents. Except as otherwise specifically provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the total voting power of the Member countries.
- c) In voting in the Board of Executive Directors:

- i) the appointed director shall be entitled to cast the number of votes of the member country which appointed him;
- ii) each elected director shall be entitled to cast the number of votes that counted toward his election, which votes shall be cast as a unit; and
- iii) except as otherwise specifically provided in this Agreement, all matters before the Board of Executive Directors shall be decided by a majority of the total voting power of the member countries.

Section 5: President, Executive Vice President, and Staff

- a) The Board of Governors, by an absolute majority of the total number of governors representing not less than a majority of the total voting power of the member countries, shall elect a President of the Bank who, while holding office, shall not be a governor or an executive director or alternate for either.

Under the direction of the Board of Executive Directors, the President of the Bank shall conduct the ordinary business of the Bank and shall be chief of its staff. He also shall be the presiding officer at meetings of the Board of Executive Directors, but shall have no vote, except that it shall be his duty to cast a deciding vote when necessary to break a tie.

The President of the Bank shall be the legal representative of the Bank. The term of office of the President of the Bank shall be five years, and he may be reelected to successive terms. He shall cease to hold office when the Board of Governors so decides by a majority of the total voting power of the member countries.

- b) The Executive Vice President shall be appointed by the Board of Executive Directors on the recommendation of the President of the Bank. Under the direction of the Board of Executive Directors and the President of the Bank, the Executive Vice President shall exercise such authority and perform such functions in the administration of the Bank as may be determined by the Board of Executive Directors. In the absence or incapacity of the President of the Bank, the Executive Vice President shall exercise the authority and perform the functions of the President.

The Executive Vice President shall participate in meetings of the Board of Executive Directors but shall have no vote at such meetings, except that he shall cast the deciding vote, as provided in paragraph (a) of this section, when he is acting in place of the President of the Bank.

- c) In addition to the Vice President referred to in Article IV, Section 8(b), the Board of Executive Directors may, on recommendation of the President of the Bank, appoint other Vice Presidents who shall exercise such authority and perform such functions as the Board of Executive Directors may determine.
- d) The President, officers, and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and shall recognize no other authority. Each member of the Bank shall respect the international character of this duty.
- e) The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

- f) The Bank, its officers and employees shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purpose and functions stated in Article I.

Section 6: Publication of Reports and Provision of Information

- a) The Bank shall publish an annual report containing an audited statement of the accounts. It shall also transmit quarterly to the members a summary statement of the financial position and a profit-and-loss statement showing the results of its ordinary operations.
- b) The Bank may also publish such other reports as it deems desirable to carry out its purpose and functions.

ARTICLE IX WITHDRAWAL AND SUSPENSION OF MEMBERS

Section 1: Right to Withdraw

Any member may withdraw from the Bank by delivering to the Bank at its principal office written notice of its intention to do so. Such withdrawal shall become finally effective on the date specified in the notice but in no event less than six months after the notice is delivered to the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

After withdrawing, a member shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice, including those specified in Section 3 of this article. However, if the withdrawal becomes finally effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the withdrawal notice was received by the Bank.

Section 2: Suspension of Membership

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of the Board of Governors by a two-thirds majority of the total number of governors representing not less than three fourths of the total voting power of the member countries.

The member so suspended shall automatically cease to be a member of the Bank one year from the date of its suspension unless the Board of Governors decides by the same majority to terminate the suspension.

While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Section 3: Settlement of Accounts

- a) After a country ceases to be a member, it no longer shall share in the profits or losses of the Bank, nor shall it incur any liability with respect to loans and guarantees entered into by the Bank thereafter. However, it shall remain liable for all amounts it owes the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted by the Bank before the date on which the country ceased to be a member remains outstanding.
- b) When a country ceases to be a member, the Bank shall arrange for the repurchase of such country's capital stock as a part of the settlement of accounts pursuant to the provisions of this section; but the country shall have no other rights under this Agreement except as provided in this section and in Article XIII, Section 2.
- c) The Bank and the country ceasing to be a member may agree on the repurchase of the capital stock on such terms as are deemed appropriate in the circumstances, without regard to the provisions of the following paragraph. Such agreement may provide, among other things, for a final settlement of all obligations of the country to the Bank.
- d) If the agreement referred to in the preceding paragraph has not been consummated within six months after the country ceases to be a member or such other time as the Bank and such country may agree upon, the repurchase price of such country's capital stock shall be its book value, according to the books of the Bank, on the date when the country ceased to be a member. Such repurchase shall be subject to the following conditions:
 - i) As a prerequisite for payment, the country ceasing to be a member shall surrender its stock certificates, and such payment may be made in such installments, at such times and in such available currencies as the Bank determines, taking into account the financial position of the Bank.
 - ii) Any amount which the Bank owes the country for the repurchase of its capital stock shall be withheld to the extent that the country or any of its subdivisions or agencies remains liable to the Bank as a result of loan or guarantee operations. The amount withheld may, at the option of the Bank, be applied on any such liability as it matures. However, no amount shall be withheld on account of the country's contingent liability for future calls on its subscription pursuant to Article II, Section 4(a)(ii).
 - iii) If the Bank sustains net losses on any loans or participations, or as a result of any guarantees, outstanding on the date the country ceased to be a member, and the amount of such losses exceeds the amount of the reserves provided therefor on such date, such country shall repay on demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the book value of the shares, according to the books of the Bank, was determined. In addition, the former member shall remain liable on any call pursuant to Article II, Section 4(a)(ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares had been determined
- e) In no event shall any amount due to a country for its shares under this section be paid until six months after the date upon which the country ceases to be a member. If within that period the Bank terminates operations all rights of such country shall be

determined by the provisions of Article X, and such country shall be considered still a member of the Bank for the purposes of such article except that it shall have no voting rights.

ARTICLE X SUSPENSION AND TERMINATION OF OPERATIONS

Section 1: Suspension of Operations

In an emergency the Board of Executive Directors may suspend operations in respect of new loans and guarantees until such time as the Board of Governors may have an opportunity to consider the situation and take pertinent measures.

Section 2: Termination of Operations

The Bank may terminate its operations by a decision of the Board of Governors by a two-thirds majority of the total number of governors representing not less than three fourths of the total voting power of the member countries. After such termination of operations the Bank shall forthwith cease all activities, except those incident to the conservation, preservation, and realization of its assets and settlement of its obligations.

Section 3: Liability of Members and Payment of Claims

- a) The liability of all members arising from the subscriptions to the capital stock of the Bank and in respect to the depreciation of their currencies shall continue until all direct and contingent obligations shall have been discharged.
- b) All creditors holding direct claims shall be paid out of the assets of the Bank and then out of payments to the Bank on unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Executive Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

Section 4: Distribution of Assets

- a) No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until all liabilities to creditors shall have been discharged or provided for. Moreover, such distribution must be approved by a decision of the Board of Governors by a two-thirds majority of the total number of governors representing not less than three fourths of the total voting power of the member countries.
- b) Any distribution of the assets of the Bank to the members shall be in proportion to capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed

need not be uniform as to type of assets. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.

- c) Any member receiving assets distributed pursuant to this article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

ARTICLE XI STATUS, IMMUNITIES AND PRIVILEGES

Section 1: Scope of Article

To enable the Bank to fulfill its purpose and the functions with which it is entrusted, the status, immunities, and privileges set forth in this article shall be to the Bank in the territories of each member.

Section 2: Legal Status

The Bank shall possess juridical personality and, in particular, full capacity:

- a) to contract;
- b) to acquire and dispose of immovable and movable property; and
- c) to institute legal proceedings.

Section 3: Judicial Proceedings

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

No action shall be brought against the Bank by members or persons acting for or deriving claims from members. However, member countries shall have recourse to such special procedures to settle controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank or in contracts entered into with the Bank.

Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Section 4: Immunity of Assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Section 5: Inviolability of Archives

The archives of the Bank shall be inviolable.

Section 6: Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank and to conduct its operations in accordance with this Agreement, all property and other assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature, except as may otherwise be provided in this Agreement.

Section 7: Privilege for Communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8: Personal Immunities and Privileges

All governors, executive directors, alternates, officers and employees of the Bank shall have the following privileges and immunities:

- a) Immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity.
- b) When not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by members to the representatives, officials, and employees of comparable rank of other members.
- c) The same privileges in respect of traveling facilities as are accorded by members to representatives, officials, and employees of comparable rank of other members.

Section 9: Immunities from Taxation

- a) The Bank, its property, other assets, income, and the operations and transactions it carries out pursuant to this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from any obligation relating to the payment, withholding or collection of any tax, or duty.
- b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank
- c) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- d) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

- ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Section 10: Implementation

Each member, in accordance with its juridical system, shall take such action as is necessary to make effective in its own territories the principles set forth in this article, and shall inform the Bank of the action which it has taken on the matter.

ARTICLE XII AMENDMENTS

- a) This Agreement may be amended only by decision of the Board of Governors by a two-thirds majority of the total number of governors representing not less than three fourths of the total voting power of the member countries.
- b) Notwithstanding the provisions of the preceding paragraph, the unanimous agreement of the Board of Governors shall be required for the approval of any amendment modifying:
 - i) the right to withdraw from the Bank as provided in Article IX, Section 1;
 - ii) the right to purchase capital stock of the Bank and to contribute to the Fund as provided in Article II, Section 3(b) and in Article IV, Section 3(g), respectively; and
 - iii) the limitation on liability as provided in Article II, Section 3(d) and Article IV, Section 5.
- c) Any proposal to amend this Agreement, whether emanating from a member or the Board of Executive Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before the Board of Governors. When an amendment has been adopted, the Bank shall so certify in an official communication addressed to all members. Amendments shall enter into force for all members three months after the date of the official communication unless the Board of Governors shall specify a different period.

ARTICLE XIII INTERPRETATION AND ARBITRATION

Section 1: Interpretation

- a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Board of Executive Directors for decision.

Members especially affected by the question under consideration shall be entitled to direct representation before the Board of Executive Directors as provided in Article VIII, Section 3(g).
- b) In any case where the Board of Executive Directors has given a decision under (a) above, any member may require that the question be submitted to the Board of Governors, whose decision shall be final. Pending the decision of the Board of

Governors, the Bank may, so far as it deems it necessary, act on the basis of the decision of the Board of Executive Directors.

Section 2: Arbitration

If a disagreement should arise between the Bank and a country which has ceased to be a member, or between the Bank and any member after adoption of a decision to terminate the operation of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the country concerned, and the third, unless the parties otherwise agree, by the Secretary General of the Organization of American States. If all efforts to reach a unanimous agreement fail, decisions shall be made by a majority vote of the three arbitrators.

The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE XIV GENERAL PROVISIONS

Section 1: Principal Office

The principal office of the Bank shall be located in Washington, District of Columbia, United States of America.

Section 2: Relations with other Organizations

The Bank may enter into arrangements with other organizations with respect to the exchange of information or for other purposes consistent with this Agreement.

Section 3: Channel of Communication

Each member shall designate an official entity for purposes of communication with the Bank on matters connected with this Agreement.

Section 4: Depositories

Each member shall designate its central bank as a depository in which the Bank may keep its holdings of such member's currency and other assets of the Bank. If a member has no central bank, it shall, in agreement with the Bank, designate another institution for such purpose.

ARTICLE XV FINAL PROVISIONS

Section 1: Signature and Acceptance

- a) This Agreement shall be deposited with the General Secretariat of the Organization of American States, where it shall remain open until December 31, 1959, for signature by the representatives of the countries listed in Annex A. Each signatory country shall deposit with the General Secretariat of the Organization of American States an instrument setting forth that it has accepted or ratified this Agreement in accordance with its own laws and has taken the steps necessary to enable it to fulfill all of its obligations under this Agreement.
- b) The General Secretariat of the Organization of American States shall send certified copies of this Agreement to the members of the Organization and duly notify them of each signature and deposit of the instrument of acceptance or ratification made pursuant to the foregoing paragraph, as well as the date thereof.
- c) At the time the instrument of acceptance or ratification is deposited on its behalf, each country shall deliver to the General Secretariat of the Organization of American States, for the purpose of meeting administrative expenses of the Bank, gold or United States dollars equivalent to one tenth of one per cent of the purchase price of the shares of the Bank subscribed by it and of its quota in the Fund. This payment shall be credited to the member on account of its subscription and quota prescribed pursuant to Articles II, Section 4(a)(i), and IV, Section 3(d)(i). At any time on or after the date on which its instrument of acceptance or ratification is deposited, any member may make additional payments to be credited to the member on account of its subscription and quota prescribed pursuant to Articles II and IV. The General Secretariat of the Organization of American States shall hold all funds paid under this paragraph in a special deposit account or accounts and shall make such funds available to the Bank not later than the time of the first meeting of the Board of Governors held pursuant to Section 3 of this article. If this Agreement has not come into force by December 31, 1959, the General Secretariat of the Organization of American States shall return such funds to the countries that delivered them.
- d) On or after the date on which the Bank commences operations, the General Secretariat of the Organization of American States may receive the signature and the instrument of acceptance or ratification of this Agreement from any country whose membership has been approved in accordance with Article II. Section 1(b).

Section 2: Entry into Force

- a) This Agreement shall enter into force when it has been signed and instruments of acceptance or ratification have been deposited, in accordance with Section 1(a) of this article, by representatives of countries whose subscriptions comprise not less than 85 per cent of the total subscriptions set forth in Annex A.
- b) Countries whose instruments of acceptance or ratification were deposited prior to the date on which the agreement entered into force shall become members on that date.

Other countries shall become members on the dates on which their instruments of acceptance or ratification are deposited.

Section 3: Commencement of Operations

- a) The Secretary General of the Organization of American States shall call the first meeting of the Board of Governors as soon as this Agreement enters into force under Section 2 of this article.
- b) At the first meeting of the Board of Governors arrangements shall be made for the selection of the executive directors and their alternates in accordance with the provisions of Article VIII, Section 3, and for the determination of the date on which the Bank shall commence operations. Notwithstanding the provisions of Article VIII, Section 3, the governors, if they deem it desirable, may provide that the first term to be served by such directors may be less than three years.

DONE at the city of Washington, District of Columbia, United States of America, in a single original, dated April 8, 1959, whose English, French, Portuguese, and Spanish texts are equally authentic.

[The Annexes are not reproduced here.]

CHAPTER EIGHTEEN

Statute of the Organization of the Petroleum Exporting Countries

Baghdad, 14 September 1960

INTRODUCTION

The Organization of the Petroleum Exporting Countries (OPEC) began as a group of five oil producing and exporting countries—Iraq, Iran, Kuwait, Saudi Arabia and Venezuela—wanting a forum for consultations and as a more coherent front dealing with the then seven dominant oil companies (known as the ‘seven sisters’). OPEC soon grew to 11 member nations, controlling about 40% of world petroleum production. There have been attempts to form splinter alliances or groups, for example, the Organization of Arab Petroleum Exporting Countries (OAPEC) and the African Petroleum Exporting Countries, but OPEC remains the focal point of recognition and activity. Its objectives are to stabilize petroleum production and, therefore, prices, to earn good revenue for members and to unify the petroleum policies of member states. There are two other interesting objectives: efficient, economic and regular supply of petroleum to consuming nations; and a fair return on the capital to investors in the industry. It is important to note that these latter objectives are secondary to the earlier ones and couched in less obligatory language. Nevertheless, efficient and regular supply to consumers and fair return on capital to investors are critical to the attainment of the high-priority goals of the organization.

Membership of OPEC is divided into three: the founding five members; subsequent members who were admitted to full member status; and associate members who were deemed not qualified for full member status, but who share the interests and aims of the member countries. All decisions on membership are decided by 75% of the votes of all the members, including the concurrent vote of the founding members. Associate members can be invited to participate in meetings, consultative conferences and Board of Governors meetings, but do not have the right to vote. All members have access to the three organs of the organization. The Conference is the supreme body, made up of delegations from member countries. Each full member has one vote, but all decisions on substantive matters must be unanimous. This confers veto powers on individual members. The Conference formulates the general policy of OPEC and determines the appropriate methods of implementation. It decides on membership issues, receives and

approves the budget and the audited financial statement of the organization and appoints the Secretary-General, as well as the Chairman of the Board of Governors. The Board of Governors is made up of representatives of member countries, confirmed by the Conference and serving for renewable periods of two years. Each Governor has one vote and all matters are to be decided by a simple majority. The Board of Governors meets at least twice a year and directs the general management of the organization, seeing to the implementation of the decisions of the Conference. It also prepares the budget and other documentation for the Conference. The Secretariat, which services all the organs of OPEC and serves as the administrative headquarters of the organization, is headed by the Secretary-General.

The organization has thrived since it started operations in 1965. OPEC's activities have had immense impact on the world economy. The legality of its existence and operations has also been questioned at various points. The USA, for example, predicates some forms of assistance and trade relations (as, for example, the General System of Preferences) on non-membership of OPEC. There is no doubt, however, that OPEC has brought enormous financial and other benefits to its members and, indeed, to all oil-producing countries, including non-OPEC members, like Canada, Norway, Russia and the United Kingdom.

OPEC came into existence at the end of the Baghdad Conference, in September 1960, but the text of the Statute was not approved until January 1961, at a summit in Caracas (Venezuela). The document was amended four times in the early 1960s, before the entire Statute was revised in April 1965 (in the same year the seat of the organization moved from Switzerland to Vienna, Austria). To produce the consolidated text reproduced below (published in 2001), there were two more occasions of amendment during the 1960s, four in the 1970s, two in the 1980s and, most recently, in December 1997. Thirteen countries have joined OPEC, although there have only been 11 members since the mid-1990s.

ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES STATUTE*

CHAPTER I: ORGANIZATION AND OBJECTIVES

Article 1

The Organization of the Petroleum Exporting Countries (OPEC), hereinafter referred to as "the Organization", created as a permanent intergovernmental organization in conformity with the Resolutions of the Conference of the Representatives of the Governments of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, held in Baghdad from September 10 to 14, 1960, shall carry out its functions in accordance with the provisions set forth hereunder.

Article 2

- A. The principal aim of the Organization shall be the co-ordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively.
- B. The Organization shall devise ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations.
- C. Due regard shall be given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; an efficient, economic and regular supply of petroleum to consuming nations; and a fair return on their capital to those investing in the petroleum industry.

Article 3

The Organization shall be guided by the principle of the sovereign equality of its Member Countries. Member Countries shall fulfil, in good faith, the obligations assumed by them in accordance with this Statute.

Article 4

If, as a result of the application of any decision of the Organization, sanctions are employed, directly or indirectly, by any interested company or companies against one or more Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in oil exports or in an improvement in prices, which may be made to it by such interested company or companies with the intention of discouraging the application of the decision of the Organization.

Article 5

The Organization shall have its Headquarters at the place the Conference decides upon.

Article 6

English shall be the official language of the Organization.

CHAPTER II: MEMBERSHIP

Article 7

- A. Founder Members of the Organization are those countries which were represented at the First Conference, held in Baghdad, and which signed the original agreement of the establishment of the Organization.
- B. Full Members shall be the Founder Members as well as those countries whose application for membership has been accepted by the Conference.

- C. Any other country with a substantial net export of crude petroleum, which has fundamentally similar interests to those of Member Countries, may become a Full Member of the Organization, if accepted by a majority of three-fourths of Full Members, including the concurrent vote of all Founder Members.
- D. A net petroleum-exporting country, which does not qualify for membership under paragraph C above, may nevertheless be admitted as an Associate Member by the Conference under such special conditions as may be prescribed by the Conference, if accepted by a majority of three-fourths, including the concurrent vote of all Founder Members. No country may be admitted to Associate Membership which does not fundamentally have interests and aims similar to those of Member Countries.
- E. Associate Members may be invited by the Conference to attend any Meeting of a Conference, the Board of Governors or Consultative Meetings and to participate in their deliberations without the right to vote. They are, however, fully entitled to benefit from all general facilities of the Secretariat, including its publications and library, as any Full Member.
- F. Whenever the words "Members" or "Member Countries" occur in this Statute, they mean a Full Member of the Organization, unless the context demonstrates to the contrary.

Article 8

- A. No Member of the Organization may withdraw from membership without giving notice of its intention to do so to the Conference. Such notice shall take effect at the beginning of the next calendar year after the date of its receipt by the Conference, subject to the Member having at that time fulfilled all financial obligations arising out of its membership.
- B. In the event of any country having ceased to be a Member of the Organization, its readmission to membership shall be made in accordance with Article 7, paragraph C.

CHAPTER III: ORGANS

Article 9

The Organization shall have three organs:

- I. The Conference;
- II. The Board of Governors; and
- III. The Secretariat.

I. THE CONFERENCE

Article 10

The Conference shall be the supreme authority of the Organization.

Article 11

- A. The Conference shall consist of delegations representing the Member Countries. A delegation may consist of one or more delegates, as well as advisers and observers. When a delegation consists of more than one person, the appointing country shall nominate one person as the Head of the Delegation.
- B. Each Member Country should be represented at all Conferences; however, a quorum of three-quarters of Member Countries shall be necessary for holding a Conference.
- C. Each Full Member Country shall have one vote. All decisions of the Conference, other than on procedural matters, shall require the unanimous agreement of all Full Members. The Conference Resolutions shall become effective after 30 days from the conclusion of the Meeting, or after such period as the Conference may decide unless, within the said period, the Secretariat receives notification from Member Countries to the contrary. In the case of a Full Member being absent from the Meeting of the Conference, the Resolutions of the Conference shall become effective unless the Secretariat receives a notification to the contrary from the said Member, at least ten days before the date fixed for publication of the Resolutions.
- D. A non-Member country may be invited to attend a Conference as Observer, if the Conference so decides.

Article 12

The Conference shall hold two Ordinary Meetings a year. However, an Extraordinary Meeting of the Conference may be convened at the request of a Member Country by the Secretary General, after consultation with the President and approval by a simple majority of the Member Countries. In the absence of unanimity among Member Countries approving the convening of such a Meeting, as to the date

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and venue of the Meeting, they shall be fixed by the Secretary General in consultation with the President.

Article 13

The Conference shall normally be held at the Headquarters of the Organization, but it may meet in any of the Member Countries, or elsewhere as may be advisable.

Article 14

- A. The Conference shall elect a President and an Alternate President at its first Preliminary Meeting. The Alternate President shall exercise the responsibilities of the President during his absence, or when he is unable to carry out his responsibilities.

- B. The President shall hold office for the duration of the Meeting of the Conference, and shall retain the title until the next Meeting.
- C. The Secretary General shall be the Secretary of the Conference.

Article 15

The Conference shall:

- 1. formulate the general policy of the Organization and determine the appropriate ways and means of its implementation;
- 2. decide upon any application for membership of the Organization;
- 3. confirm the appointment of Members of the Board of Governors;
- 4. direct the Board of Governors to submit reports or make recommendations on any matters of interest to the Organization;
- 5. consider, or decide upon, the reports and recommendations submitted by the Board of Governors on the affairs of the Organization;
- 6. consider and decide upon the Budget of the Organization, as submitted by the Board of Governors;
- 7. consider and decide upon the Statement of Accounts and the Auditor's Report, as submitted by the Board of Governors;
- 8. call a Consultative Meeting for such Member Countries, for such purposes, and in such places, as the Conference deems fit;
- 9. approve any amendments to this Statute;
- 10. appoint the Chairman of the Board of Governors and an Alternate Chairman;
- 11. appoint the Secretary General; and
- 12. appoint the Auditor of the Organization for a duration of one year.

Article 16

All matters that are not expressly assigned to other organs of the Organization shall fall within the competence of the Conference.

II. THE BOARD OF GOVERNORS

Article 17

- A. The Board of Governors shall be composed of Governors nominated by the Member Countries and confirmed by the Conference.
- B. Each Member of the Organization should be represented at all Meetings of the Board of Governors; however, a quorum of two-thirds shall be necessary for the holding of a Meeting.
- C. When, for any reason, a Governor is prevented from attending a Meeting of the Board of Governors, a substitute ad hoc Governor shall be nominated by the corresponding Member Country. Such nomination shall not require confirmation by the Conference. At the Meetings which he attends, the ad hoc Governor shall have the same status as

the other Governors, except as regards qualifications for Chairmanship of the Board of Governors.

- D. Each Governor shall have one vote. A simple majority vote of attending Governors shall be required for decisions of the Board of Governors.
- E. The term of office of each Governor shall be two years.

Article 18

- A. The Board of Governors shall meet no less than twice each year, at suitable intervals to be determined by the Chairman of the Board, after consultation with the Secretary General.
- B. An Extraordinary Meeting of the Board of Governors may be convened at the request of the Chairman of the Board, the Secretary General, or two-thirds of the Governors.

Article 19

The Meetings of the Board of Governors shall normally be held at the Headquarters of the Organization, but they may also be held in any of the Member Countries, or elsewhere as may be advisable.

Article 20

The Board of Governors shall:

- 1. direct the management of the affairs of the Organization and the implementation of the decisions of the Conference;
- 2. consider and decide upon any reports submitted by the Secretary General;
- 3. submit reports and make recommendations to the Conference on the affairs of the Organization;
- 4. draw up the Budget of the Organization for each calendar year and submit it to the Conference for approval;
- 5. nominate the Auditor of the Organization for a duration of one year;
- 6. consider the Statement of Accounts and the Auditor's Report and submit them to the Conference for approval;
- 7. approve the appointment of Directors of Divisions and Heads of Departments, upon nomination by Member Countries, due consideration being given to the recommendations of the Secretary General;
- 8. convene an Extraordinary Meeting of the Conference; and
- 9. prepare the Agenda for the Conference.

Article 21

The Chairman of the Board of Governors and the Alternate Chairman, who shall assume all the responsibilities of the Chairman whenever the Chairman is absent or unable to exercise his responsibilities, shall be appointed by the Conference from among the Governors for a period of one year, in accordance with the principle of alphabetical

rotation. The date of membership in the Organization, however, shall take precedence over the principle of alphabetical rotation.

Article 22

The Chairman of the Board of Governors shall:

1. preside over the Meetings of the Board of Governors;
2. attend the Headquarters of the Organization in preparation for each Meeting of the Board of Governors; and
3. represent the Board of Governors at Conferences and Consultative Meetings.

Article 23

Should a majority of two-thirds of Governors decide that the continuance of Membership of any Governor is detrimental to the interests of the Organization, the Chairman of the Board of Governors shall immediately communicate this decision to the Member Country affected, who in turn shall nominate a substitute for the said Governor before the next Meeting of the Board of Governors. The nomination of such substitute as a Governor shall be subject to confirmation by the following Conference.

Article 24

Should a Governor, for any reason, be precluded from continuing in the performance of his functions on the Board of Governors, the corresponding Member Country shall nominate a replacement. The nominated Governor shall assume his functions upon nomination subject to confirmation by the following Conference.

III. THE SECRETARIAT

Article 25

The Secretariat shall carry out the executive functions of the Organization in accordance with the provisions of this Statute under the direction of the Board of Governors.

Article 26

The Secretariat of the Organization shall consist of the Secretary General and such Staff as may be required. It shall function at the Headquarters of the Organization.

Article 27

- A. The Secretary General shall be the legally-authorized representative of the Organization.
- B. The Secretary General shall be the chief officer of the Secretariat, and in that capacity shall have the authority to direct the affairs of the Organization, in accordance with directions of the Board of Governors.

Article 28

- A. The Conference shall appoint the Secretary General for a period of three years, which term of office may be renewed once for the same period of time. This appointment shall take place upon nomination by Member Countries and after a comparative study of the nominees' qualifications. The minimum personal requirements for the position of the Secretary General shall be as follows:
 - a) 35 years of age.
 - b) A degree from a recognized university in Law, Economics, Science, Engineering or Business Administration.
 - c) 15 years experience, of which at least 10 years should have been spent in positions directly related to the oil industry, and five years in highly responsible executive or managerial positions. Experience in Government-Company relations and in the international aspects of the oil industry is desirable. Should, in any case, a unanimous decision not be obtained, the Secretary General, in that case, shall be appointed on a rotational basis for a term of two years without prejudice to the required qualifications.
- B. The Secretary General shall be a national of one of the Member Countries of the Organization.
- C. The Secretary General shall reside at the Headquarters of the Organization.
- D. The Secretary General shall be responsible to the Board of Governors for all activities of the Secretariat. The functions of the different departments shall be carried out on his behalf and under his authority and direction.
- E. The Secretary General shall attend all Meetings of the Board of Governors. Should the Secretary General be unable to attend any Meeting of the Board of Governors, the Officer in Charge of the Secretariat shall attend such Meeting, representing the Secretary General.

Article 29

The Secretary General shall:

- 1. organize and administer the work of the Organization;
- 2. ensure that the functions and duties assigned to the different departments of the Secretariat are carried out;
- 3. prepare reports for submission to each Meeting of the Board of Governors concerning matters which call for consideration and decision;

4. inform the Chairman and other Members of the Board of Governors of all activities of the Secretariat, of all studies undertaken and of the progress of the implementation of the Resolutions of the Conference; and
5. ensure the due performance of the duties which may be assigned to the Secretariat by the Conference or the Board of Governors.

Article 30

- A. The Directors of Divisions and Heads of Departments shall be appointed by the Secretary General with the approval of the Board of Governors.
- B. Officers of the Secretariat, upon nomination by their respective Governments, or by direct recruitment, shall be appointed by the Secretary General in accordance with the Staff Regulations. In making such appointments, the Secretary General shall give due consideration, as far as possible, to an equitable nationality distribution among Members, but such consideration shall not be allowed to impair the efficiency of the Secretariat.

Article 31

The staff of the Secretariat are international employees with an exclusively international character. In the performance of their duties, they shall neither seek, nor accept, instructions from any government, or from any other authority outside the Organization. They shall refrain from any action which might reflect on their position as international employees, and they shall undertake to carry out their duties with the sole object of bearing the interests of the Organization in mind.

Article 32

- A. The Secretary General shall be assisted in the discharge of his duties by a Division of Research, an Administration and Human Resources Department, a Public Relations and Information Department, his own Office, and any division or department the Conference may see fit to create;
- B. Notwithstanding the provisions of Article 33, and where the efficient functioning of the divisions and departments of the Secretariat so requires, the Board of Governors may, upon the recommendation of the Secretary General, authorize the Secretary General to transfer functions or units from one division or department to another.

Article 33

- A. The Division of Research shall be responsible for:
 1. conducting a continuous programme of research, fulfilling the needs of the Organization, placing particular emphasis on energy and related matters;
 2. monitoring, forecasting and analysing developments in the energy and petrochemical industries, and the evaluation of hydrocarbons and products and their non-energy uses;

3. analysing economic and financial issues of significant interest, in particular those related to international financial and monetary matters, and to the international petroleum industry; and
4. maintaining and expanding data services to support the research activities of the Secretariat and those of Member Countries.

B. The Administration and Human Resources Department shall:

1. be responsible for all organization methods, the provision of administrative services for all meetings, personnel matters, budgets, accounting and internal control;
2. study and review general administrative policies and industrial relations methods used in the oil industry in Member and other countries, and advise Member Countries of any possible improvements; and
3. keep abreast of the current administrative policies and/or policy changes occurring in the international petroleum industry which might affect the Organization or be of interest to it.

C. The Public Relations and Information Department shall be responsible for:

1. presenting OPEC objectives, decisions and actions in their true and most desirable perspective;
2. disseminating news of general interest regarding the Organization and the Member Countries on energy and related matters; and
3. carrying out a central information programme and identifying suitable areas for the promotion of the Organization's aims and image.

Article 34

- A. The Secretary General shall commission consultants, as necessary, to advise on special matters, or to conduct expert studies when such work cannot be undertaken by the Secretariat.
- B. The Secretary General may engage such specialists or experts, regardless of nationality, as the Organization needs, for a period to be approved by the Board of Governors, provided there is a provision for such appointment in the Budget.
- C. The Secretary General may at any time convene Working Parties to carry out any studies on specific subjects of interest to the Member Countries.

CHAPTER IV: CONSULTATIVE MEETINGS AND SPECIALIZED ORGANS

Article 35

- A. A Consultative Meeting shall be composed of Heads of Delegations of Member Countries or their representatives.
- B. In case a Conference is not in session, a Consultative Meeting may be convened at any time at the request of the President of the Conference.
- C. The Agenda of each Consultative Meeting shall be prepared by the President of the Conference, unless it has been previously specified by the Conference itself.
- D. The Consultative Meeting may pass decisions or recommendations to be approved by the next Conference, unless otherwise authorized by a previous Conference.

Article 36

- A. The Conference may establish specialized organs, as circumstances require, in order to assist in resolving certain problems of particular importance. The specialized organs shall function in accordance with the Resolutions or Statutes prepared to that effect.
- B. The specialized organs shall operate within the general framework of the Secretariat of the Organization, both functionally and financially.
- C. The specialized organs shall act at all times in accordance with the principles of the Organization, as set out in the Resolutions of the Conference.

CHAPTER V: FINANCIAL PROVISIONS

Article 37

- A. The Budget of the Organization shall be drawn up for each calendar year.
- B. The Conference, in accepting any Associate Member to the Organization, shall ask it to pay a fixed annual subscription, to be considered as its financial contribution to the Organization.
- C. Budget appropriations shall be apportioned on an equal basis among all Member Countries, after taking into consideration the annual subscriptions of the Associate Members.

Article 38

- A. Each Member Country shall bear all expenses incurred in sending delegations or representatives to Conferences, Consultative Meetings and Working Parties.
- B. The Organization shall bear the travelling expenses and remuneration of the Governors who attend the Meetings of the Board of Governors.

CHAPTER VI: ADDITIONAL PROVISIONS

Article 39

Amendments to this Statute may be proposed by any Member Country. Such proposed amendments shall be considered by the Board of Governors which, if it so decides, shall recommend their adoption to the Conference.

Article 40

All Resolutions contrary to the context of this Statute shall be abrogated.

Article 41

This Statute shall be applied from 1 May 1965.

CHAPTER NINETEEN

UN General Assembly Resolution 1803 on Permanent Sovereignty over Natural Resources

New York, NY, 14 December 1962

INTRODUCTION

This is one of the products of the international struggle and discourse on self-determination, decolonization and economic development. It was also an element in the contest between the sanctity of contracts and a fundamental change in circumstances: the idea that contracts entered into by the colonial administration must be respected and enforced by a new independent government vis-à-vis the challenge by such new independent states that their sovereign right was to review those contracts because of the changes in the political situation and the possible new directions of economic development. In the end, it is a summation of the place of natural resources as a key instrument in development and international political economy and succession of states and governments.

The discussion of natural-resource exploitation by colonial and non-colonial states had a fairly long history. It was first formally dealt with in UN resolutions 523 and 626 of 1952. This was followed by resolution 1314, which, among others, established the Commission on Permanent Sovereignty over Natural Resources. In 1960 resolution 1815 was passed. It recommended respect for the sovereign right of every state to dispose of its wealth and natural resources. Finally, in December 1962 resolution 1803 was passed. It declares the right of peoples and nations to permanent sovereignty over their resources. Further, it required that the right to the resources must be exercised in the interests of national development and the well-being of that people. Contracts for the exploitation of the resource and the importation of the equipment and services needed for that exploitation must be entered into freely. Nationalization, expropriation or other forms of takings must be based on grounds of public utility and national security interest. Compensation was to be paid based on the law in force in the country where the resource was located. All forms of international cooperation for the economic development of developing countries must be to further their 'independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources'.

This resolution is interesting in many respects. First, there is an assumption that a particular group of people or government from a country where a resource is located have monopoly over what is in the best interests of the broader population. History has shown that dictatorships that took over the running of countries in Africa, for instance, did not have the best interests of their people at heart. The resolution confers rights without any or with unclear attention to responsibilities. The exploitation of resources, such as water, that is shared by two or more countries certainly requires certain responsibilities by the countries involved. There is also some contradiction in the legal position regarding the payment of compensation. National law gets priority, but international law is acknowledged. Should the so-called Hull formula (a 1938 codification of the principle of 'prompt, adequate and effective compensation') or the Calvo doctrine (the 1970s preference for 'appropriate' compensation) be applied? Which principle of international law regarding nationalization and compensation would be respected? Be that as it may, this UN declaration ought to be seen in the circumstances of the struggles for independence and Cold War politics. The contemporary importance of resolution 1803 may lie in the protection and use of agricultural and other biological material and genome.

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 1803
(XVII) OF 14 DECEMBER 1962, 'PERMANENT SOVEREIGNTY
OVER NATURAL RESOURCES'*

THE GENERAL ASSEMBLY,

RECALLING its resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952,

BEARING IN MIND its resolution 1314 (XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

BEARING IN MIND its resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

CONSIDERING that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

CONSIDERING that nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

NOTING that the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission,

CONSIDERING that it is desirable to promote international cooperation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

CONSIDERING that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

CONSIDERING the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connection,

ATTACHING PARTICULAR IMPORTANCE to the question of promoting the economic development of developing countries and securing their economic independence,

NOTING that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence,

DESIRING that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

I

DECLARES THAT:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.
4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be

exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.
6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.
7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.
8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Documentation Centre (www.un.org/documents), under General Assembly—Resolutions.

CHAPTER TWENTY

Agreement Establishing the African Development Bank

Khartoum, 4 August 1963

INTRODUCTION

The African Development Bank came into existence on 10 September 1964, once 20 members had subscribed 65% of the initial authorized capital stock. It began operations in 1966, with 29 members. It has remained one of the finest continental or regional institutions in Africa. The treaty establishing it has been amended five times. The current document, the sixth, is a consolidation of all the amendments.

The Governments that signed the treaty establishing the African Development Bank were convinced for the 1979 revision (effective in 1982) that partnership between African and non-African countries was essential to facilitate the flow of international capital through the Bank, thereby contributing to economic development, which, in the short and the long run, would be to the benefit of all parties. To this end, the Bank was to use its resources to finance investment projects and economic programmes of the regional members. Priority was to be given to programmes or projects that complemented the economies of members or those that affected or concerned several member states. It was also to be involved in the selection, preparation, evaluation and execution of projects and programmes. In doing these, the Bank would have to mobilize international capital and to encourage capital and investment flows into the continent. This necessarily involves co-operation with national, regional and other international organizations.

The Bank has a Board of Governors, a Board of Directors, a President, a Vice-President and other officials necessary for the efficient working of the Bank. The Board of Governors is made up of representatives of all the member states. It must meet at least once a year. The Board of Governors is vested with all the powers of the Bank. It can give general directives regarding the credit policy of the Bank. The Board of Governors may delegate all its powers to the Board of Directors, except for: decreasing the authorized capital of the Bank; establishing or accepting the administration of special funds; the election and tenure of the President of the Bank; the appointment of external auditors; and the receipt and approval of the statement of accounts of the Bank. Next in hierarchy is the Board of Directors. It has 18 members. Twelve of the directors are elected by the governors representing regional members (African states) and six by the

governors of non-regional members. Generally, matters before the board are decided by a two-thirds majority in voting power. The Board of Directors is responsible for the general operations of the Bank. It also exercises power delegated to it by the Board of Governors. Specifically, it takes decisions regarding certain direct loans, guarantees, equity investments and borrowing by the Bank. It also determines the rate of interest for loans and commissions and other charges for loan guarantees. The President is elected by the Board of Governors. He chairs the Board of Directors, but has no vote, except, possibly, a deciding vote. The President is the chief executive officer of the Bank and is responsible for the administrative organization. He determines the tenure of staff and conducts the current business of the Bank. The President and staff of the Bank are to be apolitical and independent. Economic criteria are to be the sole basis for decisions on the Bank's activities.

Following the fifth general capital increase of 1998, the authorized capital stock of the Bank was 21,870 m. units of account. One-half of the capital stock is paid up and the rest is callable. When all the shares are fully subscribed, the African members should hold 60% of the total voting power, the remainder being with the non-African members. Management of the funds of the Bank is divided in two: ordinary capital resources, and special funds. Ordinary resources are made up of the authorized capital stock, money raised by borrowings, money received as repayment of loans, income derived from loans, guarantees and any other funds not part of the special resources. Special resources include contributions to any special fund, money borrowed for the purposes of the special fund and repayments, fees and charges based on transactions from the special fund. In the performance of its operations, the Bank is guided by many principles, including: the consent of the Government of the territory where a project is located; the fact that there is not a more competitive financing facility available; and the prospect of scheduled repayments. Loans are used for the purposes previously stated; goods and services are, as much as possible, procured from the local market, etc. In sum, the Bank is to ensure that its activities assist African countries in their developmental efforts, without compromising sound financing and banking principles, which must keep the organization viable and efficient.

The Agreement was signed by 23 African countries in Khartoum and entered into force in September 1964. An amendment was agreed in Abidjan in 1979 and signed into force by almost all the existing members at Lusaka on 7 May 1982. This amendment permitted the accession of non-regional members to the Bank. Meanwhile, three more African countries (Namibia, Eritrea and South Africa) were admitted after 1982. With the membership of Yugoslavia (the former federation signed and ratified the Agreement in 1982) recently suspended in accordance with a UN General Assembly decision on the status of the country and its successors, by 2004 there were 53 regional parties and 24 non-regional ones. The text reproduced here is the sixth edition of the original 1963 Khartoum Agreement, which includes the major 1979 amendment and four subsequent amendments.

**AGREEMENT ESTABLISHING THE AFRICAN DEVELOPMENT
BANK (AS AMENDED IN 1979 AND SUBSEQUENTLY)***

PREAMBLE

THE GOVERNMENTS on whose behalf this Agreement is signed,

DETERMINED to strengthen African solidarity by means of economic co-operation between African States,

CONSIDERING the necessity of accelerating the development of the extensive human and natural resources of Africa in order to stimulate economic development and social progress in that region,

REALIZING the importance of co-ordinating national plans of economic and social development for the promotion of the harmonious growth of African economies as a whole and the expansion of African foreign trade and, in particular, inter-African trade,

RECOGNIZING that the establishment of a financial institution common to all African countries would serve these ends,

CONVINCED that a partnership of African and non-African countries will facilitate an additional flow of international capital through such an institution for the economic development and social progress of the region, and the mutual benefit of all parties to this Agreement,

HAVE AGREED to establish hereby the African Development Bank (hereinafter called the “Bank”) which shall be governed by the following provisions:

**CHAPTER I: PURPOSE, FUNCTIONS, MEMBERSHIP AND
STRUCTURE**

Article 1: Purpose

The purpose of the Bank shall be to contribute to the sustainable economic development and social progress of its regional members individually and jointly.

Article 2: Functions

1. To implement its purpose, the Bank shall have the following functions:

- (a) To use the resources at its disposal for the financing of investment projects and programmes relating to the economic and social development of its regional members, giving special priority to:
 - i. Projects or programmes which by their nature or scope concern several members; and
 - ii. Projects or programmes designed to make the economies of its members increasingly complementary and to bring about an orderly expansion of their foreign trade;
- (b) To undertake, or participate in, the selection, study and preparation of projects, enterprises and activities contributing to such development;

- (c) To mobilize and increase in Africa, and outside Africa, resources for the financing of such investment projects and programmes;
 - (d) Generally, to promote investment in Africa of public and private capital in projects or programmes designed to contribute to the economic development or social progress of its regional members;
 - (e) To provide such technical assistance as may be needed in Africa for the study, preparation, financing and execution of development projects or programmes; and
 - (f) To undertake such other activities and provide such other services as may advance its purpose.
2. In carrying out its functions, the Bank shall seek to co-operate with national, regional and sub-regional development institutions in Africa. To the same end, it should co-operate with other international organizations pursuing a similar purpose and with other institutions concerned with the development of Africa.
 3. The Bank shall be guided in all its decisions by the provisions of articles 1 and 2 of this Agreement.

Article 3: Membership and Geographical Area

1. Any African country which has the status of an independent State may become a regional member of the Bank. It shall acquire membership in accordance with paragraph 1 or paragraph 2 of article 64 of this Agreement.
2. The geographical area to which the regional membership and development activities of the Bank may extend (referred to in this Agreement as “Africa” or “African”, as the case may be) shall comprise the continent of Africa and African islands.
3. Non-regional countries which are, or become, members of the African Development Fund, or which have made, or are making, contributions to the African Development Fund under terms and conditions similar to the terms and conditions of the Agreement Establishing the African Development Fund, may also be admitted to the Bank, at such times and under such general rules as the Board of Governors shall have established. Such general rules may be amended only by decision of the Board of Governors by a two-thirds majority of the total number of governors, including two-thirds of the governors of non-regional members, representing not less than three-fourths of the total voting power of the member countries.

Article 4: Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, at least one Vice-President and such other officers and staff to perform such duties as the Bank may determine.

CHAPTER II: CAPITAL

Article 5: Authorized Capital

1.
 - (a) The initial authorized capital stock of the Bank shall be 250,000,000 units of account. It shall be divided into 25,000 shares of a par value of 10,000 units of account each share, which shall be available for subscription by members. The authorized capital stock may be increased in accordance with paragraph 3 of this article.
 - (b) The value of a unit of account shall be equivalent to one Special Drawing Right (SDR) of the International Monetary Fund or any unit adopted for the same purpose by the International Monetary Fund.
2. The authorized capital stock shall be divided into paid-up shares and callable shares. The proportion between the paid-up shares and the callable shares shall be determined by the Board of Governors from time to time. The callable shares shall be callable for the purpose defined in paragraph 4(a) of article 7 of this Agreement.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the African Development Bank (<http://www.afdb.org/>).

3. Subject to the provisions of paragraph 4 of this article, the authorized capital stock may be increased as and when the Board of Governors deems it advisable. Unless that stock is increased solely to provide for the initial subscription of a member, the decision of the Board shall be adopted by a two-thirds majority of the total number of Governors, representing not less than three-quarters of the total voting power of the members.
4. The authorized capital stock and any increases thereof shall be allocated for subscription to regional and non-regional members in such proportions that the respective groups shall have available for subscription that number of shares which, if fully subscribed, would result in regional members holding sixty percent of the total voting power and non-regional members holding forty percent of the total voting power.

Article 6: Subscription of Shares

1. Each member shall initially subscribe shares of the capital stock of the Bank. The initial subscription of each member shall consist of an equal number of paid-up and callable shares. The initial number of shares to be subscribed by a State which acquires membership in accordance with paragraph 1 of article 64 of this Agreement shall be that set forth in this respect in annex A to this Agreement, which shall form an integral part thereof. The initial number of shares to be subscribed by other members shall be determined by the Board of Governors.

2. In the event of an increase of the capital stock for a purpose other than solely to provide for an initial subscription of a member, each member shall have the right to subscribe, on such uniform terms and conditions as the Board of Governors shall determine, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank. No member, however, shall be obligated to subscribe to any part of such increased stock.
3. A member may request the Bank to increase its subscription on such terms and conditions as the Board of Governors may determine.
4. Shares of stock initially subscribed by States which acquire membership in accordance with paragraph 1 of article 64 of this Agreement shall be issued at par. Other shares shall be issued at par unless the Board of Governors decides in special circumstances to issue them on other terms.
5. Liability on shares shall be limited to the unpaid portion of their issue price.
6. Shares shall not be pledged nor encumbered in any manner. They shall be transferable only to the Bank.

Article 7: Payment of Subscriptions

1.
 - (a) Payment of the amount initially subscribed to the paid-up capital stock of the Bank by a member which acquires membership in accordance with paragraph 1 of article 64 shall be made in six instalments, the first of which shall be five per cent, the second thirty-five per cent, and the remaining four instalments each fifteen per cent of that amount,
 - (b) The first instalment shall be paid by the Government concerned on or before the date of deposit, on its behalf, of the instrument of ratification or acceptance of this Agreement in accordance with paragraph 1 of article 64. The second instalment shall become due on the last day of a period of six months from the entry into force of this Agreement or on the day of the said deposit, whichever is the later day. The third instalment shall become due on the last day of a period of eighteen months from the entry into force of this Agreement. The remaining three instalments shall become due successively each on the last day of a period of one year immediately following the day on which the preceding instalment becomes due.
2. Payments of the amounts initially subscribed by the members of the Bank to the paid-up capital stock shall be made in convertible currency. The Board of Governors shall determine the mode of payment of other amounts subscribed by the members to the paid-up capital stock.
3. The Board of Governors shall determine the dates for the payment of amounts subscribed by the members of the Bank to the paid-up capital stock to which the provisions of paragraph 1 of this article do not apply.
4.
 - (a) Payment of the amounts subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its obligations incurred, pursuant to paragraph 1(b) and (d) of article 14, on borrowing of funds for

inclusion in its ordinary capital resources or guarantees chargeable to such resources.

- (b) In the event of such calls, payment may be made at the option of the member concerned in convertible currency or in the currency required to discharge the obligation of the Bank for the purpose of which the call is made.
- (c) Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.

5. The Bank shall determine the place for any payment under this article provided that, until the first meeting of its Board of Governors provided in article 66 of this Agreement, the payment of the first instalment referred to in paragraph 1 of this article shall be made to the Trustee referred to in article 66.

Article 8: Special Funds

1. The Bank may establish, or be entrusted with the administration of, Special Funds which are designed to serve its purpose and come within its functions. It may receive, hold, use, commit or otherwise dispose of resources appertaining to such Special Funds.
2. The resources of such Special Funds shall be kept separate and apart from the ordinary capital resources of the Bank in accordance with the provisions of article 11 of this Agreement.
3. The Bank shall adopt such special rules and regulations as may be required for the administration and use of each Special Fund, provided always that:
 - (a) Such special rules and regulations shall be subject to paragraph 4 of article 7, articles 9 to 11, and those provisions of this Agreement which expressly apply to the ordinary capital resources or ordinary operations of the Bank;
 - (b) Such special rules and regulations must be consistent with provisions of this Agreement which expressly apply to special resources or special operations of the Bank; and that
 - (c) Where such special rules and regulations do not apply, the Special Funds shall be governed by the provisions of this Agreement.

Article 9: Ordinary Capital Resources

For the purposes of this Agreement, the expression “ordinary capital resources” of the Bank shall include:

- (a) Authorized capital stock of the Bank subscribed pursuant to the provisions of article 6 of this Agreement;
- (b) Funds raised by borrowing of the Bank, by virtue of powers conferred in paragraph (a) of article 23 of this Agreement, to which the commitment to calls provided for in paragraph 4 of article 7 of this Agreement applies;
- (c) Funds received in repayment of loans made with the resources referred to in paragraphs (a) and (b) of this article;

- (d) Income derived from loans made from the aforementioned funds; income from guarantees to which the commitment to calls provided for in paragraph 4 of article 7 of this Agreement applies; as well as
- (e) Any other funds or income received by the Bank, which do not form part of its special resources.

Article 10: Special Resources

1. For the purposes of this Agreement, the expression “special resources” shall refer to the resources of Special Funds and shall include:
 - (a) Resources initially contributed to any Special Fund;
 - (b) Funds borrowed for the purposes of any Special Fund, including the Special Fund provided for in paragraph 6 of article 24 of this Agreement;
 - (c) Funds repaid in respect of loans or guarantees financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by that Special Fund;
 - (d) Income derived from operations of the Bank by which any of the aforementioned resources or funds are used or committed if, under the rules and regulations governing the Special Fund concerned, that income accrues to the said Special Fund; and
 - (e) Any other resources at the disposal of any Special Fund.
2. For the purposes of this Agreement, the expression “special resources appertaining to a Special Fund” shall include the resources, funds and income which are referred to in the preceding paragraph and are—as the case may be—contributed to, borrowed or received by, accruing to, or at the disposal of the Special Fund concerned in conformity with the rules and regulations governing that Special Fund.

Article 11: Separation of Resources

1. The ordinary capital resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of, entirely separate from special resources. Each Special Fund, its resources and accounts shall be kept entirely separate from other Special Funds, their resources and accounts.
2. The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of any Special Fund. Special resources appertaining to any Special Fund shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of the Bank financed from its ordinary capital resources or from special resources appertaining to any other Special Fund.
3. In the operations and other activities of any Special Fund the liability of the Bank shall be limited to the special resources appertaining to that Special Fund which are at the disposal of the Bank.

CHAPTER III: OPERATIONS

Article 12: Use of Resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth in articles 1 and 2 of this Agreement.

Article 13: Ordinary and Special Operations

1. The operations of the Bank shall consist of ordinary operations and of special operations.
2. The ordinary operations shall be those financed from the ordinary capital resources of the Bank.
3. The special operations shall be those financed from the special resources.
4. The financial statements of the Bank shall show the ordinary operations and the special operations of the Bank separately. The Bank shall adopt such other rules and regulations as may be required to ensure the effective separation of the two types of its operations.
5. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank; expenses appertaining directly to special operations shall be charged to the appropriate special resources. Other expenses shall be charged as the Bank shall determine.

Article 14: Recipients and Methods of Operations

1. In its operations, the Bank may provide or facilitate financing for any regional member, political subdivision or any agency thereof or for any institution or undertaking in the territory of any regional member as well as for international or regional agencies or institutions concerned with the development of Africa. Subject to the provisions of this chapter, the Bank may carry out its operations in any of the following ways:
 - (a) By making or participating in direct loans out of:
 - i. Funds corresponding to its unimpaired subscribed paidup capital and to its reserves and undistributed surplus; or out of
 - ii. Funds corresponding to special resources; or
 - (b) By making or participating in direct loans out of funds borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources or in special resources; or
 - (c) By investment of funds referred to in sub-paragraph (a) or (b) of this paragraph in the equity capital of an undertaking or institution for the benefit of one or more regional members; or
 - (d) By guaranteeing, in whole or in part, loans made by others.

2. The provisions of this Agreement applying to direct loans which the Bank may make pursuant to sub-paragraph (a) or (b) of the preceding paragraph shall also apply to its participation in any direct loan undertaken pursuant to any of those sub-paragraphs. Equally, the provisions of this Agreement applying to guarantees of loans undertaken by the Bank pursuant to sub-paragraph (d) of the preceding paragraph shall apply where the Bank guarantees part of such a loan only.

Article 15: Limitations on Operations

1. The total amount outstanding in respect of the ordinary operations of the Bank shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources.
2. The total amount outstanding in respect of the special operations of the Bank relating to any Special Fund shall not at any time exceed the total amount of the unimpaired special resources appertaining to that Special Fund.
3. In the case of loans made out of funds borrowed by the Bank to which the commitment to calls provided for in paragraph 4(a) of article 7 of this Agreement applies, the total amount of principal outstanding and payable to the Bank in a specific currency shall not at any time exceed the total amount of principal outstanding in respect of funds borrowed by the Bank that are payable in the same currency.
4.
 - (a) In the case of investments made by virtue of paragraph 1(c) of article 14 of this Agreement out of the ordinary capital resources of the Bank, the total amount outstanding shall not at any time exceed a percentage, fixed by the Board of Governors, of the aggregate amount of the paid-up capital stock of the Bank together with the reserves and surplus included in its ordinary capital resources.
 - (b) At the time it is made, the amount of any specific investment referred to in the preceding sub-paragraph shall not exceed a percentage of equity capital of the institution or undertaking concerned, which the Board of Directors shall have fixed for any investment to be made by virtue of paragraph 1(c) of article 14 of this Agreement. In no event shall the Bank seek to obtain by such an investment a controlling interest in the institution or undertaking concerned.

Article 16: Provision of Currencies for Direct Loans

In making direct loans, the Bank shall furnish the borrower with currencies other than the currency of the member in whose territory the project concerned is to be carried out (the latter currency herein-after to be called "local currency"), which are required to meet foreign exchange expenditure on that project; provided always that the Bank may, in making direct loans, provide financing to meet local expenditure on the project concerned:

- (a) Where it can do so by supplying local currency without selling any of its holdings in convertible currencies; or
- (b) Where in the opinion of the Bank local expenditure on that project is likely to cause undue loss or strain on the balance of payments of the country where that project is to

be carried out and the amount of such financing by the Bank does not exceed a reasonable portion of the total local expenditure incurred on that project.

Article 17: Operational Principles

1. The operations of the Bank shall be conducted in accordance with the following principles:

(a)

- i. The operations of the Bank shall, except in special circumstances, provide for the financing of specific projects, or groups of projects, particularly those forming part of a national or regional development programme urgently required for the economic or social development of its regional members. They may, however, include global loans to, or guarantees of loans made to, African national development banks or other suitable institutions, in order that the latter may finance projects of a specified type serving the purpose of the Bank within the respective fields of activities of such banks or institutions;
- ii. In selecting suitable projects, the Bank shall always be guided by the provisions of paragraph 1(a) of article 2 of this Agreement and by the potential contribution of the project concerned to the purpose of the Bank rather than by the type of the project. It shall, however, pay special attention to the selection of suitable multinational projects;

(b) The Bank shall not provide for the financing of a project in the territory of a member if that member objects thereto;

(c) The Bank shall not provide for the financing of a project to the extent that in its opinion the recipient may obtain the finance or facilities elsewhere on terms that the Bank considers are reasonable for the recipient;

(d) The proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank shall be used only for procurement in member countries of goods and services produced in member countries, except in any case in which the Board of Directors determines to permit procurement in a non-member country or of goods and services produced in a non-member country in special circumstances making such procurement appropriate, as in the case of a non-member country in which a significant amount of financing has been provided to the Bank;

(e) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and the guarantor, if any, will be in a position to meet their obligations under the loan;

(f) In making or guaranteeing a loan, the Bank shall be satisfied that the rate of interest and other charges are reasonable and such rate, charges and the schedule for the repayment of principal are appropriate for the project concerned;

(g) In the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditure in connexion with the project as it is actually incurred;

- (h) The Bank shall make arrangements to ensure that the proceeds of any loan made or guaranteed by it are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency;
 - (i) The Bank shall seek to maintain a reasonable diversification in its investments in equity capital;
 - (j) The Bank shall apply sound banking principles to its operations and, in particular, to its investments in equity capital. It shall not assume responsibility for managing any institution or undertaking in which it has an investment; and
 - (k) In guaranteeing a loan made by other investors, the Bank shall receive suitable compensation for its risk.
2. The Bank shall adopt such rules and regulations as are required for the consideration of projects submitted to it.

Article 18: Terms and Conditions for Direct Loans and Guarantees

1. In the case of direct loans made by the Bank, the contract:
- (a) Shall establish, in conformity with the operational principles set forth in paragraph 1 of article 17 of this Agreement and subject to the other provisions of this chapter, all the terms and conditions for the loan concerned, including those relating to amortization, interest and other charges, and to maturities and dates of payment; and, in particular,
 - (b) Shall provide that—subject to paragraph 3(c) of this article—payments to the Bank of amortization, interest, commission and other charges shall be made in the currency loaned, unless—in the case of a direct loan made as part of special operations—the rules and regulations provide otherwise.
2. In the case of loans guaranteed by the Bank, the contract of guarantee:
- (a) Shall establish, in conformity with the operational principles set forth in paragraph 1 of article 17 of this Agreement and subject to the other provisions of this chapter, all the terms and conditions of the guarantee concerned including those relating to the fees, commission, and other charges of the Bank; and, in particular,
 - (b) Shall provide that—subject to paragraph 3(c) of this article—all payments to the Bank under the guarantee contract shall be made in the currency loaned, unless—in the case of a loan guaranteed as part of special operations—the rules and regulations provide otherwise; and
 - (c) Shall also provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.
3. In the case of direct loans made or loans guaranteed by the Bank, the Bank:
- (a) In determining the terms and conditions for the operation, shall take due account of the terms and conditions on which the corresponding funds were obtained by the Bank;

- (b) Where the recipient is not a member, may, when it deems it advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or institution of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan;
- (c) Shall expressly state the currency in which all payments to the Bank under the contract concerned shall be made. At the option of the borrower, however, such payments may always be made in convertible currency or, subject to the agreement of the Bank, in any other currency; and
- (d) May attach such other terms or conditions, as it deems appropriate, taking into account both the interest of the member directly concerned in the project and the interests of the members as a whole.

Article 19: Commission and Fees

Deleted

Article 20: Special Reserve

Deleted

Article 21: Methods of Meeting Liabilities of the Bank (Ordinary Operations)

1. Whenever necessary to meet contractual payments of interest, other charges or amortization on the borrowing of the Bank, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it and chargeable to its ordinary capital resources, the Bank may call an appropriate amount of the unpaid subscribed callable capital in accordance with paragraph 4 of article 7 of this Agreement.
2. In cases of default in respect of a loan made out of borrowed funds or guaranteed by the Bank as part of its ordinary operations, the Bank may, if it believes that the default may be of long duration, call an additional amount of such callable capital not to exceed in any one year one per cent of the total subscriptions of the members, for the following purposes:
 - (a) To redeem before maturity, or otherwise discharge, its liability on all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default; and
 - (b) To repurchase, or otherwise discharge, its liability on all or part of its own outstanding borrowing.

Article 22: Methods of Meeting Liabilities on Borrowings for Special Funds

Payments in satisfaction of any liability in respect of borrowings of funds for inclusion in the special resources appertaining to a Special Fund shall be charged:

- i. First, against any reserve established for this purpose for or within the Special Fund concerned; and
- ii. Then, against any other assets available in the special resources appertaining to that Special Fund.

CHAPTER IV: BORROWING AND OTHER ADDITIONAL POWERS

Article 23: General Powers

In addition to the powers provided elsewhere in this Agreement, the Bank shall have power to:

- (a) Borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as it shall determine provided always that:
 - i. Before making a sale of its obligations in the market of a member, the Bank shall have obtained its approval;
 - ii. Where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and
 - iii. Where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in sub-paragraph (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions;
- (b) Buy and sell securities the Bank has issued or guaranteed or in which it has invested provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;
- (c) Guarantee or underwrite securities in which it has invested in order to facilitate their sale;
- (d) Invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;
- (e) Undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;
- (f)
 - i. Provide all technical advice and assistance which serve its purpose and come within its functions; and
 - ii. Where expenditure incurred by such a service is not reimbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and

- (g) Exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 24: Special Borrowing Powers

1. The Bank may request any regional member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.
2. Unless the regional member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.
3. Unless the regional member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the Bank.
4. Loans to the Bank made pursuant to this article shall bear interest, payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowings for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board of Governors shall determine from time to time.
5. The Bank shall repay the loan, and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.
6. All resources obtained by the Bank by virtue of the provisions of this article shall constitute a Special Fund.

Article 25: Warning to be Placed on Securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless it is in fact the obligation of a particular government in which case it shall so state.

Article 26: Valuation of Currencies and Determination of Convertibility

Whenever it shall become necessary under this Agreement:

- i. To value any currency in terms of another currency or in terms of the unit of account defined in paragraph 1 (b) of article 5 of this Agreement, or
- ii. To determine whether any currency is convertible, such valuation or determination, as the case may be, shall be reasonably made by the Bank after consultation with the International Monetary Fund.

Article 27: Use of Currencies

1. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of the following:
 - (a) Convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;
 - (b) Currencies of members purchased with the convertible currencies referred to in the preceding sub-paragraph;
 - (c) Currencies obtained by the Bank by borrowing, pursuant to paragraph (a) of article 23 of this Agreement, for inclusion in its ordinary capital resources;
 - (d) Currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and
 - (e) Currencies, other than its own, received by a member from the Bank in distribution of the net income of the Bank in accordance with article 42 of this Agreement.
2. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless:
 - (a) That member declares that it desires the use of such currency to be restricted to payments for goods or services produced in its territory; or
 - (b) Such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.
3. Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization or anticipatory payments or for repurchasing—in whole or in part—its obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.
4. The Bank shall not use currencies which it holds for the purchase of other currencies of its members except:
 - (a) In order to meet its existing obligations; or
 - (b) Pursuant to a decision of the Board of Directors.

Article 28: Maintenance of Value of the Currency Holdings of the Bank

1. Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph 1(b) of article 5 of this Agreement or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount in its currency required to maintain the value of all such currency held by the Bank on account of its subscription.

2. Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank on account of its subscription.
3. The Bank, in the case envisaged by paragraph 1, or the member, in the case envisaged by paragraph 2, may waive its rights under this article.

CHAPTER V: ORGANIZATION AND MANAGEMENT

Article 29: Board of Governors, Powers

1. All the powers of the Bank shall be vested in the Board of Governors. In particular, the Board shall issue general directives concerning the credit policy of the Bank.
2. The Board of Governors may delegate to the Board of Directors all its powers except the power to:
 - (a) Decrease the authorized capital stock of the Bank;
 - (b) Establish or accept the administration of Special Funds;
 - (c) Authorize the conclusion of general arrangements for cooperation with the authorities of African countries which have not yet attained independent status or of general agreements for co-operation with African Governments which have not yet acquired membership of the Bank, as well as of such agreements with other Governments and with other international organizations;
 - (d) Elect the President of the Bank, suspend or remove him from office and determine his remuneration and conditions of service;
 - (e) Determine the remuneration of directors and their alternates;
 - (f) Select outside auditors to certify the General Balance Sheet and the Statement of Profit and Loss of the Bank and to select such other experts as may be necessary to examine and report on the general management of the Bank;
 - (g) Approve, after reviewing the report of the auditors, the General Balance Sheet and Statement of Profit and Loss of the Bank; and
 - (h) Exercise such other powers as are expressly provided for that Board in this Agreement.
3. The Board of Governors shall retain full powers to exercise authority over any matter delegated to the Board of Directors pursuant to paragraph 2 of this article.

Article 30: Board of Governors, Composition

1. Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate governor. They shall be persons of the highest competence and wide experience in economic and financial matters and shall be nationals of the member States. Each governor and alternate shall serve for five years, subject to termination of appointment at any time, or to reappointment, at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. At

its annual meeting, the Board shall designate one of the governors as Chairman. The Chairman shall hold office until the election of a successor at the next annual meeting of the Board, unless otherwise decided by the Board of Governors.

2. Governors and alternates shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 31: Board of Governors, Procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by five members of the Bank, or by members having one-quarter of the total voting power of the members. Annual Meetings of the Board of Governors shall be held in regional and non-regional member States.
2. A quorum for any meeting of the Board of Governors shall be a majority of the total number of governors or their alternates, representing not less than seventy percent of the total voting power of the members.
3. The Board of Governors may by regulation establish a procedure whereby the Board of Directors may, when it deems such action advisable, obtain a vote of the governors on a specific question without calling a meeting of the Board.
4. The Board of Governors, and the Board of Directors to the extent authorized, may establish such subsidiary bodies and adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.

Article 32: Board of Directors, Powers

Without prejudice to the powers of the Board of Governors as provided in article 29 of this Agreement, the Board of Directors shall be responsible for the conduct of the general operations of the Bank and for this purpose shall, in addition to the powers provided for it expressly in this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (a) Prepare the work of the Board of Governors;
- (b) In conformity with the general directives of the Board of Governors, take decisions concerning particular direct loans, guarantees, investments in equity capital and borrowing of funds by the Bank;
- (c) Determine the rates of interest for direct loans and of commissions for guarantees;
- (d) Submit the accounts for each financial year and an annual report for approval to the Board of Governors at each annual meeting; and
- (e) Determine the general structure of the services of the Bank.

Article 33: Board of Directors, Composition

1. The Board of Directors shall be composed of eighteen members who shall not be governors or alternate governors. Twelve members shall be elected by the governors of the regional members and six members shall be elected by the governors of the non-

regional members. They shall be elected by the Board of Governors in accordance with annex B to this Agreement. In electing the Board of Directors, the Board of Governors shall have due regard to the high competence in economic and financial matters required for the office. The Board of Governors may determine to change the number of members of the Board of Directors only by a three-fourths majority of the total voting power of the member countries, including with respect to provisions relating exclusively to the number and election of directors by the regional member countries, by a two-thirds majority of the governors of regional members, and with respect to the provisions relating exclusively to the number and election of directors by non-regional member countries, by a two-thirds majority of the governors of non-regional member.

2. Each director shall appoint an alternate who shall act for him when he is not present. Directors and their alternates shall be nationals of member States; but no alternate may be of the same nationality as his director. An alternate may participate in meetings of the Board but may vote only when he is acting in place of his director.
3. Directors shall be elected for a term of three years and, subject to the limitation set forth in paragraph 4 of this article, may be reelected. They shall continue in office until their successors are elected. If the office of a director becomes vacant more than 180 days before the end of his term a successor shall be elected in accordance with annex B to this Agreement, for the remainder of the term by the Board of Governors at its next session. While the office remains vacant the alternate of the former director shall exercise the powers of the latter except that of appointing an alternate.
4. No director shall serve on the Board of Directors for more than two terms of three years each. A director whose term of office commences between two general elections shall be eligible to be elected director for a cumulative period not exceeding six years in total from the date of his first election; provided always that a director who at the time of his election shall have served two terms of three years each as an alternate director shall not be eligible for re-election.

Article 34: Board of Directors, Procedure

1. The Board of Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.
2. A quorum for any meeting of the Board of Directors shall be a majority of the total number of directors representing not less than seventy percent of the total voting power of the members.
3. The Board of Governors shall adopt regulations under which, if there is no director of its nationality, a member may be represented at a meeting of the Board of Directors when a request made by, or a matter particularly affecting, that member is under consideration.

Article 35: Voting

1. Each member shall have 625 votes and, in addition, one vote for each share of the capital stock of the Bank held by that member, provided, however, that in connection with any increase in the authorized capital stock, the Board of Governors may

determine that the capital stock authorized by such increase shall not have voting rights and that such increase of stock shall not be subject to the pre-emptive rights established in paragraph 2 of article 6 of this Agreement.

2. Save as otherwise expressly provided in this Agreement, voting in the Board of Governors shall be as specified in this article. Each governor shall be entitled to cast the votes of the Member that such governor represents. All matters before the Board of Governors shall, in general, be decided by a majority of sixty-six and two-thirds percent of the voting power of the members represented at the meeting, except that in respect of an issue declared by a member as being of great importance, touching upon a substantial interest of that member, such important issue shall be decided, at the request of the member, by a majority of seventy percent of the total voting power.
3. Save as otherwise expressly provided in this Agreement, voting in the Board of Directors shall be as provided in this article. Each director shall be entitled to cast the number of votes that counted towards the election of such director, which votes shall be cast as a unit. All matters before the Board of Directors shall, in general, be decided by a sixty-six and two-thirds percent majority of the voting power represented at the meeting, except that in respect of an issue declared by a member as being of great importance, touching upon a substantial interest of that member, such important issue shall be decided, at the request of the director concerned, by a majority of seventy per cent of the total voting power.

Article 36: The President, Appointment

1. The Board of Governors shall elect by a majority of the total voting power of the members, including a majority of the total voting power of the regional members, the President of the Bank. He shall be a person of the highest competence in matters pertaining to the activities, management and administration of the Bank and shall be a national of a regional member state. While holding office, he shall not be a governor, a director or alternate for either. The term of office of the President shall be five years. It may be renewed; provided, however, that no person may be elected or serve as President for more than two successive terms of five years each. The President shall be suspended or removed from office if the Board of Governors so decides by a majority of the total voting power of the members, including a majority of the total voting power of the regional members. The Board of Governors shall, upon the suspension or removal of the President from office, appoint an Acting President or, as the case may be, elect a President.
2. The Chairman of the Board of Governors, after consultation with the Bureau, shall convene a meeting of the Board of Governors to consider the suspension of the President upon the written requests of at least five Governors representing not less than five constituencies.

Article 37: The Office of the President

1. The President shall be Chairman of the Board of Directors but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.

2. The President shall be chief of the staff of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank. He shall be responsible for the organization of the officers and staff of the Bank, including Vice-Presidents, whom he shall appoint, fix their terms of employment, and release in accordance with the rules and regulations adopted by the Bank, provided that he shall act in consultation with the Board of Directors in the exercise of his powers of appointment and release of Vice-Presidents.
3. The President shall be the legal representative of the Bank.
4. The Bank shall adopt regulations which shall determine who shall legally represent the Bank and perform the other duties of the President in the event that he is absent or that his office should become vacant.
5. In appointing the officers and staff, the President shall make it his foremost consideration to secure the highest standards of efficiency, technical competence and integrity, and recruit them on as wide a geographical basis as possible, paying full regard to the regional character of the Bank, as well as the participation of non-regional states.

Article 38: Prohibition of Political Activity; the International Character of the Bank

1. The Bank shall not accept loans or assistance that could in any way prejudice, limit, deflect or otherwise alter its purpose or functions.
2. The Bank, its President, Vice-Presidents, officers and staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the functions of the Bank.
3. The President, Vice-Presidents, officers and staff of the Bank, in discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 39: Office of the Bank

1. The principal office of the Bank shall be located in the territory of a regional member State. The choice of the location of the principal office of the Bank shall be made by the Board of Governors at its first meeting, taking into account the availability of facilities for the proper functioning of the Bank.
2. Notwithstanding the provisions of article 35 of this Agreement, the choice of the location of the principal office of the Bank shall be made by the Board of Governors in accordance with the conditions that applied to the adoption of this Agreement.
3. The Bank may establish branch offices or agencies elsewhere.

Article 40: Channel of Communications; Depositories

1. Each member shall designate an appropriate authority with which the Bank may communicate in connexion with any matter arising under this Agreement.
2. Each member shall designate its central bank or such other institution as may be agreed by the Bank, as a depository with which the Bank may keep its holdings of currency of that member as well as other assets of the Bank.
3. The Bank may hold its assets with such depositories as the Board of Directors shall determine.

Article 41: Publication of the Agreement, Working Languages, Provision of Information and Reports

1. The Bank shall endeavour to make available the text of this Agreement and all its important documents in the principal languages used in Africa. The working languages of the Bank shall be, if possible, African languages, English and French.
2. Members shall furnish the Bank with all information it may request of them in order to facilitate the performance of its functions.
3. The Bank shall publish and transmit to its members an annual report containing an audited statement of the accounts. It shall also transmit quarterly to the members a summary statement of its financial position and a profit and loss statement showing the results of its operations. The Annual Report and the Quarterly Statements shall be drawn up in accordance with the provisions of paragraph 4 of article 13 of this Agreement.
4. The Bank may also publish such other reports as it deems desirable to carry out its purpose and functions. They shall be transmitted to the members of the Bank.

Article 42: Allocation of Net Income

1. The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to its Special Funds, shall be allocated—after making provision for reserves—to surplus and what part, if any, shall be distributed.
2. The distribution referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member.
3. Payments shall be made in such manner and in such currency as the Board of Governors shall determine.

CHAPTER VI: WITHDRAWAL AND SUSPENSION OF MEMBERS; TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK

Article 43: Withdrawal

1. Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office.

2. Withdrawal by a member shall become effective on the date specified in its notice but in no event less than six months after the date that notice has been received by the Bank.

Article 44: Suspension

1. If a member fails to fulfil any of its obligations under this Agreement or any other obligation to the Bank arising from the Bank's operations under this Agreement, the Board of Governors may suspend such member by a decision of the Board of Governors representing not less than seventy per cent of the total voting power of the members. The Board of Governors may, in lieu of suspension of membership, order suspension of the voting rights of such member upon such terms and conditions as may be established by the Board of Governors, pursuant to regulations adopted under paragraph 4 of this article.
2. The member suspended from membership shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during the one-year period, decides by the same majority necessary for suspension to restore the member to good standing.
3. While under suspension from membership, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.
4. The Board of Governors shall adopt regulations as may be necessary for the implementation of this article.

Article 45: Settlement of Accounts

1. After the date on which a State ceases to be a member (herein-after in this article called the "termination date"), the member shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before the termination date is outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.
2. At the time a State ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with that State in accordance with the provisions of paragraphs 3 and 4 of this article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the termination date.
3. The payment for shares repurchased by the Bank under this article shall be governed by the following conditions:
 - (a) Any amount due to the State concerned for its shares shall be withheld so long as that State, its Central Bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the State resulting from its subscription for shares in accordance with

paragraph 4 of article 7 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six months after the termination date.

- (b) Payments for shares may be made from time to time, upon their surrender by the Government of the State concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this article exceeds the aggregate amount of liabilities on loans and guarantees referred to in sub-paragraph (a) of this paragraph until the former member has received the full repurchase price.
- (c) Payments shall be made in the currency of the State receiving payment or, if such currency is not available, in convertible currency.
- (d) If losses are sustained by the Bank on any guarantees or loans which were outstanding on the termination date and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the State concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 4 of article 7 of this Agreement, to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

- 4. If the Bank terminates its operations pursuant to article 47 of this Agreement within six months of the termination date, all rights of the State concerned shall be determined in accordance with the provisions of its articles 47 to 49.

Article 46: Temporary Suspension of Operations

In an emergency, the Board of Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.

Article 47: Termination of Operations

- 1. The Bank may terminate its operations in respect of new loans, guarantees and equity investments by a decision of the Board of Governors exercising a majority of seventy-five per cent of the total voting power.
- 2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 48: Liability of Members and Payment of Claims

- 1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

2. All creditors holding direct claims shall be paid out of the assets of the Bank and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

Article 49: Distribution of Assets

1. In the event of termination of operations of the Bank, no distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until:
 - i. All liabilities to creditors have been discharged or provided for; and
 - ii. The Board of Governors has taken a decision to make a distribution. This decision shall be taken by the Board exercising a majority of the total voting power of the members, including a majority of the total voting power of the regional members.
2. After a decision to make a distribution has been taken in accordance with the preceding paragraph, the Board of Directors may decide to make successive distributions of the assets of the Bank to members until all assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.
3. Before any distribution of assets is made, the Board of Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank.
4. The Board of Directors shall value the assets to be distributed at the date of distribution and then proceed to distribute in the following manner:
 - (a) There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, to the extent that they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.
 - (b) Any balance due to a member after payment has been made in accordance with the preceding sub-paragraph shall be paid in its currency, to the extent that it is held by the Bank, up to an amount equivalent in value to such balance.
 - (c) Any balance due to a member after payment has been made in accordance with sub-paragraphs (a) and (b) of this paragraph shall be paid in gold or currency acceptable to that member, to the extent that they are held by the Bank, up to an amount equivalent in value to such balance.
 - (d) Any remaining assets held by the Bank after payments have been made to members in accordance with sub-paragraphs (a) to (c) of this paragraph shall be distributed pro rata among the members.
5. Any member receiving assets distributed by the Bank in accordance with the preceding paragraph shall enjoy the same rights with respect to such assets as the Bank enjoyed before their distribution.

CHAPTER VII: STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 50: Status

To enable it to fulfil its purpose and the functions with which it is entrusted, the Bank shall possess full international personality. To those ends, it may enter into agreements with members, non-member States and other international organizations. To the same ends, the status, immunities, exemptions and privileges set forth in this chapter shall be accorded to the Bank in the territory of each member.

Article 51: Status in Member Countries

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property; and
- (c) To institute legal proceedings.

Article 52: Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.
2. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Bank.

Article 53: Immunity of Assets and Archives

1. Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
2. The archives of the Bank and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.

Article 54: Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

Article 55: Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Article 56: Personal Immunities and Privileges

All governors, directors, alternates, officers and employees of the Bank and experts and consultants performing missions for the Bank:

- i. Shall be immune from legal process with respect to acts performed by them in their official capacity;
- ii. Where they are not local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- iii. Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 57: Exemption from Taxation

1. The Bank, its property, other assets, income and its operations and transactions shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding, or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.
3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - i. Which discriminates against such obligation or security solely because it is issued by the Bank; or
 - ii. If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - i. Which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - ii. If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 58: Notification of Implementation

Each member shall promptly inform the Bank of the specific action which it has taken to make effective in its territory the provisions of this chapter.

Article 59: Application of Immunities, Exemptions and Privileges

The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in articles 52, 54, 56, and 57 of this Agreement in cases where its action would in its opinion further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

CHAPTER VIII: AMENDMENTS, INTERPRETATION, ARBITRATION

Article 60: Amendments

1. Any proposal to introduce modifications to this Agreement whether emanating from a member, a governor or the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before that Board. If the proposed amendment is approved by the Board, the Bank shall, by circular letter, facsimile or telegram, ask the members whether they accept the proposed amendment. When two-thirds of the members, having three-quarters of the total voting power of the members, including two-thirds of the regional members having three-quarters of the total voting power of the regional members, have accepted the proposed amendment, the Bank shall promptly certify the fact by formal communication addressed to the members.
2. Notwithstanding paragraph 1 of this article, the voting majorities provided in article 3(3) may be amended only by the voting majorities stated therein.
3. Notwithstanding paragraph 1 of this article, acceptance by all the members is required for any amendment modifying:
 - i. The right secured by paragraph 2 of article 6 of this Agreement;
 - ii. The limitation on liability provided in paragraph 5 of that article; and
 - iii. The right to withdraw from the Bank provided in article 43 of this Agreement.
4. Amendments shall enter into force for all members three months after the date of the formal communication provided for in paragraph 1 of this article unless the Board of Governors specifies a different period.
5. Notwithstanding the provisions of paragraph 1 of this article, three years at the latest after the entry into force of this Agreement and in the light of the experience of the Bank, the rule according to which each member should have one vote shall be examined by the Board of Governors or at a meeting of Heads of State of the member

countries in accordance with the conditions that applied to the adoption of this Agreement.

Article 61: Interpretation

1. The English and French texts of this Agreement shall be regarded as equally authentic.
2. Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Board of Directors for decision. If there is no director of its nationality on that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in such cases. Such right of representation shall be regulated by the Board of Governors.
3. In any case where the Board of Directors has given a decision under paragraph 2 of this article, any member may require that the question be referred to the Board of Governors, whose decision shall be sought—under a procedure to be established in accordance with paragraph 3 of article 31 of this Agreement—within three months. That decision shall be final.

Article 62: Arbitration

In case of a dispute between the Bank and a former member, or between the Bank and a member upon the termination of the operations of the Bank, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the Chairman. If within 30 days of the request for arbitration either party has not appointed an arbitrator or if within 15 days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by regulations adopted by the Board of Governors, to appoint an arbitrator. The procedure shall be fixed by the arbitrators. However, the third arbitrator shall have full power to settle all questions of procedure in case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

CHAPTER IX: FINAL PROVISIONS

Article 63: Signature and Deposit

1. This Agreement, deposited with the Secretary-General of the United Nations (hereinafter called the “Depositary”), shall remain open until 31 December 1963 for signature by the Governments of States whose names are set forth in annex A to this Agreement.
2. The Depositary shall communicate certified copies of this Agreement to all the Signatories.

Article 64: Ratification, Acceptance, Accession and Acquisition of Membership

1.
 - (a) This Agreement shall be subject to ratification or acceptance by the Signatories. Instruments of ratification or acceptance shall be deposited by the Signatory Governments with the Depositary before 1 July 1965. The Depositary shall notify each deposit and the date thereof to the other Signatories,
 - (b) A State whose instrument of ratification or acceptance is deposited before the date on which this Agreement enters into force shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph shall become a member on the date on which its instrument of ratification or acceptance is deposited.
2. Regional States which do not acquire membership of the Bank in accordance with the provisions of paragraph 1 of this article may become members-after the Agreement have entered into force-by accession thereto on such terms as the Board of Governors shall determine. The Government of any such State shall deposit, on or before a date appointed by that Board, an instrument of accession with the Depositary who shall notify such deposit and the date thereof to the Bank and to the Parties to this Agreement. Upon the deposit, the State shall become member of the Bank on the appointed date.
3. A member may, when depositing its instrument of ratification or acceptance, declare that it retains for itself and its political sub-divisions the right to tax salaries and emoluments paid by the Bank to that member's citizens, nationals or residents.

Article 65: Entry into Force

This Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by twelve signatory Governments whose initial subscriptions, as set forth in annex A to this Agreement, in aggregate comprise not less than sixty-five percent of the authorized capital stock of the Bank; provided always that 1 January 1964 shall be the earliest date on which this Agreement may enter into force in accordance with the provisions of this article.

Article 66: Commencement of Operations

1. As soon as this Agreement enters into force, each member shall appoint a governor, and the Trustee appointed for this purpose and for the purpose indicated in paragraph 5 of article 7 of this Agreement shall call the first meeting of the Board of Governors.
2. At its first meeting, the Board of Governors:
 - (a) Shall elect nine directors of the Bank in accordance with paragraph 1 of article 33 of this Agreement; and
 - (b) Make arrangements for the determination of the date on which the Bank shall commence its operations.

3. The Bank shall notify its members of the date of the commencement of its operations.

DONE in Khartoum, this fourth day of August nineteen hundred and sixty-three, in a single copy in the English and French languages.

AMENDED:

1. On the seventh day of May, nineteen hundred and eighty-two, following the entry into force of Resolution 05-79 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the seventeenth day of May nineteen hundred and seventy-nine; and
2. On the first day of September, nineteen hundred and ninety four, following the entry into force of Resolution B/BG/92/06 adopted by the Board of Governors at Dakar, Senegal on the thirteenth day of May nineteen hundred and ninety-two; and
3. On the second day of May, nineteen hundred and ninety eight, following the entry into force of Resolution B/BG/97/05 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-seven; and
4. On the thirtieth day of September, nineteen hundred and ninety-nine, following the entry into force of Resolution B/BG/98/04 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-eight.
5. On the fifth day of July, two thousand and two, following the entry into force of Resolution B/BG/2001/08 adopted by the Board of Governors at Valencia, Spain on the twenty ninth day of May two thousand and one.

ANNEX A INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

	Members	Paid up shares	Callable shares	Total Subscription (in million of units of account)
1	Algeria	1,225	1,225	24.50
2	Burundi	60	60	1.20
3	Cameroon	200	200	4.00
4	Central African Republic	50	50	1.00
5	Chad	80	80	1.60
6	Congo (Brazzaville)	75	75	1.50
7	Congo (DRC)	650	650	13.00
8	Dahomey (Benin)	70	70	1.40
9	Ethiopia	515	515	10.30
10	Gabon	65	65	1.30
11	Ghana	640	640	12.80
12	Guinea	125	125	2.50
13	Ivory Coast (Côte	300	300	6.00

	d'Ivoire)			
14	Kenya	300	300	6.00
15	Liberia	130	130	2.60
16	Libya	95	95	1.90
17	Madagascar	260	260	5.20
18	Mali	115	115	2.30
19	Mauritania	55	55	1.10
	Members	Paid up shares	Callable shares	Total Subscription (in million of units of account)
20	Morocco	775	775	15.10
21	Niger	80	80	1.60
22	Nigeria	1,205	1,205	24.10
23	Rwanda	60	60	1.20
24	Senegal	275	275	5.50
25	Sierra Leone	105	105	2.10
26	Somalia	110	110	2.20
27	Sudan	505	505	10.10
28	Tanganyika (Tanzania)	265	265	5.30
29	Togo	50	50	1.00
30	Tunisia	345	345	6.90
31	Uganda	230	230	4.60
32	UAR (Egypt)	1,500	1,500	30.00
33	Upper Volta (Burkina Faso)	65	65	1.30

ANNEX B ELECTION OF DIRECTORS

1. Non-divisible vote

At the election of directors each governor shall cast all votes of the member he represents for a single person.

2. Regional Directors

- (a) The twelve persons receiving the highest number of votes of the governors representing the regional members shall be directors, except that no person who receives less than eight per cent of the total voting power of the regional members shall be considered as elected.

- (b) If twelve persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:
 - i. Governors who voted in the preceding ballot for a person who is not elected; and
 - ii. Governors whose votes for a person who is elected are deemed, in accordance with paragraph 2(c) of this annex, to have raised the votes cast for that person above ten per cent of the total voting power of the regional members.
- (c)
 - i. In determining whether the votes cast by a governor shall be deemed to have raised the total number of votes for any person above ten per cent, the said ten per cent shall be deemed to include, first, the votes of the governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each governor casting the next highest number until ten per cent is attained.
 - ii. Any governor part of whose votes must be counted in order to raise the votes cast for any person above eight per cent shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds ten per cent.
- (d) If, after the second ballot, twelve persons are not elected, further ballots shall be held in conformity with the principles laid down in this annex, provided that after eleven persons are elected, the twelfth may be elected—notwithstanding the provisions of paragraph 2(a) of this annex—by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the twelfth director.

3. Non-regional Directors

- (a) The six persons receiving the highest number of votes of the governors representing the non-regional members shall be directors, except that no person who receives less than fourteen per cent of the total voting power of the non-regional members shall be considered as elected.
- (b) If six persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:
 - i. Governors who voted in the preceding ballot for a person who is not elected; and
 - ii. Governors whose votes for a person who is elected are deemed in accordance with paragraph 3(c) of this annex, to have raised the votes cast for that person above nineteen per cent of the total voting power of the non-regional members.
- (c)
 - i. In determining whether the votes cast by a governor shall be deemed to have raised the total number of votes for any person above nineteen per cent, the

said nineteen per cent shall be deemed to include, first the votes of the governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each governor casting the next highest number until nineteen per cent is attained.

- ii. Any governor part of whose votes must be counted in order to raise the votes cast for any person above fourteen per cent shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds nineteen per cent.

- (d) If, after the second ballot, six persons are not elected, further ballots shall be held in conformity with the principles laid down in this annex, provided that after five persons are elected, the sixth may be elected—notwithstanding the provisions of paragraph 3(a) of this annex—by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the sixth director.

CHAPTER TWENTY-ONE

Convention on the Settlement of Investment Disputes between States and Nationals of other States

Washington, DC, 18 March 1965

INTRODUCTION

The Convention arose out of two optimistic assessments: the importance and flow of private investments and the likelihood of disputes with host nations; and the attractions or benefits of non-adversarial, more subdued or discreet, and more focused or specialized dispute-resolution mechanisms to deal with investment disputes. The Convention and its institutional operations are located under the auspices of the International Bank for Reconstruction and Development (IBRD). This is because it is an important instrument in the attainment of the developmental and more micro-economic goals of the IBRD.

The internal institutional arrangement for the working of the Convention is as follows. An office is established to serve as the nucleus of the implementation or working of the Convention. The International Centre for the Settlement of Investment Disputes (ICSID) is managed by an Administrative Council, which is made up of representatives of the contracting states. These representatives are also the representatives of states serving on the board of the IBRD as governors. This is clearly for practical reasons. The President of the IBRD is the ex officio Chairman of the Administrative Council. Unlike in the IBRD or the IMF, each member of the Council has one vote, but the Chairman has none. The Council determines the administrative functions and working of the ICSID. There is a Secretariat established, headed by a Secretary-General who has traditionally been the General Counsel of the IBRD. The Secretary-General also serves as Registrar of the Centre and has the power to authenticate arbitral awards. A register of Conciliators and Arbitrators is maintained at the Centre. Each contracting party nominates eight persons each on to the register of panellists. The Chairman designates 10 to serve on each panel (Conciliation and Arbitration). Panellists serve a renewable period of six years each.

In practice, the Centre is synonymous with the conciliation and arbitration functions enunciated by the Convention. For specific disputes it constitutes a commission or a tribunal to adjudicate. Its jurisdiction covers disputes arising directly from 'an investment, between a Contracting State (or any constituent sub-division or agency of a Contracting State designated to the Centre by that State) and a national of another

Contracting State'. The 'national' includes juridical persons or companies. The parties to any such dispute have to consent in writing to submit the dispute to the Centre. That consent cannot be withdrawn unilaterally. Where a legal entity that has the nationality of a contracting state party to a dispute but is foreign controlled, the parties can agree to it being treated as a national of another contracting state for the purposes of the Convention.

Also, any contracting state upon signing or ratification, or at any time thereafter, is at liberty to exclude and notify the Centre of class or classes of disputes that it would or would not like to submit to the jurisdiction of the Centre. This does not mean automatic consent to all other disputes. Consent of the parties to the resolution of the dispute by the Centre is deemed to exclude any other judicial process or remedy. Intriguingly, a contracting state may ask for the exhaustion of local remedies as a precondition to its consent to arbitration, but not conciliation under the Convention. Conciliators for a particular dispute are appointed from the panel of conciliators, so also are arbitrators for specific disputes appointed from the panel of arbitrators. Both the Conciliation Commission formed to conciliate a dispute and the Arbitral Tribunal established to arbitrate disputes judge their own respective competence. They also largely determine procedure and, in the case of arbitration, the outcome of the dispute. Unlike conciliation, the arbitral award is binding on the parties and must be enforced using the instruments of enforcement, with the normal diplomatic allowances, in the countries party to the dispute.

The Convention on the Settlement of Investment Disputes between States and Nationals of other States entered into force on 14 October 1966. By December 2004 154 states had signed the Convention and 142 formally lodged their instruments of ratification.

THE CONVENTION*

PREAMBLE

THE CONTRACTING STATES

CONSIDERING the need for international cooperation for economic development, and the role of private international investment therein;

BEARING IN MIND the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

RECOGNIZING that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

ATTACHING particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

DESIRING to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

RECOGNIZING that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement

which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

DECLARING that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

HAVE AGREED AS FOLLOWS:

CHAPTER I: INTERNATIONAL CENTRE FOR INVESTMENT DISPUTES

SECTION 1: ESTABLISHMENT AND ORGANIZATION

Article 1

1. There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).
2. The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2

The seat of the Centre shall be at the principal office for the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

SECTION 2: THE ADMINISTRATIVE COUNCIL

Article 4

The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

In the absence of a contrary designation, each governor and alternate of the Bank appointed by a Contracting State shall be ex officio its representative and its alternate respectively.

Article 5

The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

1. Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall
 - (a) adopt the administrative and Financial regulations of the Centre;
 - (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
 - (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);
 - (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
 - (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General.;
 - (f) adopt the annual budget of revenues and expenditures of the Centre;
 - (g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

2. The Administrative Council may appoint such committees as it considers necessary.
3. The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of the Convention.

Article 7

1. The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.
2. Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.
3. A quorum for any meeting of the Administrative Council shall be a majority of its members.
4. The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

SECTION 3: THE SECRETARIAT

Article 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

1. The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for reelection. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.
2. The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Bank for Reconstruction and Development—the World Bank (<http://www.worldbank.org>).

Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

3. During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

SECTION 4: THE PANELS

Article 12

The panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

1. Each Contracting State may designate to each Panel four persons who may but need not be its nationals.
2. The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

1. Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.
2. The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

1. Panel members shall serve for renewable periods of six years.
2. In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.
3. Panel members shall continue in office until their successors have been designated.

Article 16

1. A person may serve on both Panels.
2. If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.
3. All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

SECTION 5: FINANCING THE CENTRE

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

SECTION 6: STATUS, IMMUNITIES AND PRIVILEGES

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat:

- (a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;
- (b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

- (a) The archives of the Centre shall be inviolable, wherever they may be.
- (b) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

Article 24

- 1. The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.
- 2. Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.
- 3. No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II: JURISDICTION OF THE CENTRE

Article 25

- 1. The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.
- 2. “National of another Contracting State” means:
 - (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but

does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

- (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

3. Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.
4. Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Article 27

1. No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.
2. Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III: CONCILIATION

SECTION 1: REQUEST FOR CONCILIATION

Article 28

1. Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

2. The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.
3. The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2: CONSTITUTION OF THE CONCILIATION COMMISSION

Article 29

1. The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.
2.
 - (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree,
 - (b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article 31

1. Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.
2. Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3: CONCILIATION PROCEEDINGS

Article 32

1. The Commission shall be the judge of its own competence.

2. Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

1. It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.
2. If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV: ARBITRATION

SECTION 1: REQUEST FOR ARBITRATION

Article 36

1. Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.
2. The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.
3. The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2: CONSTITUTION OF THE TRIBUNAL

Article 37

1. The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.
2.
 - (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree,
 - (b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

1. Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.
2. Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3: POWERS AND FUNCTIONS OF THE TRIBUNAL

Article 41

1. The Tribunal shall be the judge of its own competence.
2. Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

1. The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.
2. The Tribunal may not bring in a finding of non liquet on the ground of silence or obscurity of the law.
3. The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

- (a) call upon the parties to produce documents or other evidence, and
- (b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

1. Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.
2. If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

SECTION 4: THE AWARD

Article 48

1. The Tribunal shall decide questions by a majority of the votes of all its members.
2. The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.
3. The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.
4. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.
5. The Centre shall not publish the award without the consent of the parties.

Article 49

1. The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.
2. The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

SECTION 5: INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

Article 50

1. If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.
2. The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

1. Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.
2. The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.
3. The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.
4. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52

1. Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:
 - (a) that the Tribunal was not properly constituted;
 - (b) that the Tribunal has manifestly exceeded its powers;
 - (c) that there was corruption on the part of a member of the Tribunal;
 - (d) that there has been a serious departure from a fundamental rule of procedure; or
 - (e) that the award has failed to state the reasons on which it is based.
2. The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.
3. On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an ad hoc Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).
4. The provisions of Articles 41–45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply mutatis mutandis to proceedings before the Committee.
5. The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.
6. If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

SECTION 6: RECOGNITION AND ENFORCEMENT OF THE AWARD

Article 53

1. The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.
2. For the purposes of this Section, “award” shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

1. Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.
2. A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.
3. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

CHAPTER V: REPLACEMENT AND DISQUALIFICATION OF CONCILIATORS AND ARBITRATORS

Article 56

1. After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.
2. A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.
3. If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI: COST OF PROCEEDINGS

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

1. Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.
2. Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

1. In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.
2. In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII: PLACE OF PROCEEDINGS

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

- (a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or
- (b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII: DISPUTES BETWEEN CONTRACTING STATES

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX: AMENDMENT

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

1. If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.
2. No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X: FINAL PROVISIONS

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.
2. This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depositary shall notify all signatory States of the following:

- (a) signatures in accordance with Article 67;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;
- (c) the date on which this Convention enters into force in accordance with Article 68;
- (d) exclusions from territorial application pursuant to Article 70;
- (e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and
- (f) denunciations in accordance with Article 71.

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

CHAPTER TWENTY-TWO

Convention on Transit Trade of Land-locked States

New York, NY, 8 July 1965

INTRODUCTION

Article 55 of the UN Charter recognizes that, in order to promote the overriding objective of world peace, obstacles to regular trade must be removed. More specifically, disadvantages to the economic progress of any member state or states must be dealt with, and this is the fundamental basis for the Convention on Transit Trade of Land-locked States. The Convention defines landlocked countries as countries with no sea coast. There are about two dozen countries in the world that have no direct access to a sea coast. Countries like the Democratic Republic of the Congo (DRC—formerly Zaire), which have a very small strip of sea coast, do not qualify as landlocked, although in some cases it may be more efficient to transport the bulk of the trade of such countries via the coast of neighbouring countries.

Existing customary international law already recognized the position of landlocked states and accorded them equal access to the sea. For example, the high seas are open to all countries, irrespective of location. Beyond that, landlocked states are to have agreements with the states situated between themselves and the sea (or, in a regional context, multilateral agreement) on free transit of trade. Additionally, ships flying the flag of the landlocked state must be accorded treatment no less than those accorded that of the coastal state. All this must be done on the basis of reciprocity and in accordance with international law, including maritime law. No customs duties should be levied on goods in transit. Taxes or charges on the mode of transport of transit goods should not be higher than those of the transit country. Charges based solely on the costs of supervision and administration of the transit traffic may be levied.

In order not to complicate the operation of this Convention and more general principles and rules of international trade, the rule or principle of most favoured nation (MFN) is excluded from this Convention. This appears inconsistent with article 2 of the Convention, which prohibits ‘discrimination...based on the place of origin, departure, entry, exit destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used’. At the same time, future agreements on matters relating to transit trade

should not be less favourable or inconsistent with the principles established for transit trade under the Convention and general international law. The application of the more established and generalized MFN principle would have eased the tediousness of the non-discriminatory provisions, but its exclusion could be justified on the grounds that the circumstances of various landlocked states may differ considerably and the blanket application of the MFN principle would create significant burdens on the transit and coastal states.

The coverage of the Convention begins from the origin of the traffic to its final destination, and where the origin or termination is located in a landlocked country and the traffic or part thereof has to go through another country or countries to the coast. This covers warehousing, transshipment, breaking bulk, assembly, reassembly and changes in the mode of transport for the purposes of completing the transit trade. This does not impose any obligation whatsoever on the transit state or on any contracting state to build or permit the construction of permanent facilities for the smooth operation of the transit trade. The construction of temporary facilities may, however, be inevitable for the warehousing, assembly, etc., of the transit goods. The sovereignty of the state of transit over its territory is not in any way undermined. It has the right to ensure that the unrestrained transit does not infringe or adversely affect its legitimate interests. Contracting states are not bound to admit for transit persons who are forbidden from entry into its territory nor to allow goods prohibited on grounds of public health, security, etc. On war, the Convention leaves the existing law and principles unaffected, except that the Convention remains in force even at such a time.

The Convention came into force on 9 June 1967. By 2004 there were 27 signatories and 37 parties to the treaty.

CONVENTION ON TRANSIT TRADE OF LAND-LOCKED STATES*

PREAMBLE

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECALLING that Article 55 of its Charter requires the United Nations to promote conditions of economic progress and solutions of international economic problems,

NOTING General Assembly resolution 1028(XI) on the land-locked countries and the expansion of international trade which, "recognizing the need of land-locked countries for adequate transit facilities in promoting international trade", invited "the Governments of Member States to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries",

RECALLING article 2 of the Convention on the High Seas which states that the high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty and article 3 of the said Convention which states:

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated

between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

- (a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and
- (b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.”

REAFFIRMING the following principles adopted by the United Nations Conference on Trade and Development with the understanding that these principles are interrelated and each principle should be construed in the context of the other principles:

PRINCIPLE I

The recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development.

PRINCIPLE II

In territorial and on internal waters, vessels flying the flag of land-locked countries should have identical rights and enjoy treatment identical to that enjoyed by vessels flying the flag of coastal States other than the territorial State.

PRINCIPLE III

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall by common agreement with the latter and in conformity with existing international conventions accord to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to sea ports and the use of such ports.

PRINCIPLE IV

In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and international trade in all circumstances and for every type of goods.

Goods in transit should not be subject to any customs duty.

Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

PRINCIPLE V

The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

PRINCIPLE VI

In order to accelerate the evolution of a universal approach to the solution of the special and particular problems of trade and development of land-locked countries in the different geographical areas, the conclusion of regional and other international agreements in this regard should be encouraged by all States.

PRINCIPLE VII

The facilities and special rights accorded to land-locked countries in view of their special geographical position are excluded from the operation of the most-favoured-nation clause.

PRINCIPLE VIII

The principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems, nor shall they raise an obstacle as regards the conclusions of such agreements in the future, provided that the latter do not establish a regime which is less favourable than or opposed to the above-mentioned provisions.

HAVE AGREED as follows:

ARTICLE 1 DEFINITIONS

For the purpose of this Convention,

- (a) the term "land-locked State" means any Contracting State which has no sea-coast;
- (b) the term "traffic in transit" means the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage. The trans-shipment, warehousing, breaking bulk, and change in the mode of transport of such goods as well as the assembly, disassembly or reassembly of machinery and bulky goods shall not render the passage of goods outside the definition of "traffic in transit" provided that any such operation is undertaken solely for the convenience of transportation. Nothing in this paragraph shall be construed as imposing an obligation on any Contracting State to establish or

permit the establishment of permanent facilities on its territory for such assembly, disassembly or reassembly;

(c) the term “transit State” means any Contracting State with or without a sea-coast, situated between a land-locked State and the sea, through whose territory “traffic in transit” passes;

(d) the term “means of transport” includes:

- i. any railway stock, seagoing and river vessels and road vehicles;
- ii. where the local situation so requires porters and pack animals;

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

- iii. if agreed upon by the Contracting States concerned, other means of transport and pipelines and gas lines when they are used for traffic in transit within the meaning of this article.

ARTICLE 2 FREEDOM OF TRANSIT

1. Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned. Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used.
2. The rules governing the use of means of transport, when they pass across part or the whole of the territory of another Contracting State, shall be established by common agreement among the Contracting States concerned, with due regard to the multilateral international conventions to which these States are parties.
3. Each Contracting State shall authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit.
4. The Contracting States shall permit the passage of traffic in transit across their territorial waters in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

ARTICLE 3 CUSTOMS DUTIES AND SPECIAL TRANSIT DUES

Traffic in transit shall not be subjected by any authority within the transit State to customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit. Nevertheless on such traffic in transit there may be levied charges intended solely to defray expenses of supervision and administration

entailed by such transit. The rate of any such charges must correspond as nearly as possible with the expenses they are intended to cover and, subject to that condition, the charges must be imposed in conformity with the requirement of non-discrimination laid down in article 2, paragraph 1.

ARTICLE 4 MEANS OF TRANSPORT AND TARIFFS

1. The Contracting States undertake to provide, subject to availability, at the points of entry and exit, and as required at points of trans-shipment, adequate means of transport and handling equipment for the movement of traffic in transit without unnecessary delay.
2. The Contracting States undertake to apply to traffic in transit, using facilities operated or administered by the State, tariffs or charges which, having regard to the conditions of the traffic and to considerations of commercial competition, are reasonable as regards both their rates and the method of their application. These tariffs or charges shall be so fixed as to facilitate traffic in transit as much as possible, and shall not be higher than the tariffs or charges applied by Contracting States for the transport through their territory of goods of countries with access to the sea. The provisions of this paragraph shall also extend to the tariffs and charges applicable to traffic in transit using facilities operated or administered by firms or individuals, in cases in which the tariffs or charges are fixed or subject to control by the Contracting State. The term “facilities” used in this paragraph shall comprise means of transport, port installations and routes for the use of which tariffs or charges are levied.
3. Any haulage service established as a monopoly on waterways used for transit must be so organized as not to hinder the transit of vessels.
4. The provisions of this article must be applied under the conditions of non-discrimination laid down in article 2, paragraph 1.

ARTICLE 5 METHODS AND DOCUMENTATION IN REGARD TO CUSTOMS, TRANSPORT, ETC.

1. The Contracting States shall apply administrative and customs measures permitting the carrying out of free, uninterrupted and continuous traffic in transit. When necessary, they should undertake negotiations to agree on measures that ensure and facilitate the said transit.
2. The Contracting States undertake to use simplified documentation and expeditious methods in regard to customs, transport and other administrative procedures relating to traffic in transit for the whole transit journey on their territory, including any transshipment, warehousing, breaking bulk, and changes in the mode of transport as may take place in the course of such journey.

ARTICLE 6 STORAGE OF GOODS IN TRANSIT

1. The conditions of storage of goods in transit at the points of entry and exit, and at intermediate stages in the transit State may be established by agreement between the

- States concerned. The transit States shall grant conditions of storage at least as favourable as those granted to goods coming from or going to their own countries.
2. The tariffs and charges shall be established in accordance with article 4.

ARTICLE 7 DELAYS OR DIFFICULTIES IN TRAFFIC IN TRANSIT

1. Except in cases of force majeure all measures shall be taken by Contracting States to avoid delays in or restrictions on traffic in transit.
2. Should delays or other difficulties occur in traffic in transit, the competent authorities of the transit State or States and of the land-locked State shall co-operate towards their expeditious elimination.

ARTICLE 8 FREE ZONES OR OTHER CUSTOMS FACILITIES

1. For convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.
2. Facilities of this nature may also be provided for the benefit of land-locked States in other transit States which have no sea coast or seaports.

ARTICLE 9 PROVISION OF GREATER FACILITIES

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in the Convention and which under conditions consistent with its principles, are agreed between Contracting States or granted by a Contracting State. The Convention also does not preclude such grant of greater facilities in the future.

ARTICLE 10 RELATION TO MOST-FAVOURED-NATION CLAUSE

1. The Contracting States agree that the facilities and special rights accorded by this Convention to land-locked States in view of their special geographical position are excluded from the operation of the most-favoured-nation clause. A land-locked State which is not a Party to this Convention may claim the facilities and special rights accorded to land-locked States under this Convention only on the basis of the most-favoured-nation clause of a treaty between that land-locked State and the Contracting State granting such facilities and special rights.
2. If a Contracting State grants to a land-locked State facilities or special rights greater than those provided for in this Convention, such facilities or special rights may be limited to that land-locked State, except in so far as the withholding of such greater facilities or special rights from any other land-locked State contravenes the most-favoured-nation provision of a treaty between such other land-locked State and the Contracting State granting such facilities or special rights.

ARTICLE 11 EXCEPTIONS TO CONVENTION ON GROUNDS OF PUBLIC HEALTH, SECURITY, AND PROTECTION OF INTELLECTUAL PROPERTY

1. No Contracting State shall be bound by this Convention to afford transit to persons whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public morals, public health or security, or as a precaution against diseases of animals or plants or against pests.
2. Each Contracting State shall be entitled to take reasonable precautions and measures to ensure that persons and goods, particularly goods which are the subject of a monopoly, are really in transit, and that the means of transport are really used for the passage of such goods, as well as to protect the safety of the routes and means of communication.
3. Nothing in this Convention shall affect the measures which a Contracting State may be called upon to take in pursuance of provisions in a general international convention, whether of a world-wide or regional character, to which it is a party, whether such convention was already concluded on the date of this Convention or is concluded later, when such provisions relate:
 - (a) to export or import or transit of particular kinds of articles such as narcotics, or other dangerous drugs, or arms; or
 - (b) to protection of industrial, literary or artistic property, or protection of trade names, and indications of source or appellations of origin, and the suppression of unfair competition.
4. Nothing in this Convention shall prevent any Contracting State from taking any action necessary for the protection of its essential security interests.

ARTICLE 12 EXCEPTIONS IN CASE OF EMERGENCY

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency endangering its political existence or its safety may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this Convention on the understanding that the principle of freedom of transit shall be observed to the utmost possible extent during such a period.

ARTICLE 13 APPLICATION OF THE CONVENTION IN TIME OF WAR

This Convention does not prescribe the rights and duties of belligerents and neutrals in time of war. The Convention shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 14 OBLIGATIONS UNDER THE CONVENTION AND RIGHTS AND DUTIES OF UNITED NATIONS MEMBERS

This Convention does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the United Nations.

ARTICLE 15 RECIPROCITY

The provisions of this Convention shall be applied on a basis of reciprocity.

ARTICLE 16 SETTLEMENT OF DISPUTES

1. Any dispute which may arise with respect to the interpretation or application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement within a period of nine months shall, at the request of either party, be settled by arbitration. The arbitration commission shall be composed of three members. Each party to the dispute shall appoint one member to the commission, while the third member, who shall be the Chairman, shall be chosen in common agreement between the parties. If the parties fail to agree on the designation of the third member within a period of three months, the third member shall be appointed by the President of the International Court of Justice. In case any of the parties fail to make an appointment within a period of three months the President of the International Court of Justice shall fill the remaining vacancy or vacancies.
2. The arbitration commission shall decide on the matters placed before it by simple majority and its decisions shall be binding on the parties.
3. Arbitration commissions or other international bodies charged with settlement of disputes under this Convention shall inform, through the Secretary-General of the United Nations, the other Contracting States of the existence and nature of disputes and of the terms of their settlement.

ARTICLE 17 SIGNATURE

The present Convention shall be open until 31 December 1965 for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

ARTICLE 18 RATIFICATION

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 19 ACCESSION

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 17. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 20 ENTRY INTO FORCE

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the instruments of ratification or accession of at least two land-locked States and two transit States having a sea-coast.
2. For each State ratifying or acceding to the Convention after the deposit of the instruments of ratification or accession necessary for the entry into force of this Convention in accordance with paragraph 1 of this article, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

ARTICLE 21 REVISION

At the request of one third of the Contracting States, and with the concurrence of the majority of the Contracting States, the Secretary-General of the United Nations shall convene a conference with a view to the revision of this Convention

ARTICLE 22 NOTIFICATIONS BY THE SECRETARY-GENERAL

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 17;

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 17, 18 and 19;
- (b) of the date on which the present Convention will enter into force, in accordance with article 20;
- (c) of requests for revision, in accordance with article 21.

ARTICLE 23 AUTHENTIC TEXTS

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 17.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at the Headquarters of the United Nations, New York, this eighth day of July, one thousand nine hundred and sixty-five.

CHAPTER TWENTY-THREE

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

The Hague, 15 November 1965

INTRODUCTION

The existence of treaties, international arrangements and international organizations for handling criminal investigations and related matters is not matched by similar facilities in civil and commercial matters. This is what the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters and the related Convention on Taking Evidence Abroad in Civil and Commercial Matters seek to do. Any time that there is reason to transmit judicial or extra-judicial documentation to be served in a country other than where the proceedings are taking place, the Convention can be relied upon, provided the countries involved are parties.

The Convention relies a lot on the establishment and functioning of a central authority. This authority is the terminus for the receipt of requests for service from contracting states and is also the serving or transmitting authority. For the document to be served to the addressee, it must comply with the terms of this Convention. The standard format or terms must be written in English or French, but must, where necessary, be translated into the official language of the state addressed. No fee payment or reimbursement of taxes or other costs are due to the state addressed. However, the person who applied for the service in the first place must pay the costs of employing a judicial officer for the purpose. The particular method of service must be consistent with the law of the state addressed. The service may, therefore, be challenged if the method of service prescribed by the requesting state does not conform to the law of the state addressed. After service is effected, a certificate must be prepared by the central or judicial authority or must be countersigned by one of the two institutions detailing the method, the place and the date of service, as well as the identity of the person to whom the document was delivered. A state party may refuse to follow a request for service only if compliance with that request would compromise its sovereignty or national security. Exclusivity of jurisdiction on the substance of the request for service is not a basis for refusing to comply with the request.

Apart from using the central authority to effect service, each contracting state is free to use its diplomatic or consular agents to arrange service of judicial or extra-judicial

documents on persons in foreign countries, especially where there would be no need for compulsion or force in the service of the documents. The use of postal services and the judicial or other competent agencies of officers of the state of destination may also be used to effect service, provided that the state of destination has no objections. Furthermore, two or more states are permitted to have direct arrangements that may not rely on the agencies prescribed in this Convention for the service of civil and commercial documents.

Judgments in default may be rendered in cases where the documents concerning the action have been served under the law of the state of destination and where the object of the service resides and if the service was done in good time. At any rate, a minimum of six months must elapse before the default judgment. The defendant may be allowed to appeal the default judgment, even if out of time he establishes that he did not in good faith, and without his fault, have knowledge of the document in sufficient time to defend or have the knowledge of the default judgment in order to appeal. There must be *prima facie* defence to the case on the merits. The time allowed for appeals against default judgments is to be set by individual countries, but the minimum is set at one year by the Convention. Cases regarding capacity of persons are not covered by the default judgment provisions.

The Convention came into force on 10 November 1969. It is a product of the process known as the Hague Conference on Private International Law.

CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS*

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

DESIRING to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

DESIRING to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

HAVE RESOLVED to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extra-judicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I: JUDICIAL DOCUMENTS

Article 2

Each contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either:

- (a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
- (b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to subparagraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose.

Each contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with:

- (a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
- (b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- (c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by:

- (a) the employment of a judicial officer or of a person competent under the law of the State of destination,
- (b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter

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of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that:

- (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- (a) the document was transmitted by one of the methods provided for in this Convention,
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled-

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- (b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II: EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a contracting State may be transmitted for the purpose of service in another contracting State by the methods and under the provisions of the present Convention.

CHAPTER III: GENERAL CLAUSES

Article 18

Each contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more contracting States to dispense with:

- (a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
- (b) the language requirements of the third paragraph of Article 5 and Article 7,
- (c) the provisions of the fourth paragraph of Article 5,
- (d) the provisions of the second paragraph of Article 12.

Article 21

Each contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following:

- (a) the designation of authorities, pursuant to Articles 2 and 18,
- (b) the designation of the authority competent to complete the certificate pursuant to Article 6,
- (c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each contracting State shall similarly inform the Ministry, where appropriate, of:

- (a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,
- (b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,
- (c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17 July 1905 and on 1 March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of Article 23 of the Convention on Civil Procedure signed at The Hague on 17 July 1905 or of Article 24 of the Convention on Civil Procedure signed at The Hague on 1 March 1954.

These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in

accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following-

- (a) the signatures and ratifications referred to in Article 26;
- (b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
- (c) the accessions referred to in Article 28 and the dates on which they take effect;
- (d) the extensions referred to in Article 29 and the dates on which they take effect;
- (e) the designations, oppositions and declarations referred to in Article 21;
- (f) the denunciations referred to in the third paragraph of Article 30.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

[The Annex to the Convention, on Forms, is not reproduced here.]

CHAPTER TWENTY-FOUR

Agreement Establishing the Asian Development Bank

Manila, 4 December 1965

INTRODUCTION

This Agreement was formulated and signed at about the same time as that which established the African Development Bank (see above). Its objective is to foster economic development and co-operation in Asia and the Far East. The Bank is to promote investment in both public and private sectors, to provide technical assistance for the preparation, evaluation, financing and execution of development projects and programmes, and to assist members in the development and co-ordination of their economic policies, in ways that make for efficient utilization of resources and promote regional and foreign trade.

Membership of the Asian Development Bank is open to members and associate members of the UN Economic Commission for Asia and the Far East and to other regional countries and to non-regional developed countries that are members of the UN or its specialized agencies. This is an interesting feature that is not seen in the Agreement establishing the African Development Bank. In many ways the provision in the African bank's Agreement allowing for non-regional members may be the same as that in the Asian bank's allowing for UN members, except that the Asian Agreement on the Asian Development Bank is explicit that developed-country members of the UN are eligible for membership of the Asian Development Bank.

As with the African Development Bank, the Asian Development Bank has a Board of Governors made of representatives of member countries at the apex of its organization. All the powers of the Bank are vested in the Board of Governors, which can delegate its powers to the Board of Directors, except for the power to admit or suspend a member, any adjustments in the authorized capital stock, the election of directors, agreements for co-operation with other international organizations, approval of the accounting statements of the Bank, determining the reserves, the distribution of net profits, any amendments to the Agreement and the winding up of the activities of the Bank. The Board of Directors is next in hierarchy. It is an elected body of 10. Seven of the directors are elected by the governors representing the regional members and three by the governors representing the non-regional members. Directors hold office for two years, but are eligible for re-

election. The Board of Directors is responsible for the general operations of the Bank. In accordance with general directions given by the Board of Governors, the Board of Directors takes decisions on loans, guarantees, investments in equity capital, borrowings, technical assistance and other activities of the Bank. It also submits the Bank's annual budget and statement of accounts to the Board of Governors for approval. Voting by the directors is based on the number of votes that led to the particular director's election. That, in turn, is based on the number of shares of the capital stock held by the member(s) who elected the said director. Each director's votes are cast as a unit. Next after the Board of Directors is the President of the Bank. Elected by the Board of Governors, the President serves for renewable periods of five years each. The President chairs the Board of Directors, but has no vote except a possible casting vote in an impasse. He is the chief of staff of the Bank and is responsible, under the direction of the directors, for the current operations of the Bank. He is responsible for staff appointments and tenure.

The operations of the Bank are divided between ordinary and special activities. Ordinary operations are financed from the ordinary capital resources, while special operations are financed from the Special Funds created under article 20 of the Agreement. The two forms of resources and the records thus generated must be kept separate at all times. The Bank is empowered to grant loans or to participate in loan arrangements for members or agency in a member state, or to invest in equity capital of an enterprise or entity in a member state. It may also guarantee loans, either as a primary or a secondary obligor. The money is generated from its subscribed capital, borrowed from international capital markets or coming as yields from its own investments. The total amount outstanding on loans, equity commitments and guarantees made by the Bank in its ordinary operations is not to exceed the total amount of its unimpaired subscribed capital, reserves and surplus. In other words, the Bank must be able to balance its books all the time. As with its African counterpart, the Asian Development Bank is to follow guidelines that make for efficient and sound commercial operations, while assisting the rapid development of the members and the region.

The Agreement came into force on 22 August 1966, when it had 31 members. By 2004 the Bank had 63 members, including 18 from outside the Asia-Pacific region. Ownership and voting rights vary, from the 0.593% of total votes for 10 of the non-regional members or the 3.19% for Tuvalu, to the 12.942% of the USA (non-regional) and of Japan (regional).

AGREEMENT ESTABLISHING THE ASIAN DEVELOPMENT BANK*

THE CONTRACTING PARTIES

CONSIDERING the importance of closer economic cooperation as a means for achieving the most efficient utilization of resources and for accelerating the economic development of Asia and the Far East;

REALIZING the significance of making additional development financing available for the region by mobilizing such funds and other resources both from within and outside the region, and by seeking to create and foster conditions conducive to increased domestic savings and greater flow of development funds into the region;

RECOGNIZING the desirability of promoting the harmonious growth of the economies of the region and the expansion of external trade of member countries;

CONVINCED that the establishment of a financial institution that is Asian in its basic character would serve these ends;

HAVE AGREED to establish hereby the Asian Development Bank (hereinafter called the “Bank”) which shall operate in accordance with the following

ARTICLES OF AGREEMENT

CHAPTER I: PURPOSE, FUNCTIONS AND MEMBERSHIP

Article 1 Purpose

The purpose of the Bank shall be to foster economic growth and cooperation in the region of Asia and the Far East (hereinafter referred to as the “region”) and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually. Wherever used in this Agreement, the terms “region of Asia and the Far East” and “region” shall comprise the territories of Asia and the Far East included in the Terms of Reference of the United Nations Economic Commission for Asia and the Far East.

Article 2 Functions

To fulfil its purpose, the Bank shall have the following functions:

- (i) to promote investment in the region of public and private capital for development purposes;
- (ii) to utilize the resources at its disposal for financing development of the developing member countries in the region, giving priority to those regional, sub-regional as well as national projects and programs which will contribute most effectively to the harmonious economic growth of the region as a whole, and having special regard to the needs of the smaller or less developed member countries in the region;
- (iii) to meet requests from members in the region to assist them in the coordination of their development policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, in particular, intra-regional trade;
- (iv) to provide technical assistance for the preparation, financing and execution of development projects and programs, including the formulation of specific project proposals;
- (v) to cooperate, in such manner as the Bank may deem appropriate, within the terms of this Agreement, with the United Nations, its organs and subsidiary bodies including, in particular, the Economic Commission for Asia and the Far East, and with public international organizations and other international institutions, as well as national entities whether public or private, which are concerned with the investment of development funds in the region, and to interest such institutions and entities in new opportunities for investment and assistance; and

- (vi) to undertake such other activities and provide such other services as may advance its purpose.

Article 3 Membership

1. Membership in the Bank shall be open to:
 - (i) members and associate members of the United Nations Economic Commission for Asia and the Far East; and
 - (ii) other regional countries and non-regional developed countries which are members of the United Nations or of any of its specialized agencies.
2. Countries eligible for membership under paragraph 1 of this Article which do not become members in accordance with Article 64 of this Agreement may be admitted, under such terms and conditions as the Bank may determine, to membership in the Bank upon the affirmative vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
3. In the case of associate members of the United Nations Economic Commission for Asia and the Far East which are not responsible for the conduct of their international relations, application for membership in the Bank shall be presented by the member of the Bank responsible for the international relations of the applicant and accompanied by an undertaking by such member that, until the applicant itself assumes such responsibility, the member shall be responsible for all obligations that may be incurred by the applicant by reason of admission to membership in the Bank and enjoyment of the benefits of such membership. "Country" as used in this Agreement shall include a territory which is an associate member of the United Nations Economic Commission for Asia and the Far East.

CHAPTER II: CAPITAL

Article 4 Authorized capital

1. The authorized capital stock of the Bank shall be one billion dollars (\$1,000,000,000) in terms of United States dollars of the weight and fineness in effect on 31 January 1966. The dollar wherever referred to in this Agreement shall be understood as being a United States dollar of the above value. The authorized capital stock shall be divided into one hundred thousand (100,000) shares having a par value of ten thousand dollars (\$10,000) each, which shall be available for subscription only by members in accordance with the provisions of Article 5 of this Agreement.
2. The original authorized capital stock shall be divided into paid-in shares and callable shares. Shares having an aggregate par value of five hundred million dollars (\$500,000,000) shall be paid-in shares, and shares having an aggregate par value of five hundred million dollars (\$500,000,000) shall be callable shares.
3. The authorized capital stock of the Bank may be increased by the Board of Governors, at such time and under such terms and conditions as it may deem advisable, by a vote

of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

Article 5 Subscription of shares

1. Each member shall subscribe to shares of the capital stock of the Bank. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in equal parts. The initial number of shares to be subscribed by countries which become members in accordance with Article 64 of this Agreement shall be that set forth in Annex A hereof. The initial number of shares to be subscribed by countries which are admitted to

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membership in accordance with paragraph 2 of Article 3 of this Agreement shall be determined by the Board of Governors; provided, however, that no such subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below sixty (60) percent of the total subscribed capital stock.

2. The Board of Governors shall at intervals of not less than five (5) years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such terms and conditions as the Board of Governors shall determine, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total subscribed capital stock immediately prior to such increase; provided, however, that the foregoing provision shall not apply in respect of any increase or portion of an increase in the authorized capital stock intended solely to give effect to determinations of the Board of Governors under paragraphs 1 and 3 of this Article. No member shall be obligated to subscribe to any part of an increase of capital stock.
3. The Board of Governors may, at the request of a member, increase the subscription of such member on such terms and conditions as the Board may determine; provided, however, that no such increase in the subscription of any member shall be authorized which would have the effect of reducing the percentage of capital stock held by the regional members below sixty (60) percent of the total subscribed capital stock. The Board of Governors shall pay special regard to the request of any regional member having less than six (6) percent of the subscribed capital stock to increase its proportionate share thereof.
4. Shares of stock initially subscribed by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors by a vote of a majority of the total number of Governors, representing a majority of the total voting power of the members, decides in special circumstances to issue them on other terms.
5. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.

6. The liability of the members on shares shall be limited to the unpaid portion or their issue price.
7. No member shall be liable, by reason of its membership, for obligations of the Bank.

Article 6 Payment of subscriptions

1. Payment of the amount initially subscribed by each Signatory to this Agreement which becomes a member in accordance with Article 64 to the paid-in capital stock of the Bank shall be made in five (5) instalments, of twenty (20) percent each of such amount. The first instalment shall be paid by each member within thirty (30) days after entry into force of this Agreement, or on or before the date of deposit on its behalf of its instrument of ratification or acceptance in accordance with paragraph 1 of Article 64, whichever is later. The second instalment shall become due one (1) year from the entry into force of this Agreement. The remaining three (3) instalments shall each become due successively one (1) year from the date on which the preceding instalment becomes due.
2. Of each instalment for the payment of initial subscriptions to the original paid-in capital stock:
 - a. fifty (50) percent shall be paid in gold or convertible currency; and
 - b. fifty (50) percent in the currency of the member.
3. The Bank shall accept from any member promissory notes or other obligations issued by the Government of the member, or by the depository designated by such member, in lieu of the amount to be paid in the currency of the member pursuant to paragraph 2(b) of this Article, provided such currency is not required by the Bank for the conduct of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing, and payable to the Bank at par value upon demand. Subject to the provisions of paragraph 2(ii) of Article 24, demands upon such notes or obligations payable in convertible currencies shall, over reasonable periods of time, be uniform in percentage on all such notes or obligations.
4. Each payment of a member in its own currency under paragraph 2(b) of this Article shall be in such amount as the Bank, after such consultation with the International Monetary Fund as the Bank may consider necessary and utilizing the par value established with the International Monetary Fund, if any, determines to be equivalent to the full value in terms of dollars of the portion of the subscription being paid. The initial payment shall be in such amount as the member considers appropriate hereunder but shall be subject to such adjustment, to be effected within ninety (90) days of the date on which such payment was due, as the Bank shall determine to be necessary to constitute the full dollar equivalent of such payment.
5. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its obligations incurred under sub-paragraphs (ii) and (iv) of Article 11 on borrowings of funds for inclusion in its ordinary capital resources or on guarantees chargeable to such resources.
6. In the event of the call referred to in paragraph 5 of this Article, payment may be made at the option of the member in gold, convertible currency or in the currency required

to discharge the obligations of the Bank for the purpose of which the call is made.
Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.

7. The Bank shall determine the place for any payment under this Article, provided that, until the inaugural meeting of its Board of Governors, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the Secretary-General of the United Nations, as Trustee for the Bank.

Article 7 Ordinary capital resources

As used in this Agreement, the term “ordinary capital resources” of the Bank shall include the following:

- (i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed pursuant to Article 5 of this Agreement, except such part thereof as may be set aside into one or more Special Funds in accordance with paragraph 1(i) of Article 19 of this Agreement;
- (ii) funds raised by borrowings of the Bank by virtue of powers conferred by subparagraph (i) of Article 21 of this Agreement, to which the commitment to calls provided for in paragraph 5 of Article 6 of this Agreement is applicable;
- (iii) funds received in repayment of loans or guarantees made with the resources indicated in (i) and (ii) of this Article;
- (iv) income derived from loans made from the aforementioned funds or from guarantees to which the commitment to calls set forth in paragraph 5 of Article 6 of this Agreement is applicable; and
- (v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 20 of this Agreement.

CHAPTER III: OPERATIONS

Article 8 Use of resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth respectively in Articles 1 and 2 of this Agreement.

Article 9 Ordinary and special operations

1. The operations of the Bank shall consist of ordinary operations and special operations.
2. Ordinary operations shall be those financed from the ordinary capital resources of the Bank.
3. Special operations shall be those financed from the Special Funds resources referred to in Article 20 of this Agreement.

Article 10 Separation of operations

1. The ordinary capital resources and the Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of

entirely separate from each other. The financial statements of the Bank shall show the ordinary operations and special operations separately.

2. The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of special operations or other activities for which Special Funds resources were originally used or committed.
3. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses appertaining directly to special operations shall be charged to the Special Funds resources. Any other expenses shall be charged as the Bank shall determine.

Article 11 Recipients and methods of operation

Subject to the conditions stipulated in this Agreement, the Bank may provide or facilitate financing to any member, or any agency, instrumentality or political subdivision thereof, or any entity or enterprise operating in the territory of a member, as well as to international or regional agencies or entities concerned with economic development of the region. The Bank may carry out its operations in any of the following ways:

- (i) by making or participating in direct loans with its unimpaired paid-in capital and, except as provided in Article 17 of this Agreement, with its reserves and undistributed surplus; or with the unimpaired Special Funds resources;
- (ii) by making or participating in direct loans with funds raised by the Bank in capital markets or borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources;
- (iii) by investment of funds referred to in (i) and (ii) of this Article in the equity capital of an institution or enterprise, provided no such investment shall be made until after the Board of Governors, by a vote of a majority of the total number of Governors, representing a majority of the total voting power of the members, shall have determined that the Bank is in a position to commence such type of operations; or
- (iv) by guaranteeing, whether as primary or secondary obligor, in whole or in part, loans for economic development participated in by the Bank.

Article 12 Limitations on ordinary operations

1. The total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources, exclusive of the special reserve provided for by Article 17 of this Agreement and other reserves not available for ordinary operations.
2. In the case of loans made with funds borrowed by the Bank to which the commitment to calls provided for by paragraph 5 of Article 6 of this Agreement is applicable, the total amount of principal outstanding and payable to the Bank in a specific currency shall not at any time exceed the total amount of the principal of outstanding borrowings by the Bank that are payable in the same currency.
3. In the case of funds invested in equity capital out of the ordinary capital resources of the Bank, the total amount invested shall not exceed ten (10) percent of the aggregate amount of the unimpaired paid-in capital stock of the Bank actually paid up at any

given time together with the reserves and surplus included its ordinary capital resources, exclusive of the special reserve provided for in Article 17 of this Agreement.

4. The amount of any equity investment shall not exceed such percentage of the equity capital of the entity or enterprise concerned as the Board of Directors shall in each specific case determine to be appropriate. The Bank shall not seek to obtain by such an investment a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Bank.

Article 13 Provision of currencies for direct loans

In making direct loans or participating in them, the Bank may provide financing in any of the following ways:

- (i) by furnishing the borrower with currencies other than the currency of the member in whose territory the project concerned is to be carried out (the latter currency hereinafter to be called “local currency”), which are necessary to meet the foreign exchange costs of such project; or
- (ii) by providing financing to meet local expenditures on the project concerned, where it can do so by supplying local currency without selling any of its holdings in gold or convertible currencies. In special cases when, in the opinion of the Bank, the project causes or is likely to cause undue loss or strain on the balance of payments of the member in whose territory the project is to be carried out, the financing granted by the Bank to meet local expenditures may be provided in currencies other than that of such member; in such cases, the amount of the financing granted by the Bank for this purpose shall not exceed a reasonable portion of the total local expenditure incurred by the borrower.

Article 14 Operating principles

The operations of the Bank shall be conducted in accordance with the following principles:

- (i) The operations of the Bank shall provide principally for the financing of specific projects, including those forming part of a national, sub-regional or regional development program. They may, however, include loans to, or guarantees of loans made to, national development banks or other suitable entities, in order that the latter may finance specific development projects whose individual financing requirements are not, in the opinion of the Bank, large enough to warrant the direct supervision of the Bank;
- (ii) In selecting suitable projects, the Bank shall always be guided by the provisions of sub-paragraph (ii) of Article 2 of this Agreement;
- (iii) The Bank shall not finance any undertaking in the territory of a member if that member objects to such financing;
- (iv) Before a loan is granted, the applicant shall have submitted an adequate loan proposal and the President of the Bank shall have presented to the Board of Directors a

written report regarding the proposal, together with his recommendations, on the basis of a staff study;

- (v) In considering an application for a loan or guarantee, the Bank shall pay due regard to the ability to the borrower to obtain financing or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors;
- (vi) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract;
- (vii) In making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Bank, appropriate for the loan concerned;
- (viii) In guaranteeing a loan made by other investors, or in under-writing the sale of securities, the Bank shall receive suitable compensation for its risk;
- (ix) The proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank or with Special Funds established by the Bank pursuant to paragraph 1(i) of Article 19, shall be used only for procurement in member countries of goods and services produced in member countries, except in any case in which the Board of Directors, by a vote of the Directors representing not less than two-thirds of the total voting power of the members, determines to permit procurement in a non-member country or of goods and services produced in a non-member country in special circumstances making such procurement appropriate, as in the case of a non-member country in which a significant amount of financing has been provided to the Bank;
- (x) In the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures in connexion with the project as they are actually incurred;
- (xi) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency;
- (xii) The Bank shall pay due regard to the desirability of avoiding a disproportionate amount of its resources being used for the benefit of any member;
- (xiii) The Bank shall seek to maintain reasonable diversification in its investments in equity capital; it shall not assume responsibility for managing any entity or enterprise in which it has an investment, except where necessary to safeguard its investments; and
- (xiv) The Bank shall be guided by sound banking principles in its operations.

Article 15 Terms and conditions for direct loans and guarantees

1. In the case of direct loans made or participated in or loans guaranteed by the Bank, the contract shall establish, in conformity with the operating principles set forth in Article 14 of this Agreement and subject to the other provisions of this Agreement, the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other charges, maturities, and dates of payment in

respect of the loan, or the fees and other charges in respect of the guarantee, respectively. In particular, the contract shall provide that, subject to paragraph 3 of this Article, all payments to the Bank under the contract shall be made in the currency loaned, unless, in the case of a direct loan made or a loan guaranteed as part of special operations with funds provided under paragraph 1(ii) of Article 19, the rules and regulations of the Bank provide otherwise. Guarantees by the Bank shall also provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

2. Where the recipient of loans or guarantees of loans is not itself a member, the Bank may, when it deems it advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.
3. The loan or guarantee contract shall expressly state the currency in which all payments to the Bank thereunder shall be made. At the option of the borrower, however, such payments may always be made in gold or convertible currency.

Article 16 Commission and fees

1. The Bank shall charge, in addition to interest, a commission on direct loans made or participated in as part of its ordinary operations. This commission, payable periodically, shall be computed on the amount outstanding on each loan or participation and shall be at the rate of not less than one (1) percent per annum, unless the Bank, after the first five (5) years of its operations, decides to reduce this minimum rate by a two-thirds majority of its members, representing not less than three-fourths of the total voting power of the members.
2. In guaranteeing a loan as part of its ordinary operations, the Bank shall charge a guarantee fee, at a rate determined by the Board of Directors, payable periodically on the amount of the loan outstanding.
3. Other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations shall be determined by the Board of Directors.

Article 17 Special reserve

The amount of commissions and guarantee fees received by the Bank pursuant to Article 16 of this Agreement shall be set aside as a special reserve which shall be kept for meeting liabilities of the Bank in accordance with Article 18 of this Agreement. The special reserve shall be held in such liquid form as the Board of Directors may decide.

Article 18 Methods of meeting liabilities of the Bank

1. In cases of default on loans made, participated in or guaranteed by the Bank in its ordinary operations, the Bank shall take such action as it deems appropriate with respect to modifying the terms of the loan, other than the currency of repayment.

2. The payments in discharge of the Bank's liabilities on borrowings or guarantees under sub-paragraphs (ii) and (iv) of Article 11 chargeable to the ordinary capital resources shall be charged:
 - (i) First, against the special reserve provided for in Article 17;
 - (ii) Then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.
3. Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Bank in its ordinary operations, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it, chargeable to its ordinary capital resources, the Bank may call an appropriate amount of the uncalled subscribed callable capital in accordance with paragraphs 6 and 7 of Article 6 of this Agreement.
4. In cases of default in respect of a loan made from borrowed funds or guaranteed by the Bank as part of its ordinary operations, the Bank may, if it believes that the default may be of long duration, call an additional amount of such callable capital not to exceed in any one (1) year one (1) percent of the total subscriptions of the members to such capital, for the following purposes:
 - (i) To redeem before maturity, or otherwise discharge, the Bank's liability on all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default; and
 - (ii) To repurchase, or otherwise discharge, the Bank's liability on all or part of its own outstanding borrowing.
5. If the Bank's subscribed callable capital stock shall be entirely called pursuant to paragraphs 3 and 4 of this Article, the Bank may, if necessary for the purposes specified in paragraph 3 of this Article, use or exchange the currency of any member without restriction, including any restriction imposed pursuant to paragraphs 2(i) and (ii) of Article 24.

Article 19 Special Funds

1. The Bank may:
 - (i) set aside, by a vote of two-thirds of the total number of Governors, representing at least three-fourths of the total voting power of the members, not more than ten (10) percent each of the portion of the unimpaired paid-in capital of the Bank paid by members pursuant to paragraph 2(a) of Article 6 and of the portion thereof paid pursuant to paragraph 2(b) of Article 6, and establish therewith one or more Special Funds; and
 - (ii) accept the administration of Special Funds which are designed to serve the purpose and come within the functions of the Bank.
2. Special Funds established by the Bank pursuant to paragraph 1(i) of this Article may be used to guarantee or make loans of high developmental priority, with longer maturities, longer deferred commencement of repayment and lower interest rates than

those established by the Bank for its ordinary operations. Such Funds may also be used on such other terms and conditions, not inconsistent with the applicable provisions of this Agreement nor with the character of such Funds as revolving funds, as the Bank in establishing such Funds may direct.

3. Special Funds accepted by the Bank under paragraph 1(ii) of this Article may be used in any manner and on any terms and conditions not inconsistent with the purpose of the Bank and with the agreement relating to such Funds.
4. The Bank shall adopt such special rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, excepting those provisions expressly applicable only to ordinary operations of the Bank.

Article 20 Special Funds resources

As used in this Agreement, the term “Special Funds resources” shall refer to the resources of any Special Fund and shall include:

- a. resources set aside from the paid-in capital to a Special Fund or otherwise initially contributed to any Special Fund;
- b. funds accepted by the Bank for inclusion in any Special Fund;
- c. funds repaid in respect of loans or guarantees financed from the resources of any Special Fund which, under the rules and regulations of the Bank governing that Special Fund, are received by such Special Fund;
- d. income derived from operations of the Bank in which any of the aforementioned resources or funds are used or committed if, under the rules and regulations of the Bank governing the Special Fund concerned, that income accrues to such Special Fund; and
- e. any other resources placed at the disposal of any Special Fund.

CHAPTER IV: BORROWING AND OTHER MISCELLANEOUS POWERS

Article 21 General powers

In addition to the powers specified elsewhere in this Agreement, the Bank shall have the power to:

- (i) borrow funds in member countries or elsewhere, and in this connexion to furnish such collateral or other security therefor as the Bank shall determine, provided always that:
 - a. before making a sale of its obligations in the territory of a country, the Bank shall have obtained its approval;
 - b. where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval;
 - c. the Bank shall obtain the approval of the countries referred to in sub-paragraphs (a) and (b) of this paragraph that the proceeds may be exchanged for the currency of any member without restriction; and

- d. before determining to sell its obligations in a particular country, the Bank shall consider the amount of previous borrowing, if any, in that country, the amount of previous borrowing in other countries, and the possible availability of funds in such other countries; and shall give due regard to the general principle that its borrowings should to the greatest extent possible be diversified as to country of borrowing;
- (ii) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any country in whose territory the securities are to be bought or sold;
- (iii) guarantee securities in which it has invested in order to facilitate their sale;
- (iv) underwrite, or participate in the underwriting of, securities issued by any entity or enterprise for purposes consistent with the purpose of the Bank;
- (v) invest funds, not needed in its operations, in the territories of members in such obligations of members or nationals thereof as it may determine, and invest funds held by the Bank for pensions or similar purposes in the territories of members in marketable securities issued by members or nationals thereof;
- (vi) provide technical advice and assistance which serve its purpose and come within its functions, and where expenditures incurred in furnishing such services are not reimbursable, charge the net income of the Bank therewith; in the first five (5) years of its operations, the Bank may use up to two (2) percent of its paid-in capital for furnishing such services on a nonreimbursable basis; and
- (vii) exercise such other powers and establish such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 22 Notice to be placed on securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall so state.

CHAPTER V: CURRENCIES

Article 23 Determination of convertibility

Whenever it shall become necessary under this Agreement to determine whether any currency is convertible, such determination shall be made by the Bank after consultation with the International Monetary Fund.

Article 24 Use of currencies

1. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of the following:

- (i) gold or convertible currencies received by the Bank in payment of subscriptions to its capital stock, other than that paid to the Bank by members pursuant to paragraph 2(b) of Article 6 and restricted pursuant to paragraphs 2(i) and (ii) of this Article;
 - (ii) currencies of members purchased with the gold or convertible currencies referred to in the preceding sub-paragraph;
 - (iii) currencies obtained by the Bank by borrowing, pursuant to sub-paragraph (i) of Article 21 of this Agreement, for inclusion in its ordinary capital resources;
 - (iv) gold or currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (i) to (iii) of this paragraph or in payment of fees in respect of guarantees made by the Bank; and
 - (v) currencies, other than the member's own currency, received by the member from the Bank in distribution of the net income of the Bank in accordance with Article 40 of this Agreement.
2. Members may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless:
- (i) a developing member country, after consultation with and subject to periodic review by the Bank, restricts in whole or in part the use of such currency to payments for goods or services produced and intended for use in its territory; or
 - (ii) any other member whose subscription has been determined in Part A of Annex A hereof and whose exports of industrial products do not represent a substantial proportion of its total exports, deposits with its instrument of ratification or acceptance a declaration that it desires the use of the portion of its subscription paid pursuant to paragraph 2(b) of Article 6 to be restricted, in whole or in part, to payments for goods or services produced in its territory: provided that such restrictions be subject to periodic review by and consultation with the Bank and that any purchases of goods or services in the territory of that member, subject to the usual consideration of competitive tendering, shall be first charged against the portion of its subscription paid pursuant to paragraph 2(b) of Article 6; or
 - (iii) such currency forms part of the Special Funds resources of the Bank available under paragraph 1(ii) of Article 19 and its use is subject to special rules and regulations.
3. Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization payments or anticipatory payments or for repurchasing in whole or in part the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources, provided, however, that until the Bank's subscribed callable capital stock has been entirely called, such holding or use shall be subject to any limitations imposed pursuant to paragraph 2(i) of this Article except in respect of obligations payable in the currency of the member concerned.
4. Gold or currencies held by the Bank shall not be used by the Bank to purchase other currencies of members or non-members except:

- (i) in order to meet its obligations in the ordinary course of its business; or
 - (ii) pursuant to a decision of the Board of Directors adopted by a vote of the Directors representing not less than two-thirds of the total voting power of the members.
5. Nothing herein contained shall prevent the Bank from using the currency of any member for administrative expenses incurred by the Bank in the territory of such member.

Article 25 Maintenance of value of the currency holdings of the Bank

1. Whenever (a) the par value in the International Monetary Fund of the currency of a member is reduced in terms of the dollar defined in Article 4 of this Agreement, or (b) in the opinion of the Bank, after consultation with the International Monetary Fund, the foreign exchange value of a member's currency has depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an additional amount of its currency required to maintain the value of all such currency held by the Bank, excepting (a) currency derived by the Bank from its borrowings and (b) unless otherwise provided in the agreement establishing such Funds, Special Funds resources accepted by the Bank under paragraph 1(ii) of Article 19.
2. Whenever (a) the par value in the International Monetary Fund of the currency of a member is increased in terms of the said dollar, or (b) in the opinion of the Bank, after consultation with the International Monetary Fund, the foreign exchange value of a member's currency has appreciated to a significant extent, the Bank shall pay to that member, within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank excepting (a) currency derived by the Bank from its borrowings, and (b) unless otherwise provided in the agreement establishing such Funds, Special Funds resources accepted by the Bank under paragraph 1(ii) of Article 19.
3. The Bank may waive the provisions of this Article when a uniform proportionate change in the par value of the currencies of all its members takes place.

CHAPTER VI: ORGANIZATION AND MANAGEMENT

Article 26 Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and such other officers and staff as may be considered necessary.

Article 27 Board of Governors: composition

1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one alternate. Each Governor and alternate shall serve at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. At its annual meeting, the Board shall designate one of the Governors as Chairman who shall hold office until the election of the next Chairman and the next annual meeting of the Board.

2. Governors and alternates shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 28 Board of Governors: powers

1. All the powers of the Bank shall be vested in the Board of Governors.
2. The Board of Governors may delegate to the Board of Directors any or all its powers, except the power to:
 - (i) admit new members and determine the conditions of their admission;
 - (ii) increase or decrease the authorized capital stock of the Bank;
 - (iii) suspend a member;
 - (iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
 - (v) authorize the conclusion of general agreements for cooperation with other international organizations;
 - (vi) elect the Directors and the President of the Bank;
 - (vii) determine the remuneration of the Directors and their alternates and the salary and other terms of the contract of service of the President;
 - (viii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;
 - (ix) determine the reserves and the distribution of the net profits of the Bank;
 - (x) amend this Agreement;
 - (xi) decide to terminate the operations of the Bank and to distribute its assets; and
 - (xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.
3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 2 of this Article.
4. For the purposes of this Agreement, the Board of Governors may, by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members, from time to time determine which countries or members of the Bank are to be regarded as developed or developing countries or members, taking into account appropriate economic considerations.

Article 29 Board of Governors: procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by five (5) members of the Bank.
2. A majority of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.
3. The Board of Governors may by regulation establish a procedure whereby the Board of Directors may, when the latter deems such action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

4. The Board of Governors, and the Board of Directors to the extent authorized, may establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

Article 30 Board of Directors: composition

1.

- (i) The Board of Directors shall be composed of ten (10) members who shall not be members of the Board of Governors, and of whom:

- a. seven (7) shall be elected by the Governors representing regional members; and
- b. three (3) by the Governors representing non-regional members.

Directors shall be persons of high competence in economic and financial matters and shall be elected in accordance with Annex B hereof.

- (ii) At the Second Annual Meeting of the Board of Governors after its inaugural meeting, the Board of Governors shall review the size and composition of the Board of Directors, and shall increase the number of Directors as appropriate, paying special regard to the desirability, in the circumstances at that time, of increasing representation in the Board of Directors of smaller less developed member countries. Decisions under this paragraph should be made by a vote of a majority of the total number of Governors, representing not less than two-thirds of the total voting power of the members.

2. Each Director shall appoint an alternate with full power to act for him when he is not present. Directors and alternates shall be nationals of member countries. No two or more Directors may be of the same nationality nor may any two or more alternates be of the same nationality. An alternate may participate in meetings of the Board but may vote only when he is acting in place of his principal.
3. Directors shall hold office for a term of two (2) years and may be re-elected. They shall continue in office until their successors shall have been chosen and qualified. If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his term, a successor shall be chosen in accordance with Annex B hereof, for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his term, a successor may similarly be chosen for the remainder of the term, by the Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the alternate of the former Director shall exercise the powers of the latter, except that of appointing an alternate.

Article 31 Board of Directors: powers

The Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by

this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (i) prepare the work of the Board of Governors;
- (ii) in conformity with the general directions of the Board of Governors, take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, furnishing of technical assistance and other operations of the Bank;
- (iii) submit the accounts for each financial year for approval of the Board of Governors at each annual meeting; and
- (iv) approve the budget of the Bank.

Article 32 Board of Directors: procedure

- 1. The Board of Directors shall normally function at the principal office of the Bank and shall meet as often as the business of the Bank may require.
- 2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds of the total voting power of the members.
- 3. The Board of Governors shall adopt regulations under which, if there is no Director of its nationality, a member may send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

Article 33 Voting

- 1. The total voting power of each member shall consist of the sum of its basic votes and proportional votes.
 - (i) The basic votes of each member shall consist of such number of votes as results from the equal distribution among all the members of twenty (20) percent of the aggregate sum of the basic votes and proportional votes of all the members.
 - (ii) The number of the proportional votes of each member shall be equal to the number of shares of the capital stock of the Bank held by that member.
- 2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power represented at the meeting.
- 3. In voting in the Board of Directors, each Director shall be entitled to cast the number of votes that counted towards his election which votes need not be cast as a unit. Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power represented at the meeting.

Article 34 The President

1. The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President of the Bank. He shall be a national of a regional member country. The President, while holding office, shall not be a Governor or a Director or an alternate for either.
2. The term of office of the President shall be five (5) years. He may be re-elected. He shall, however, cease to hold office when the Board of Governors so decides by a vote of two-thirds of the total number of Governors, representing not less than two-thirds of the total voting power of the members. If the office of the President for any reason becomes vacant more than one hundred and eighty (180) days before the end of his term, a successor shall be elected for the unexpired portion of such term by the Board of Governors in accordance with the provisions of paragraph 1 of this Article. If such office for any reason becomes vacant one hundred and eighty (180) days or less before the end of the term, a successor may similarly be elected for the unexpired portion of such term by the Board of Governors.
3. The President shall be Chairman of the Board of Directors but shall have no vote, except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.
4. The President shall be the legal representative of the Bank.
5. The President shall be chief of the staff of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank. He shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations adopted by the Board of Directors.
6. In appointing the officers and staff, the President shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of personnel on as wide a regional geographical basis as possible.

Article 35 Vice-President(s)

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. Vice-President(s) shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, the Vice-President or, if there be more than one, the ranking Vice-President, shall exercise the authority and perform the functions of the President.
2. Vice-President(s) may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that the Vice-President or ranking Vice-President, as the case may be, shall cast the deciding vote when acting in place of the President.

Article 36 Prohibition of political activity: the international character of the Bank

1. The Bank shall not accept loans or assistance that may in any way prejudice, limit, deflect or otherwise alter its purpose or functions.
2. The Bank, its President, Vice-President(s), officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.
3. The President, Vice-President(s), officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 37 Office of the Bank

1. The principal office of the Bank shall be located in Manila, Philippines.
2. The Bank may establish agencies or branch offices elsewhere.

Article 38 Channel of communications, depositories

1. Each member shall designate an appropriate official entity with which the Bank may communicate in connexion with any matter arising under this Agreement.
2. Each member shall designate its central bank, or such other agency as may be agreed upon with the Bank, as a depository with which the Bank may keep its holdings of currency of that member as well as other assets of the Bank.

Article 39 Working language, reports

1. The working language of the Bank shall be English.
2. The Bank shall transmit to its members an Annual Report containing an audited statement of its accounts and shall publish such Report. It shall also transmit quarterly to its members a summary statement of its financial position and a profit and loss statement showing the results of its operations.
3. The Bank may also publish such other reports as it deems desirable in the carrying out of its purpose and functions. Such reports shall be transmitted to the members of the Bank.

Article 40 Allocation of net income

1. The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to Special Funds, shall be allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the members.

2. The distribution referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member.
3. Payments shall be made in such manner and in such currency as the Board of Governors shall determine.

CHAPTER VII: WITHDRAWAL AND SUSPENSION OF MEMBERS, TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK

Article 41 Withdrawal

1. Any member may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office.
2. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice but in no event less than six (6) months after the date that notice has been received by the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.
3. A withdrawing member shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice. If the withdrawal becomes finally effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the withdrawal notice was received by the Bank.

Article 42 Suspension of membership

1. If a member fails to fulfil any of its obligations to the Bank, the Board of Governors may suspend such member by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
2. The member so suspended shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during that one-year period, decides by the same majority necessary for suspension to restore the member to good standing.
3. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 43 Settlement of accounts

1. After the date on which a country ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member is outstanding; but it shall not incur liabilities with respect to loans and guarantees entered into thereafter by the Bank nor share either in the income or the expenses of the Bank.

2. At the time a country ceases to be a member, the Bank shall arrange for the repurchase of such country's shares by the Bank as a part of the settlement of accounts with such country in accordance with the provisions of paragraphs 3 and 4 of this Article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date the country ceases to be a member.
3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:
 - (i) Any amount due to the country concerned for its shares shall be withheld so long as that country, its central bank or any of its agencies, instrumentalities or political subdivisions remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the contingent liability of the country for future calls on its subscription for shares in accordance with paragraph 5 of Article 6 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date on which the country ceases to be a member.
 - (ii) Payments for shares may be made from time to time, upon surrender of the corresponding stock certificates by the country concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans and guarantees referred to in sub-paragraph (i) of this paragraph, until the former member has received the full repurchase price.
 - (iii) Payments shall be made in such available currencies as the Bank determines, taking into account its financial position.
 - (iv) If losses are sustained by the Bank on any guarantees or loans which were outstanding on the date when a country ceased to be a member and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the country concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 5 of Article 6 of this Agreement, to the same extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.
4. If the Bank terminates its operations pursuant to Article 45 of this Agreement within six (6) months of the date upon which any country ceases to be a member, all rights of the country concerned shall be determined in accordance with the provisions of Articles 45 to 47 of this Agreement. Such country shall be considered as still a member for purposes of such Articles but shall have no voting rights.

Article 44 Temporary suspensions of operations

In an emergency, the Board of Directors may temporarily suspend operations in respect of new loans and guarantees, pending an opportunity for further consideration and action by the Board of Governors.

Article 45 Termination of operations

1. The Bank may terminate its operations by a resolution of the Board of Governors approved by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 46 Liability of members and payment of claims

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
2. All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank on unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims

Article 47 Distribution of assets

1. No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until all liabilities to creditors shall have been discharged or provided for. Moreover, such distribution must be approved by the Board of Governors by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of asset. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.
3. Any member receiving assets distributed pursuant to this Article enjoyed prior to their distribution. shall enjoy the same rights with respect to such assets as the Bank

CHAPTER VIII: STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 48 Purpose of Chapter

To enable the Bank effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

Article 49 Legal status

The Bank shall possess full juridical personality and, in particular, full capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

Article 50 Immunity from judicial proceedings

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connexion with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.
3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 51 Immunity of assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 52 Immunity of archives

The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

Article 53 Freedom of assets from restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls, and moratoria of any nature.

Article 54 Privilege for communications

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

Article 55 Immunities and privileges of Bank personnel

All Governors, Directors, alternates, officers, and employees of the Bank, including experts performing missions for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 56 Exemption from taxation

1. The Bank, its assets, property, income and its operations and transaction, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.
3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 57 Implementation

Each member, in accordance with its juridical system, shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken on the matter.

Article 58 Waiver of immunities, exemptions and privileges

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

CHAPTER IX: AMENDMENTS, INTERPRETATION, ARBITRATION

Article 59 Amendments

1. This Agreement may be amended only by a resolution of the Board of Governors approved by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
2. Notwithstanding the provisions of paragraph 1 of this Article, the unanimous agreement of the Board of Governors shall be required for the approval of any amendment modifying:
 - (i) the right to withdraw from the Bank;
 - (ii) the limitations on liability provided in paragraphs 6 and 7 of Article 5; and
 - (iii) the rights pertaining to purchase of capital stock provided in paragraph 2 of Article 5.
3. Any proposal to amend this Agreement, whether emanating from a member or the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before the Board of Governors. When an amendment has been adopted, the Bank shall so certify in an official communication addressed to all members. Amendments shall enter into force for all members three (3) months after the date of the official communication unless the Board of Governors specifies therein a different period.

Article 60 Interpretation or application

1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank, or between two or more members of the Bank, shall be submitted to the Board of Directors for decision. If there is no Director of its nationality on that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in the Board of Directors during such consideration; the representative of such member shall, however, have no vote. Such right of representation shall be regulated by the Board of Governors.

2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems it necessary, act on the basis of the decision of the Board of Directors.

Article 61 Arbitration

If a disagreement should arise between the Bank and a country which has ceased to be a member, or between the Bank and any member, after adoption of a resolution to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the country concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article 62 Approval deemed given

Whenever the approval of any member is required before any act may be done by the Bank, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

CHAPTER X: FINAL PROVISIONS

Article 63 Signature and deposit

1. The original of this Agreement in a single copy in the English language shall remain open for signature at the United Nations Economic Commission for Asia and the Far East, in Bangkok, until 31 January 1966 by Governments of countries listed in Annex A to this Agreement. This document shall thereafter be deposited with the Secretary-General of the United Nations (hereinafter called the "Depository").
2. The Depository shall send certified copies of this Agreement to all the Signatories and other countries which become members of the Bank.

Article 64 Ratification or acceptance

1. This Agreement shall be subject to ratification or acceptance by the Signatories. Instruments of ratification or acceptance shall be deposited with the Depository not later than 30 September 1966. The depository shall duly notify the other Signatories of each deposit and the date thereof.

2. A Signatory whose instrument of ratification or acceptance is deposited before the date on which this Agreement enters into force, shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph, shall become a member of the Bank on the date on which its instrument of ratification or acceptance is deposited.

Article 65 Entry into force

This Agreement shall enter into force when instruments of ratification or acceptance have been deposited by at least fifteen (15) Signatories (including not less than ten (10) regional countries) whose initial subscriptions, as set forth in Annex A to this Agreement, in the aggregate comprise not less than sixty-five (65) percent of the authorized capital stock of the Bank.

Article 66 Commencement of operations

1. As soon as this Agreement enters into force, each member shall appoint a Governor, and the Executive Secretary of the United Nations Economic Commission for Asia and the Far East shall call the inaugural meeting of the Board of Governors.
2. At its inaugural meeting, the Board of Governors:
 - (i) shall make arrangements for the election of Directors of the Bank in accordance with paragraph 1 of Article 30 of this Agreement; and
 - (ii) shall make arrangements for the determination of the date on which the Bank shall commence its operations.
3. The Bank shall notify its members of the date of the commencement of its operations.

DONE at the City of Manila, Philippines, on 4 December 1965, in a single copy in the English language which shall be brought to the United Nations Economic Commission for Asia and the Far East, Bangkok, and thereafter deposited with the Secretary-General of the United Nations, New York, in accordance with Article 63 of this Agreement.
[Signatories not reproduced here.]

ANNEX A INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK FOR COUNTRIES WHICH MAY BECOME MEMBERS IN ACCORDANCE WITH ARTICLE 64

Part A: Regional Countries

I

	Country	Amount of subscription (in million US dollars)
1.	Afghanistan	3.36
2.	Australia	85.00

3.	Cambodia	3.00
4.	Ceylon	8.52
5.	China, Republic of	16.00
6.	India	93.00
7.	Iran	60.00
8.	Japan	200.00
9.	Korea, Republic of	30.00
10.	Laos	0.42

II

The following regional countries may become Signatories of this Agreement in accordance with Article 63, provided that at the time of signing, they shall respectively subscribe to the capital stock of the Bank in the following amounts:

	Country	Amount of subscription (in million US dollars)
1.	Burma	7.74
2.	Mongolia	0.18
	TOTAL	7.92

Part B: Non-regional countries

I

	Country	Amount of subscription (in million US dollars)
1.	Belgium	5.00
2.	Canada	25.00
3.	Denmark	5.00
4.	Germany, Federal Republic of	30.00

	Country	Amount of subscription (in million US dollars)
5.	Italy	10.00
6.	Netherlands	11.00
7.	United Kingdom	10.00
8.	United States	200.00
	TOTAL	296.00

II

The following non-regional countries which participated in the meeting of the Preparatory Committee on the Asian Development Bank in Bangkok from 21 October to 1 November 1965 and which there indicated interest in membership in the Bank, may become Signatories of this Agreement in accordance with Article 63, provided that at the time of signing, each such country shall subscribe to the capital stock of the Bank in an amount which shall not be less than five million dollars (\$5,000,000):

1. Austria
2. Finland
3. Norway
4. Sweden

III

On or before 31 January 1966, any of the non-regional countries listed in Part B(I) of this Annex may increase the amount of its subscription by so informing the Executive Secretary of the United Nations Economic Commission for Asia and the Far East in Bangkok, provided, however, that the total amount of the initial subscriptions of the non-regional countries listed in Part B(I) and (II) of this Annex shall not exceed the amount of three hundred and fifty million dollars (\$350,000,000).

ANNEX B ELECTION OF DIRECTORS

Section A: Election of Directors by Governors representing regional members

1. Each Governor representing a regional member shall cast all votes of the member he represents for a single person.
2. The seven (7) persons receiving the highest number of votes shall be Directors, except that no person who receives less than ten (10) percent of the total voting power of regional members shall be considered as elected.
3. If seven (7) persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:
 - (a) Governors who voted in the preceding ballot for a person who is not elected; and
 - (b) Governors whose votes for a person who is elected are deemed, in accordance with paragraph 4 of this Section, to have raised the votes cast for that person above eleven (11) percent of the total voting power of regional members.
4.
 - (a) In determining whether the votes cast by a Governor shall be deemed to have raised the total number of votes for any person above eleven (11) percent, the said eleven (11) percent shall be deemed to include, first, the votes of the Governor casting the highest number of votes for that person, and then, in diminishing order,

the votes of each Governor casting the next highest number until eleven (11) percent is attained.

- (b) Any Governor, part of whose votes must be counted in order to raise the votes cast for any person above ten (10) percent, shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds eleven (11) percent.

5. If, after the second ballot, seven (7) persons are not elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, except that after six (6) persons are elected, the seventh may be elected—notwithstanding the provisions of paragraph (2) of this Section—by a simple majority of the remaining votes of regional members. All such remaining votes shall be deemed to have counted towards the election of the seventh Director.
6. In case of an increase in the number of Directors to be elected by Governors representing regional members, the minimum and maximum percentages specified in paragraphs (2), (3), and (4) of Section A of this Annex shall be correspondingly adjusted by the Board of Governors.

Section B: Election of Directors by Governors representing non-regional members

1. Each Governor representing a non-regional member shall cast all votes of the member he represents for a single person.
2. The three (3) persons receiving the highest number of votes shall be Directors, except that no person who receives less than twenty-five (25) percent of the total voting power of non-regional members shall be considered as elected.
3. If three (3) persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:
 - (a) Governors who voted in the preceding ballot for a person who is not elected; and
 - (b) Governors whose votes for a person who is elected are deemed, in accordance with paragraph (4) of this Section, to have raised the votes cast for that person above twenty-six (26) percent of the total voting power of non-regional members.
4.
 - (a) In determining whether the votes cast by a Governor shall be deemed to have raised the total number of votes for any person above twenty-six (26) percent, the said twenty-six (26) percent shall be deemed to include, first, the votes of the Governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each Governor casting the next highest number until twenty-six (26) percent is attained.
 - (b) Any Governor, part of whose votes must be counted in order to raise the votes cast for any person above twenty-six (26) percent, shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds twenty-six (26) percent.

5. If, after the second ballot, three (3) persons are not elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, except that after two (2) persons are elected, a third may be elected—provided that subscriptions from non-regional members shall have reached a minimum total of \$345 million, and notwithstanding the provisions of paragraph (2) of this Section—by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the third Director.
6. In case of an increase in the number of directors to be elected by Governors representing non-regional members, the minimum and maximum percentages specified in paragraphs (2), (3) and (4) of Section B of this Annex shall be correspondingly adjusted by the Board of Governors.

CHAPTER TWENTY-FIVE

International Covenant on Economic, Social and Cultural Rights

New York, NY, 16 December 1966

INTRODUCTION

This Covenant was conceived in the wake of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. Those documents were considered to be of a liberal ethos and, in the context of the Cold War, seen as not in conformity with socialist or communist ideals. The counter to that perception was the International Covenant on Economic, Social and Cultural Rights. The Covenant takes inspiration from the Universal Declaration, but places overwhelming emphasis on the economic and social aspects of rights. It places rights in the context of the community, peoples or society.

One of the rights specifically referenced is self-determination. Political self-determination is constructed as the basis of economic, social and cultural self-determination. Specifically, management and disposal of the natural resources of a people must be done by them free of any prior legal obligations. This is connected to the UN declaration on 'Permanent Sovereignty over Natural Resources' (see above). The whole idea of self-determination is founded in the context of colonial rule, mainly by Western European nations over much of Africa particularly, with indirect control of regimes in Latin America and Asia. Countries having administrative responsibility for colonial or trust territories were to promote self-determination and to protect the resources of the territories they controlled. These provisions are largely defunct, as colonies hardly existed by the end of the Cold War, and developing countries have changed their language and policies and, therefore, control over their natural resources is now more flexible and sophisticated.

There is also the right to work. This right must be freely exercised. State parties are to provide technical, vocational and other training in order for their peoples to realize their rights to work. Fair wages, safety at work, equal opportunity of promotion, rest and leisure are all to be included in the right to work. This also means that countries must strive to attain full employment of their peoples. This has hardly ever been attained. Although not in express pursuit of this objective, countries like Singapore and Japan have at various times, even if for short periods, come close to attaining full employment. The

Covenant requires that education in general be freely available at the primary level. Education at the higher level must be accessible to all and made progressively free. The content of education must emphasize employment skills and social, cultural and friendship ethics must be taught. State parties must also take steps to provide medical facilities that must be easily available, to reduce the rates of stillbirths and infant mortality and to improve environmental and industrial hygiene.

Usually, laws on economic and social rights are seen as principles, standards or aspirations, which are hardly enforceable nor justiciable. This Covenant has not escaped that description, and the fact that most of the provisions on health, education and standard of living have not been realized in most of the developing world after about three decades has not helped. Furthermore, the 'claw back' clauses on developing countries and alien property in article 2(3) and the general one in article 4 also blunt the effectiveness of the entire Covenant. In theory, at least, the Covenant has provisions on enforcing its prescriptions. States parties are to submit reports on measures that they have taken and the progress made in achieving the rights enunciated by the Covenant. These reports are to be submitted to the Secretary-General of the UN, who is to forward them to the Economic and Social Council (ECOSOC) and other relevant specialized bodies within the UN. These agencies are then to make recommendations on steps to implement fully the provisions of the Covenant.

The Covenant came into force on 3 January 1976. By mid-2004 there were 149 states parties.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ADOPTED BY RESOLUTION 2200A (XXI) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS)*

PREAMBLE

THE STATES PARTIES TO THE PRESENT COVENANT,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

RECOGNIZING that these rights derive from the inherent dignity of the human person,

RECOGNIZING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

CONSIDERING the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

REALIZING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

AGREE UPON THE FOLLOWING ARTICLES:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be

compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Documentation Centre (www.un.org/documents), under General Assembly—Resolutions.

- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2.
 - (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
 - (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be

necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant

shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

CHAPTER TWENTY-SIX

Outer Space Treaty

London, Moscow and Washington, DC, 27 January
1967

INTRODUCTION

Exploration of space and the competition that ensued started in 1957, with the then USSR launching the Sputnik artificial satellite. This was followed by the USA launching Explorer I the following year. The intense competition between the two Cold War protagonists continued throughout the 1960s. The origins of the ‘space race’ had a lot to do with military or strategic superiority between the two superpowers. There was a threat that this motivation could spell disaster for humanity. The concern that each side would like to monopolize or control what was clearly a global, common resource prompted a series of efforts—including UN resolution 1962 (XVIII) of 1963—that culminated in the signing of the so-called Outer Space Treaty (Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies) in 1967.

The Treaty is premised largely on the principle that ‘the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development’. It also calls for co-operation by countries in the areas of science and law of space exploration. This would help universalize the peaceful benefits of such exploration. The exploration of space itself is open to all states and, indeed, to all mankind. Space, including the moon and other celestial bodies, is not to be appropriated or subject to any national claim of sovereignty in any form. States parties to this Treaty must, when they explore and use space, do so in accordance with international law and with the view to maintaining peace, security and international understanding. The international law principle that comes to mind immediately is that of state responsibility. This is confirmed by articles 6 and 7 of the Treaty. States parties are responsible for national activities in outer space. The responsibility remains even when such activities are carried on by non-governmental entities. This is to be facilitated by states having oversight or regulatory control over the activities of non-governmental entities relating to space. States parties that launch or secure the launching of an object into outer space, as well as the parties from whose territory or facility any object is launched, bear liability for damage caused by the object or its constituent parts on the Earth, in space or in outer space to another state party to this Treaty or to its natural or artificial persons. Where any space activity is carried out by inter-governmental organization, the inter-governmental organization is responsible jointly with the

individual states parties to the treaty establishing that organization. At the same time, the state from whose territory an object is launched into outer space retains jurisdiction and control over the said object and over the personnel on the object while in outer space. Rights of ownership of objects do not change simply because they are relocated or present in space.

State parties that have launched objects into space are obliged to afford other interested states parties access to those objects on mutually agreed terms. State parties must also consider requests for opportunities to observe space flights by other states. In general, countries must take cognisance of the interests of other countries when conducting space exploratory activities. Studies, research and all exploratory activities must be done with the aim of avoiding harmful contamination or other adverse changes in the environment of the Earth, particularly by the introduction of extra-terrestrial material. If a state party has reason to believe that a particular space activity by another party is likely to cause harm to it or to other states' programmes, or if the state undertaking the exploration itself realizes that such activity would adversely affect other states' interests, it is under an obligation to undertake consultations with all states affected, directly or indirectly, before proceeding with the planned activity. In sum, the emphasis of the Outer Space Treaty is peaceful use, accessibility to all countries and safety or protection of the environment.

The Treaty came into force on 10 October 1967. By the beginning of the 21st century it had almost 100 parties.

TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES*

THE STATES PARTIES TO THIS TREATY,

INSPIRED by the great prospects opening up before mankind as a result of man's entry into outer space,

RECOGNIZING the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,

BELIEVING that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development,

DESIRING to contribute to broad international co-operation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes,

BELIEVING that such co-operation will contribute to the development of mutual understanding and to the strengthening of friendly relations between States and peoples,

RECALLING resolution 1962 (XVIII), entitled "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space", which was adopted unanimously by the United Nations General Assembly on 13 December 1963,

RECALLING resolution 1884 (XVIII), calling upon States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of

weapons of mass destruction or from installing such weapons on celestial bodies, which was adopted unanimously by the United Nations General Assembly on 17 October 1963,

TAKING ACCOUNT of United Nations General Assembly resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, and considering that the aforementioned resolution is applicable to outer space,

CONVINCED that a Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, will further the purposes and principles of the Charter of the United Nations,

HAVE AGREED on the following:

Article I

The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.

Article II

Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

Article III

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

Article IV

States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres

on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.

Article V

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the State of registry of their space vehicle.

In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties.

States Parties to the Treaty shall immediately inform the other States Parties to the Treaty or the Secretary-General of the United Nations of any phenomena they discover in outer space, including the moon and other celestial bodies, which could constitute a danger to the life or health of astronauts.

Article VI

States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty. When activities are carried on in outer space, including the moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization.

Article VII

Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air or in outer space, including the moon and other celestial bodies.

Article VIII

A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into

outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the depositary Governments, of Russia, the United Kingdom and the USA.

Article IX

In the exploration and use of outer space, including the moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose. If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment.

Article X

In order to promote international co-operation in the exploration and use of outer space, including the moon and other celestial bodies, in conformity with the purposes of this Treaty, the States Parties to the Treaty shall consider on a basis of equality any requests by other States Parties to the Treaty to be afforded an opportunity to observe the flight of space objects launched by those States. The nature of such an opportunity for observation and the conditions under which it could be afforded shall be determined by agreement between the States concerned.

Article XI

In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively.

Article XII

All stations, installations, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity. Such representatives shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited.

Article XIII

The provisions of this Treaty shall apply to the activities of States Parties to the Treaty in the exploration and use of outer space, including the moon and other celestial bodies, whether such activities are carried on by a single State Party to the Treaty or jointly with other States, including cases where they are carried on within the framework of international intergovernmental organizations.

Any practical questions arising in connection with activities carried on by international intergovernmental organizations in the exploration and use of outer space, including the moon and other celestial bodies, shall be resolved by the States Parties to the Treaty either with the appropriate international organization or with one or more States members of that international organization, which are Parties to this Treaty.

Article XIV

1. This Treaty shall be open to all States for signature. Any State which does not sign this Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at anytime.
2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.
3. This Treaty shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Treaty.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Treaty, the date of its entry into force and other notices.
6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XV

Any State Party to the Treaty may propose amendments to this Treaty. Amendments shall enter into force for each State Party to the Treaty accepting the amendments upon their acceptance by a majority of the States Parties to the Treaty and thereafter for each remaining State Party to the Treaty on the date of acceptance by it.

Article XVI

Any State Party to the Treaty may give notice of its withdrawal from the Treaty one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article XVII

This Treaty, of which the English, Russian, French, Spanish and Chinese texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned [not reproduced here], duly authorized, have signed this Treaty.

DONE in triplicate, at the cities of London, Moscow and Washington, the twenty-seventh day of January, one thousand nine hundred and sixty-seven.

CHAPTER TWENTY-SEVEN

Convention Establishing the World Intellectual Property Organization

Stockholm, 14 July 1967

INTRODUCTION

This is an institutional arrangement headquartered in Geneva (Switzerland) to help effect the principles and provisions of several intellectual property treaties and other legal instruments. Its two-fold goal is to promote the protection of intellectual in the world through cooperation with nations and international organizations and to facilitate administrative co-operation among the unions established by the Paris and Berne Conventions (see above). This is a clear response to the institutional and administrative paucity of the two monumental Conventions. The World Intellectual Property Organization (WIPO) treaty goes beyond institutional organization to provide a fairly comprehensive definition of intellectual property. Intellectual property is defined as 'rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts,...industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition'. The definition also includes the all-encompassing 'inventions in all fields of human endeavour' and, in conclusion, 'all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields'.

Membership of WIPO is open to any member of the Paris and Berne unions. Other countries, which are not members of either of the two unions, are also welcomed, provided that they are members of the UN any of its specialized agencies, the International Atomic Energy Agency or the International Court of Justice. New members can also be admitted by the General Assembly created by the treaty and made up of representatives of the member states of the WIPO Convention. The General Assembly appoints a Director-General, who is the head of the International Bureau, the secretariat of the organization. The General Assembly vets and approves the budget and other financial arrangements, including subscription rates. The treaty also established a Conference made up of states parties. Its primary function is to discuss matters of general interest in intellectual property. It is also to make arrangements for the provision of legal technical assistance and to amend the treaty when and where necessary. Below the Conference is a Co-ordinating Committee, with membership drawn from members of the

two Executive Committees of the Paris and Berne unions. The Co-ordination Committee is mainly an advisory body for the General Assembly, the Conference and the Director-General on administrative and budgetary matters. It aims for unity and efficiency, which is necessary for the execution of the wide-ranging functions of WIPO.

These functions include the development of measures to facilitate the efficient protection of intellectual property in the world. It is to help harmonize national laws on intellectual property, to encourage the negotiation of and entry into international agreements on intellectual property, as well as to research, collect and disseminate information on intellectual property and to administer the Paris and Berne Conventions. There is also a residual function, that stipulates that WIPO, in pursuit of its objectives, 'shall take all other appropriate action'.

The funding of WIPO is not very different from that of other international organizations—subscription and payment for technical services—except that WIPO has the power to receive bequests, gifts and subventions. This is perhaps owing to the sector it is located in, which could see much settled or unsettled inheritance. The financing arrangements are not to compromise its efficiency or legal status. WIPO is to enjoy all legal rights, capacity and privileges in the territories of the member states that are necessary for the efficient execution of its functions. It is empowered to negotiate agreements with other international organizations on any relevant matter.

The Convention came into force and WIPO officially came into existence on 26 April 1970. By April 2005 there were 182 countries in the organization. The text reproduced below is as amended on 28 September 1979 (it does not include the new contribution system adopted by WIPO from 1 January 1994, which replaced the provisions of article 11).

CONVENTION ESTABLISHING THE WORLD PROPERTY ORGANIZATION (AS AMENDED)*

THE CONTRACTING PARTIES,

DESIRING to contribute to better understanding and co-operation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

DESIRING, in order to encourage creative activity, to promote the protection of intellectual property throughout the world,

DESIRING to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions,

AGREE AS FOLLOWS:

Article 1 Establishment of the Organization

The World Intellectual Property Organization is hereby established.

Article 2 Definitions

For the purposes of this Convention:

- (i) "Organization" shall mean the World Intellectual Property Organization (WIPO);
- (ii) "International Bureau" shall mean the International Bureau of Intellectual Property;
- (iii) "Paris Convention" shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (iv) "Berne Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, including any of its revisions;
- (v) "Paris Union" shall mean the International Union established by the Paris Convention;
- (vi) "Berne Union" shall mean the International Union established by the Berne Convention;
- (vii) "Unions" shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4(iii);
- (viii) "intellectual property" shall include the rights relating to:

literary, artistic and scientific works,
 performances of performing artists, phonograms, and broadcasts,
 inventions in all fields of human endeavor,
 scientific discoveries,
 industrial designs,
 trademarks, service marks, and commercial names and designations,
 protection against unfair competition,
 and all other rights resulting from intellectual activity in the industrial,
 scientific, literary or artistic fields.

Article 3 Objectives of the Organization

The objectives of the Organization are:

- (i) to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,
- (ii) to ensure administrative cooperation among the Unions.

Article 4 Functions

In order to attain the objectives described in Article 3, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- (i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- (ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;

- (iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;
- (vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;
- (vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;
- (viii) shall take all other appropriate action.

Article 5 Membership

1. Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).
2. Membership in the Organization shall be equally open to any State not a member of any of the Unions, provided that:
 - i. it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or
 - ii. it is invited by the General Assembly to become a party to this Convention.

Article 6 General Assembly

1.
 - (a) There shall be a General Assembly consisting of the States party to this Convention which are members of any of the Unions.
 - (b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
2. The General Assembly shall:
 - i. appoint the Director General upon nomination by the Coordination Committee;
 - ii. review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
 - iii. review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
 - iv. adopt the biennial budget of expenses common to the Unions;
 - v. approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
 - vi. adopt the financial regulations of the Organization;

- vii. determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

- viii. invite States referred to under Article 5(2)(ii) to become party to this Convention;
- ix. determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- x. exercise such other functions as are appropriate under this Convention.

3.

- (a) Each State, whether member of one or more Unions, shall have one vote in the General Assembly.
- (b) One-half of the States members of the General Assembly shall constitute a quorum.
- (c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the General Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the States members of the General Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of States having thus expressed their vote or abstention attains the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.
- (d) Subject to the provisions of subparagraphs (e) and (f), the General Assembly shall make its decisions by a majority of two-thirds of the votes cast.
- (e) The approval of measures concerning the administration of international agreements referred to in Article 4(iii) shall require a majority of three-fourths of the votes cast.
- (f) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast.
- (g) For the appointment of the Director General (paragraph (2)(i)), the approval of measures proposed by the Director General concerning the administration of international agreements (paragraph (2)(v)), and the transfer of headquarters (Article 10), the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.
- (h) Abstentions shall not be considered as votes,
- (i) A delegate may represent, and vote in the name of, one State only.

4.

- (a) The General Assembly shall meet once in every second calendar year in ordinary session, upon convocation by the Director General.
- (b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.
- (c) Meetings shall be held at the headquarters of the Organization.

5. States party to this Convention which are not members of any of the Unions shall be admitted to the meetings of the General Assembly as observers.

6. The General Assembly shall adopt its own rules of procedure.

Article 7 Conference

1.

- (a) There shall be a Conference consisting of the States party to this Convention whether or not they are members of any of the Unions.
- (b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (c) The expenses of each delegation shall be borne by the Government which has appointed it.

2. The Conference shall:

- i. discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;
- ii. adopt the biennial budget of the Conference;
- iii. within the limits of the budget of the Conference, establish the biennial program of legal-technical assistance;
- iv. adopt amendments to this Convention as provided in Article 17;
- v. determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- vi. exercise such other functions as are appropriate under this Convention.

3.

- (a) Each Member State shall have one vote in the Conference.
- (b) One-third of the Member States shall constitute a quorum.
- (c) Subject to the provisions of Article 17, the Conference shall make its decisions by a majority of two-thirds of the votes cast.
- (d) The amounts of the contributions of States party to this Convention not members of any of the Unions shall be fixed by a vote in which only the delegates of such States shall have the right to vote.
- (e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one State only.

4.

(a) The Conference shall meet in ordinary session, upon convocation by the Director General, during the same period and at the same place as the General Assembly,

(b) The Conference shall meet in extraordinary session, upon convocation by the Director General, at the request of the majority of the Member States.

5. The Conference shall adopt its own rules of procedure.

Article 8 Coordination Committee

1.

(a) There shall be a Coordination Committee consisting of the States party to this Convention which are members of the Executive Committee of the Paris Union, or the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their number shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) Whenever the Coordination Committee considers either matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of this Convention which would affect the rights or obligations of States party to this Convention not members of any of the Unions, one-fourth of such States shall participate in the meetings of the Coordination Committee with the same rights as members of that Committee. The Conference shall, at each of its ordinary sessions, designate these States.

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

2. If the other Unions administered by the Organization wish to be represented as such in the Coordination Committee, their representatives must be appointed from among the States members of the Coordination Committee.

3. The Coordination Committee shall:

i. give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;

- ii. prepare the draft agenda of the General Assembly;
- iii. prepare the draft agenda and the draft program and budget of the Conference;
- iv. [deleted]
- v. when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;
- vi. if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;
- vii. perform such other functions as are allocated to it under this Convention.

4.

- (a) The Coordination Committee shall meet once every year in ordinary session, upon convocation by the Director General. It shall normally meet at the headquarters of the Organization.
- (b) The Coordination Committee shall meet in extraordinary session, upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

5.

- (a) Each State whether a member of one or both of the Executive Committees referred to in paragraph (1)(a), shall have one vote in the Coordination Committee.
- (b) One-half of the members of the Coordination Committee shall constitute a quorum.
- (c) A delegate may represent, and vote in the name of, one State only.

6.

- (a) The Coordination Committee shall express its opinions and make its decisions by a simple majority of the votes cast. Abstentions shall not be considered as votes,
- (b) Even if a simple majority is obtained, any member of the Coordination Committee may, immediately after the vote, request that the votes be the subject of a special recount in the following manner: two separate lists shall be prepared, one containing the names of the States members of the Executive Committee of the Paris Union and the other the names of the States members of the Executive Committee of the Berne Union; the vote of each State shall be inscribed opposite its name in each list in which it appears. Should this special recount indicate that a simple majority has not been obtained in each of those lists, the proposal shall not be considered as carried.

- 7. Any State Member of the Organization which is not a member of the Coordination Committee may be represented at the meetings of the Committee by observers having the right to take part in the debates but without the right to vote.
- 8. The Coordination Committee shall establish its own rules of procedure.

Article 9 International Bureau

1. The International Bureau shall be the Secretariat of the Organization.
2. The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.
3. The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.
4.
 - (a) The Director General shall be the chief executive of the Organization.
 - (b) He shall represent the Organization.
 - (c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.
5. The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the Unions and the Organization.
6. The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.
7. The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General after approval by the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
8. The nature of the responsibilities of the Director General and of the staff shall be exclusively international. In the discharge of their duties they shall not seek or receive instructions from any Government or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials. Each Member State undertakes to respect the exclusively international character of the responsibilities of the Director General and the staff, and not to seek to influence them in the discharge of their duties.

Article 10 Headquarters

1. The headquarters of the Organization shall be at Geneva.
2. Its transfer may be decided as provided for in Article 6(3)(d) and (g).

Article 11 Finances

1. The Organization shall have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference.
2.
 - (a) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions,
 - (b) This budget shall be financed from the following sources:
 - i. contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;
 - ii. charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance;
 - iii. sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;
 - iv. gifts, bequests, and subventions, given to the Organization, except those referred to in paragraph (3)(b)(iv);
 - v. rents, interests, and other miscellaneous income, of the Organization.
3.
 - (a) The budget of the Conference shall include provision for the expenses of holding sessions of the Conference and for the cost of the legal-technical assistance program,
 - (b) This budget shall be financed from the following sources:
 - i. contributions of States party to this Convention not members of any of the Unions;
 - ii. any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;
 - iii. sums received for services rendered by the International Bureau in the field of legal-technical assistance;
 - iv. gifts, bequests, and subventions, given to the Organization for the purposes referred to in subparagraph (a).
4.
 - (a) For the purpose of establishing its contribution towards the budget of the Conference, each State party to this Convention not member of any of the Unions shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:
 - Class A 10
 - Class B 3
 - Class C 1

- (b) Each such State shall, concurrently with taking action as provided in Article 14(1), indicate the class to which it wishes to belong. Any such State may change class. If it chooses a lower class, the State must announce it to the Conference at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.
 - (c) The annual contribution of each such State shall be an amount in the same proportion to the total sum to be contributed to the budget of the Conference by all such States as the number of its units is to the total of the units of all the said States.
 - (d) Contributions shall become due on the first of January of each year.
 - (e) If the budget is not adopted before the beginning of a new financial period, the budget shall be at the same level as the budget of the previous year, in accordance with the financial regulations.
5. Any State party to this Convention not member of any of the Unions which is in arrears in the payment of its financial contributions under the present Article, and any State party to this Convention member of any of the Unions which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.
6. The amount of the fees and charges due for services rendered by the International Bureau in the field of legal-technical assistance shall be established, and shall be reported to the Coordination Committee, by the Director General.
7. The Organization, with the approval of the Coordination Committee, may receive gifts, bequests, and subventions, directly from Governments, public or private institutions, associations or private persons.
- 8.
- (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.
 - (b) The amount of the single payment of each Union and its possible participation in any increase shall be decided by its Assembly.
 - (c) The amount of the single payment of each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase decided. The proportion and the terms of payment shall be fixed by the Conference on the proposal of the Director General and after it has heard the advice of the Coordination Committee.
- 9.
- (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of

separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an ex officio seat on the Coordination Committee,

- (b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification.

Denunciation shall take effect three years after the end of the year in which it has been notified.

10. The auditing of the accounts shall be effected by one or more Member States, or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the General Assembly.

Article 12 Legal Capacity; Privileges and Immunities

1. The Organization shall enjoy on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Organization's objectives and for the exercise of its functions.
2. The Organization shall conclude a headquarters agreement with the Swiss Confederation and with any other State in which the headquarters may subsequently be located.
3. The Organization may conclude bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of all Member States, of such privileges and immunities as may be necessary for the fulfilment of its objectives and for the exercise of its functions.
4. The Director General may negotiate and, after approval by the Coordination Committee, shall conclude and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

Article 13 Relations with Other Organizations

1. The Organization shall, where appropriate, establish working relations and cooperate with other intergovernmental organizations. Any general agreement to such effect entered into with such organizations shall be concluded by the Director General after approval by the Coordination Committee.
2. The Organization may, on matters within its competence, make suitable arrangements for consultation and cooperation with international non-governmental organizations and, with the consent of the Governments concerned, with national organizations, governmental or non-governmental. Such arrangements shall be made by the Director General after approval by the Coordination Committee.

Article 14 Becoming Party to the Convention

1. States referred to in Article 5 may become party to this Convention and Member of the Organization by:
 - i. signature without reservation as to ratification, or

- ii. signature subject to ratification followed by the deposit of an instrument of ratification, or
 - iii. deposit of an instrument of accession.
2. Notwithstanding any other provision of this Convention, a State party to the Paris Convention, the Berne Convention, or both Conventions, may become party to this Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to:
- either the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 20(1)(b)(i) thereof,
 - or the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 28(1)(b)(i) thereof.
3. Instruments of ratification or accession shall be deposited with the Director General.

Article 15 Entry into Force of the Convention

1. This Convention shall enter into force three months after ten States members of the Paris Union and seven States members of the Berne Union have taken action as provided in Article 14(1), it being understood that, if a State is a member of both Unions, it will be counted in both groups. On that date, this Convention shall enter into force also in respect of States which, not being members of either of the two Unions, have taken action as provided in Article 14(1) three months or more prior to that date.
2. In respect to any other State, this Convention shall enter into force three months after the date on which such State takes action as provided in Article 14(1).

Article 16 Reservations

No reservations to this Convention are permitted.

Article 17 Amendments

1. Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the Conference.
2. Amendments shall be adopted by the Conference. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Union shall vote. Amendments shall be adopted by a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

3. Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the Conference adopted the amendment. Any amendment thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

Article 18 Denunciation

1. Any Member State may denounce this Convention by notification addressed to the Director General.
2. Denunciation shall take effect six months after the day on which the Director General has received the notification.

Article 19 Notifications

The Director General shall notify the Governments of all Member States of:

- (i) the date of entry into force of the Convention,
- (ii) signatures and deposits of instruments of ratification or accession,
- (iii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,
- (iv) denunciations of this Convention.

Article 20 Final Provisions

1.
 - (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.
 - (b) This Convention shall remain open for signature at Stockholm until January 13, 1968.
2. Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the Conference may designate.
3. The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the Conference to the Governments of the States members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

4. The Director General shall register this Convention with the Secretariat of the United Nations.

Article 21 Transitional Provisions

1. Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references to the United International Bureau for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureau for the Protection of Intellectual Property (BIRPI)), or its Director, respectively.
2.
 - (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly and the Conference until the expiration of the said period.
 - (b) Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, the Conference, and the Coordination Committee.
 - (c) Upon becoming party to this Convention, such States shall regain such right to vote.
3.
 - (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureau for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.
 - (b) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in subparagraph (a), be considered as also employed by the International Bureau.
4.
 - (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.
 - (b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

CHAPTER TWENTY-EIGHT

Bangkok Declaration (ASEAN Declaration)

Bangkok, 8 August 1967

INTRODUCTION

Against the backdrop of the war in Viet Nam, and with some instability, as well as frostiness, in their relations, leaders of five South-East Asian countries came together in 1967 to pronounce a Declaration that was to lay the foundation for their economic and political relations. In the Declaration, the countries in the region accept primary responsibility for their social stability and progressive national economic development.

As a framework for achieving the ideals of social stability, economic development and regional co-operation, they declared, first, the establishment of an Association of South East Asian Nations (ASEAN). It replaced the more limited Association for Southeast Asia. ASEAN was open for all countries in the region to join. The original five—Indonesia, Malaysia, Philippines, Singapore and the Thailand—were subsequently joined by five other countries of the region. The objectives of ASEAN, according to its founding Declaration, are the acceleration of economic growth, social progress, the promotion of regional peace and stability, mutual assistance, training, optimum utilization of resources located within their individual countries and collaboration with international organizations with similar ideals. Interestingly, the promotion of peace and stability is to be done through respect for the UN Charter and for the rule of law in the relations between member states. The countries of the region—certainly at that time—were not specifically known for their adherence to the tenets of the rule of law within their respective national borders. Almost all of them were operating a de facto one-party political system and emasculating divergent positions. Today, they are mainly known for their economic ‘miracles’. In that, this Declaration and the institution of ASEAN played a vital role.

The Declaration created the Annual Meeting of Foreign Ministers, which is chaired on a rotational basis. There is also the Standing Committee, chaired by the foreign minister of the member at the time hosting the Annual Meeting. The Standing Committee is made up of the ambassadors of the other member countries. It carries out the work of the Association in between the annual ministerial meetings. Specific technical functions are assigned to committees set up ad hoc or on a permanent basis. All the organs are serviced by a secretariat in each member country. The institutions have developed and multiplied since the original Declaration of 1967. The highest decision-making body is now the annual meeting of heads of state or government. Although the ministerial sessions remain as before, any decisions now have to be submitted to the heads of state or government for approval. The permanent secretariat (established in 1976) is headed by a Secretary-General. External engagement has brought about committees of ASEAN diplomats in the capitals of leading countries throughout the world.

Although a ‘Declaration’, the founding document of ASEAN has crystallized into hard law, making ASEAN a body recognized by the UN as ‘a trusted partner in the field of

development'. The Declaration has served as the framework for further binding treaties among members. These include the 1976 Treaty of Amity and Co-operation, the 1987 Agreement for the Promotion and Protection of Investments (see below) and the 1995 Treaty on the Southeast Asia Nuclear Weapon-Free Zone.

The signature of the Declaration in 1967 created ASEAN, which was joined by further countries of the region and now numbers 10 members.

THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS DECLARATION (BANGKOK DECLARATION)*

The Presidium Minister for Political Affairs/Minister for Foreign Affairs of Indonesia, the Deputy Prime Minister of Malaysia, the Secretary of Foreign Affairs of the Philippines, the Minister for Foreign Affairs of Singapore and the Minister of Foreign Affairs of Thailand:

MINDFUL of the existence of mutual interests and common problems among countries of South-East Asia and convinced of the need to strengthen further the existing bonds of regional solidarity and cooperation;

DESIRING to establish a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region;

CONSCIOUS that in an increasingly interdependent world, the cherished ideals of peace, freedom, social justice and economic well-being are best attained by fostering good understanding, good neighbourliness and meaningful cooperation among the countries of the region already bound together by ties of history and culture;

CONSIDERING that the countries of South-East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;

AFFIRMING that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development;

DO HEREBY DECLARE:

FIRST, the establishment of an Association for Regional Cooperation among the countries of South-East Asia to be known as the Association of South-East Asian Nations (ASEAN).

SECOND, that the aims and purposes of the Association shall be:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;

2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
6. To promote South-East Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

THIRD, that to carry out these aims and purposes, the following machinery shall be established:

- (a) Annual Meeting of Foreign Ministers, which shall be by rotation and referred to as ASEAN Ministerial Meeting. Special Meetings of Foreign Ministers may be convened as required.
- (b) A Standing Committee, under the chairmanship of the Foreign Minister of the host country or his representative and having as its members the accredited Ambassadors of the other member countries, to carry on the work of the Association in between Meetings of Foreign Ministers.
- (c) Ad-Hoc Committees and Permanent Committees of specialists and officials on specific subjects.
- (d) A National Secretariat in each member country to carry out the work of the Association on behalf of that country and to service the Annual or Special Meetings of Foreign Ministers, the Standing Committee and such other committees as may hereafter be established.

FOURTH, that the Association is open for participation to all States in the South-East Asian Region subscribing to the aforementioned aims, principles and purposes.

FIFTH, that the Association represents the collective will of the nations of South-East Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.

DONE in Bangkok on the Eighth Day of August in the Year One Thousand Nine Hundred and Sixty-Seven.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of ASEAN (<http://www.aseansec.org/>).

CHAPTER TWENTY-NINE

Hague-Visby Rules (Brussels Protocol to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading)

Brussels, 23 February 1968

INTRODUCTION

Historically, the common law gave the carrier wide scope to avoid liability for loss, delay or damage to cargo. The so-called Hague Rules, brought about by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (see above) of 1924, made the first efforts at containing this equivocation in the contract of carriage. These Rules were amended and updated by means of a Protocol to the original treaty in 1968, which was negotiated in Brussels (Belgium), and since known as the Visby or Hague-Visby Rules. The United Kingdom is the leading maritime country to adopt and implement the Hague-Visby Rules (through the Carriage of Goods by Sea Act 1971). However, the USA, for example, continues to apply the original Hague Rules.

The Hague-Visby Rules apply to every contract of carriage of goods by sea, from loading to discharge or delivery to consignee. For these Rules to apply though, the voyage must have started from the port of a state party to the Rules, or the bill of lading covering the goods should have been issued in a contracting state, or the contract contained in or evidenced by the bill of lading should stipulate that the Hague-Visby Rules (or any national legislation implementing the same) govern the contract. This is to be the case whether or not the ship is registered in a member state or the carrier, shipper or other stakeholders are nationals of countries that are not parties to the Rules. The Rules will also apply to documentation in the nature of a bill of lading. Charter parties are, therefore, generally excluded from their purview. Courts have, however, held that it is permissible for a charter party to adopt and adapt the Rules as contractual provisions. The bill of lading must show the leading marks necessary for the identification of the cargo, the number of packages or pieces, and the quantity and weight, as provided by the shipper or his agent or, otherwise, by being made visible or accessible by the carrier or his agents. The bill of lading so issued is *prima facie* evidence of the receipt of the goods by the carrier. However, once the bill of lading has been transferred to a third party in good faith, any proof that it is not evidence of receipt and condition of the goods shall not be admissible. Apart from voyage and documentation, the Hague-Visby Rules also state clearly that they apply to all types of cargo, except live animals and deck cargo.

The carrier is under an obligation to exercise due diligence to ensure that the ship is seaworthy. This means that, unlike the common law position, there is no absolute obligation on the carrier to provide a seaworthy vessel. It is enough that he has exercised due care in the provision of the vessel, and provided skilled personnel, adequate equipment and supplies. He is further obliged to load, handle, stow, carry and discharge the cargo properly and with due care. In the event of loss or damage owing to unseaworthiness, the carrier shall not be liable unless it is established that the carrier did not exercise due diligence to make the ship seaworthy, including proper manning and adequate supplies and equipment. The burden of proof of due diligence remains with the carrier. More specifically, the carrier is exempted from liability for loss or damage arising from act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or management of the ship. The carrier is also not liable for damage or loss owing to acts of God, war or public enemies, to arrest or restraint by sovereign authorities or seizure under a due legal process, to perils and accidents of the sea, to quarantine restrictions, strikes, riots, civil commotions, etc. Activities that may be under the control of the carrier, such as inadequate packing, insufficiency of marks or defects not discoverable by due diligence, are also bases of exemption of liability.

Where the carrier is liable, his liability shall not exceed an amount of 666.67 units of account (as determined by the IMF) per kilogram of gross weight of the lost or damaged cargo, unless the parties had agreed on higher value prior to shipment. The benefits of this limitation on liability would not inure to the benefit of the carrier if it is established that they resulted from an act or omission of the carrier, done with an intent to cause damage or done recklessly as to whether damage resulted or not. It does not matter whether the action is in tort or contract, the Hague-Visby Rules apply. At any rate, any action in respect of delay, damage or loss of cargo must be instituted within a year of the event that gave rise to the cause of action. The period can be extended after the cause of action has arisen. An action for indemnity against a third party may, however, be brought after the prescribed one year, provided that the court with jurisdiction allows it.

The Brussels Protocol and the Hague-Visby Rules came into force on 23 June 1977, when the 10th country ratified the 1968 amendment. By the early 2000s there were 23 sovereign parties to the Hague-Visby Rules (including the People's Republic of China, which had assumed the responsibilities for Hong Kong that the United Kingdom had originally acceded to on behalf of all its dependencies). In 1979 a further amendment, known as the SDR Protocol, because it made the IMF's special drawing rights the unit of account, was signed in Brussels on 21 December (it came into effect on 14 February 1984). Some countries have adopted the Hague-Visby Rules by adhering directly to the latter Protocol. The consolidated text of the 1924 Convention, as amended in 1968 and 1979, is reproduced below as the most current version of the Hague-Visby Rules.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF
CERTAIN RULES OF LAW RELATING TO BILLS OF LADING, AS
AMENDED BY THE BRUSSELS PROTOCOLS OF 1968 AND 1979
[HAGUE-VISBY RULES]*

Article I

In these Rules the following words are employed, with the meanings set out below:

- (a) 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.
- (b) 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) 'Ship' means any vessel used for the carriage of goods by sea.
- (e) 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
 - (a) Make the ship seaworthy;
 - (b) Properly man, equip and supply the ship;
 - (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

- 4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.
- 5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
- 6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6 bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for

indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands be a 'shipped' bill of lading, provided that if

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Adopted by a diplomatic conference, the Convention is in the public domain. However, enquiries about the official document and its status should be satisfied via, for example, the website of the International Maritime Committee, Comité Maritime International—CMI (<http://www.comitemaritime.org/>).

the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a 'shipped' bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.
2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
 - (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
 - (b) Fire, unless caused by the actual fault or privity of the carrier.
 - (c) Perils, dangers and accidents of the sea or other navigable waters.
 - (d) Act of God.

- (e) Act of war.
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- (h) Quarantine restrictions.
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions.
- (l) Saving or attempting to save life or property at sea.
- (m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing.
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
- 5.

- (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

- (d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

- i. in respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units;
- ii. in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this

paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IV bis

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any

agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

An agreement so entered into shall have full legal effect. Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article VIII

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article X

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if

- (a) the bill of lading is issued in a contracting State, or
- (b) the carriage is from a port in a contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract; whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to Bills of Lading not included in the preceding paragraphs.

[Articles XI to XVI of the Hague Rules—the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25 August 1924—are not repeated here (see chapter above). They deal with the coming into force of the Convention, the procedure for ratification, accession and denunciation, and the right to call for a new conference to consider amendments to the Rules contained in the Convention.]

CHAPTER THIRTY

EC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

Brussels, 27 September 1968

INTRODUCTION

This, the so-called Brussels Convention, seeks to bring order and coherence to the rules on private international law or conflict of laws. It applies exclusively to European countries, but can by declaration be extended to the French overseas territories, to the Danish external territories of the Faeroe (Faroe) Islands and Greenland, to the Netherlands Antilles and Aruba, and to the overseas territories of the United Kingdom. Such territories (for example, Gibraltar) are sometimes better covered by the 1988 Lugano Convention (see below) between the European Community (EC) and the European Free Trade Association (EFTA) on the same subject and largely based on the Brussels Convention. Thus, despite the limitation of the Brussels Convention mainly to European countries within the EC, the principles enunciated by the Convention are relied upon by or serve as guidance to courts and legal practitioners in many non-member countries.

The Brussels Convention applies to all civil and commercial issues before any court or tribunal. However, if the matter or proceedings relate to bankruptcy, to administration or the winding up of business entities, to matrimonial causes and succession, or to public revenue, customs, social security, arbitration and administrative matters, the Convention will not apply. Special provisions have been made for matters relating to insurance and consumer contracts. In insurance cases, an insurer (whether alone or as co-insurer) resident in a contracting state can be sued in that state or in the state of domicile of the policyholder provided that that state is also a party to the Convention. Even if it is just a branch or agency that is domiciled in a contracting state, in actions against that branch or agency, the insurer itself will be deemed as domiciled in that state. Where the matter relates to liability in respect of an immovable property or if movable property is joined and covered by the same policy, the insurer may also be sued directly or indirectly through the policyholder in the jurisdiction where the event took place. The insurer itself can only sue in the courts of the contracting country where the defendant is domiciled. The two sides in an insurance dispute can agree to opt out of the provisions outlined here,

provided any such agreement was reached after the dispute had arisen. Further, if both sides are resident in the same contracting state, that agreement may allow the policyholder or the insured or beneficiary to bring suit in courts other than those indicated in the Convention, likewise if the agreement is reached with a policyholder who is not domiciled in a contracting state, except if the insurance is compulsory or relates to immovable property in a contracting state. The insurance contract itself must be in respect of loss or damage to commercial maritime or aviation transport, including transit goods.

With consumer contracts, the Convention confers jurisdiction on the state in which the consumer is domiciled, where the consumer was specifically invited by advertisement or other means and where the contract was concluded in that state. The consumer can sue in the country in which he or she is domiciled or in the country in which the other party is domiciled, directly or indirectly, if it has an agency, branch or other establishment in that country. The conditions for a possible agreement to opt out of these provisions are same as for insurance contracts. Consumer transactions include any contract for the sale of goods on instalment credit terms or any contract for a loan repayable by instalments or any other form of credit given to finance the sale of goods or services. These provisions are based on the growth of, and recognition of, transnational transactions.

The provisions on insurance and consumer actions are largely a derogation from the general provisions regarding jurisdiction. Generally, persons domiciled in any contracting state can be sued in the courts of that state, irrespective of their nationality. The procedural rules that operate in each country regarding invocation of a court's jurisdiction, the service of process documents and the presence of defendant's property in the country, as in Ireland and the United Kingdom, will apply as if the defendant is a citizen. Exclusive jurisdiction is conferred on courts in the contracting state in which the property is located, where the proceedings relate to rights in the property (in rem), or to tenancies or immovable property. Actions on the legality of companies or their dissolution (likewise of other associations of natural or artificial persons) are to be held in the courts of the country where the company was registered. Proceedings regarding the registration of intellectual property or the keeping of registers and the enforcement of judgments are all to be held in the court of the country where the registration or the judgment is given. This is obviously to help the collection and ascertainment of evidence and the effective and efficient operation of the court process. Parties can also agree to confer exclusive jurisdiction on courts in a specific contracting state irrespective of their domiciles or nationality.

Judgments given in a contracting state are to be recognized by other contracting states, except if the judgment is in default of appearance by the defendant and it is established that service of the initiation of the court action was inadequate. Other exceptions are where there are conflicting judgments, between the same parties by courts in different member states or in a non-member state on the same subject matter, or where the judgment touched on or dealt with matters excluded from the purview of the Convention, such as matrimonial and succession issues. There is also an omnibus ground for non-recognition of judgment given in another state, which is if the judgment conflicts with the public policy of the state in which it is sought to be recognized and enforced.

The Convention came into force upon signature in September 1968. It has been revised and amended, particularly upon the accession of new countries to the European Community.

EUROPEAN COMMUNITY CONVENTION ON JURISDICTION AND
THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND
COMMERCIAL MATTERS (FULL FAITH AND CREDIT
CONVENTION)*

PREAMBLE

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

DESIRING to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

ANXIOUS to strengthen in the Community the legal protection of persons therein established; Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries: [not reproduced];

Who, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I: SCOPE

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

This Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

TITLE II: JURISDICTION

SECTION 1: GENERAL PROVISIONS

Article 2

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State. Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

in Belgium: Article 15 of the civil code (Code civil Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire Gerechtelijk Wetboek),

in Denmark: Article 248(2) of the law on civil procedure (Lov om retsens pleje) and Chapter 3. Article 3 of the Greenland law on civil procedure (Lov for Grønland om retsens pleje),

in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),

in France: Articles 14 and 15 of the civil code (Code civil),

in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),

in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

in the Netherlands: Articles 126(3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

in the United Kingdom: the rules which enable jurisdiction to be founded on:

- (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
- (b) the presence within the United Kingdom of property belonging to the defendant; or
- (c) the seizure by the plaintiff of property situated in the United Kingdom.

Article 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in

force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

SECTION 2: SPECIAL JURISDICTION

Article 5

A person domiciled in a Contracting State may, in another Contracting State, be sued:

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1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasidelict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;
7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:
 - (a) has been arrested to secure such payment, or
 - (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage;

Article 6

A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

Article 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3: JURISDICTION IN MATTERS RELATING TO INSURANCE

Article 7

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5).

Article 8

An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policyholder is domiciled, or
3. if he is a coinsurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State, but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 9

In respect of liability insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured. The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary. The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policyholder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A.

Article 12A

The following are the risks referred to in Article 12(5):

1. Any loss of or damage to (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes, (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
2. Any liability, other than for bodily injury to passengers or loss of or damage to their baggage,

- (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks,
 - (b) for loss or damage caused by goods in transit as described in (1)(b) above;
- 3. Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1)(a) above, in particular loss of freight or charter hire;
 - 4. Any risk or interest connected with any of those referred to in (1) to (3) above.

SECTION 4: JURISDICTION OVER CONSUMER CONTRACT

Article 13

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called “the consumer”, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

- 1. a contract for the sale of goods on instalment credit terms, or
- 2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- 3. any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer’s domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where the consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.

Article 14

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

SECTION 5: EXCLUSIVE JURISDICTION

Article 16

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting States in which the judgment has been or is to be enforced.

SECTION 6: PROROGATION OF JURISDICTION

Article 17

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practice in that trade or commerce of which the parties are or ought to have been aware. Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have

declined jurisdiction. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Article 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

Article 18

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

SECTION 7: EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY

Article 19

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Article 20

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

SECTION 8: LIS PENDENS RELATED ACTIONS

Article 21

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Article 22

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

SECTION 9: PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 24

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

TITLE III: RECOGNITION AND ENFORCEMENT

Article 25

For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

SECTION 1: RECOGNITION

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision, that the judgment be recognized.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addresses.

Article 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

Article 29

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 30

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal.

SECTION 2: ENFORCEMENT

Article 31

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 32

The application shall be submitted:

- in Belgium, to the tribunal de premiere instance or rechtbank van eerste aanleg,
- in Denmark, to the underret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in France, to the presiding judge of the tribunal de grande instance, in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in the United Kingdom:

1. in England and Wales, to the High Court of Justice or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;
2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in

which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33

The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 35

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Article 36

If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 37

An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

- in Belgium, with the tribunal de premiere instance or rechtbank van eerstaanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in France, with the cour d'appel,
- in Ireland, with the High Court,
- in Italy, with the corte d'appello,

in Luxembourg, with the Court supérieure de justice sitting as a court of civil appeal,
 in the Netherlands, with the arrondissementsrechtbank,
 in the United Kingdom:

1. in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
2. in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
3. in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

The judgment given on the appeal may be contested only:

in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
 in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
 in the Federal Republic of Germany, by a Rechtsbeschwerde,
 in Ireland, by an appeal on a point of law to the Supreme Court,
 in the United Kingdom, by a single further appeal on a point of law.

Article 38

The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Article 40

If the application for enforcement is refused, the applicant may appeal:

in Belgium, to the cour d'appel or hof van beroep,
 in Denmark, to the landsret,
 in the Federal Republic of Germany, to the Oberlandesgericht,
 in France, to the cour d'appel,
 in Ireland, to the High Court,

in Italy, to the corte d'appello,
 in Luxembourg, to the Court superieure de justice sitting as a court of civil appeal.
 in the Netherlands, to the arrondissementsrechtbank,
 in the United Kingdom:

1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41

A judgment given on an appeal provided for in Article 40 may be contested only:
 in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
 in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice.
 in the Federal Republic of Germany, by a Rechtsbeschwerde,
 in the United Kingdom, by a single further appeal on a point of law.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given.

Article 44

An applicant who, in the State in which the judgment was given, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed. However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if the presents a

statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

SECTION 3: COMMON PROVISIONS

Article 46

A party seeking recognition or applying for enforcement of a judgment shall produce:

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

Article 48

If the document specified in Articles 46(2) and 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Article 49

No legalization or other similar formality shall be required in respect of the documents referred to in Article 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

TITLE IV: AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 50

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Article 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State in which enforcement is sought under the same conditions as authentic instruments.

TITLE V: GENERAL PROVISIONS

Article 52

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority.

Article 53

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

TITLE VI: TRANSITIONAL PROVISIONS

Article 54

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force. However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

TITLE VII: RELATIONSHIP TO OTHER CONVENTIONS

Article 55

Subject to the provisions of the second paragraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,

the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,

the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,

the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on 18 January 1934,

the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934,

the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,

the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,

the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,

the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14 July 1960,

the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,

the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,

the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970,

the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on 17 November 1967,

and, in so far as it is in force:

the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961.

Article 56

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 57

This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

Article 58

This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on Jurisdiction and the enforcement of judgments in civil matters.

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to

recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or,
2. if the property constitutes the security for a debt which is the subject matter of the action.

TITLE VIII: FINAL PROVISIONS

Article 60

This Convention shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte. The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Notwithstanding the first paragraph, this Convention shall not apply to:

1. The Faroe islands, unless the Kingdom of Denmark makes a declaration to the contrary;
2. any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declaration may be made at any time by notifying the Secretary General of the Council of the European Communities.

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph (2) of the third paragraph shall be deemed to be proceedings taking place in those courts.

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the Faroe Islands (lov for Færøerne om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands.

Article 61

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary General on the Council of the European Communities.

Article 62

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

Article 64

The Secretary General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) any declaration received pursuant to Article 60;
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol.

Article 65

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66

This Convention is concluded for an unlimited period.

Article 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary General shall transmit a certified copy to the Government of each signatory State.

CHAPTER THIRTY-ONE

Agreement Establishing the Caribbean Development Bank

Kingston, 18 October 1969

INTRODUCTION

This Agreement established a regional bank to facilitate the rapid development of the Caribbean region. The Caribbean Development Bank (CBD) is meant to mobilize financial and other support from the region and on the global market to finance development projects in both the public and private sectors. It is also to assist regional members in the development of and coordination of their development programmes, with the aim of optimizing their resources. Interestingly, and unlike the agreements establishing other regional banks, the CBD is explicitly enjoined to support the establishment of financial consortia, to assist in efforts to promote regionally controlled financial institutions and to encourage the growth of capital markets within the region. This indicates that, although its membership is open to almost all members of the UN, the focus of its activities is the Caribbean region. The CBD is to help develop other financial institutions that, in the long term, would ease the pressures on the CDB.

As noted, the membership of the CDB is open to countries in the Caribbean region as well as to member countries of the UN. This is unlike many other regional development banks, which are open to members of the IMF. The latest country to join is the People's Republic of China, which joined the CDB in 1998. The highest policy-making body of the CDB is the Board of Governors. It is made up of representatives of all the members. The British dependencies of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands are considered as one member for the purposes of representation. The Board of Governors has all the powers of the Bank and may delegate any of its powers to the Board of Directors, except the power over membership, the appointment of external auditors and approval of financial statements of the Bank, adjustments to the authorized capital, determination of the reserves of the Bank and distribution of net profits and the election of the Directors and President of the Bank. If the Bank is to wind up, the responsibility for that also lies exclusively with the Governors. The Board of Directors is selected by the Governors, with the overwhelming majority selected by the regional members. The Board of Directors is responsible for the general direction and operations of the Bank. It takes decisions concerning loans,

guarantees, equity investment, provision of technical assistance and borrowing by the Bank itself. The President of the Bank, elected by the Governors to a renewable term of five years, chairs the Board of Directors. He sees to the daily functioning of the Bank and is responsible for staff appointments and tenure.

The resources of the Bank are divided into ordinary resources and special funds. The ordinary resources are those obtained from the subscribed capital stock, moneys borrowed by the Bank, repayments of loans made from the ordinary resources and any other moneys not part of the special fund. The special funds resources include specific contributions to a special fund and repayments of loans made from a special fund. The ordinary operations of the Bank are funded from the ordinary resources, special operations from special funds. The two operations and the records related thereto are to be kept separate at all times. A specific special fund called the Special Development Fund was created and loan contributions were made into it. Money from that Fund is used to make or guarantee loans of high priority developmental projects, with longer maturities, lower interest rates than for the use of ordinary resources and longer deferred repayment thresholds and periods. The specification of the details of the operation of a special fund is fairly unique to this Agreement. As with the other regional development banks, the CDB is to operate on sound banking principles and remain viable.

The Agreement came into effect on 26 January 1970, but has been amended twice since then (effective on 2 September 1976 and 24 June 1985). The original 18 members have since been joined by seven others, including three non-regional, non-borrowing members and three large Latin American countries. Anguilla (which joined once disputes about its status had been resolved) was the only new borrowing member, until it was joined by Suriname and Haiti, although in 2004 the formal process of admission for the latter two was not yet complete.

AGREEMENT ESTABLISHING THE CARIBBEAN DEVELOPMENT BANK (AS AMENDED)*

THE CONTRACTING PARTIES:

CONSCIOUS of the need to accelerate the economic development of States and Territories of the Caribbean and to improve the standards of living of their peoples;

RECOGNIZING the resolve of these States and Territories to intensify economic co-operation and promote economic integration in the Caribbean;

AWARE of the desire of other countries outside the region to contribute to the economic development of the region;

CONSIDERING that such regional economic development urgently requires the mobilization of additional financial and other resources; and

CONVINCED that the establishment of a regional financial institution with the broadest possible participation will facilitate the achievement of these ends;

HEREBY AGREE AS FOLLOWS:

INTRODUCTORY ARTICLE

The Caribbean Development Bank (hereinafter called the “Bank”) is hereby established and shall be governed by the following:

ARTICLES OF AGREEMENT

CHAPTER I: PURPOSE, FUNCTIONS AND PARTICIPATION

Article 1 Purpose

The purpose of the Bank shall be to contribute to the harmonious economic growth and development of the member countries in the Caribbean (hereinafter called the “region”) and to promote economic co-operation and integration among them, having special and urgent regard to the needs of the less developed members of the Region.

Article 2 Functions

1. To carry out its purpose, the Bank shall have the following functions:

- (a) to assist regional members in the co-ordination of their development programmes with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their international trade, in particular intra-regional trade;
- (b) to mobilize within and outside the region additional financial resources for the development of the region;
- (c) to finance projects and programmes contributing to the development of the region or any of the regional members;
- (d) to provide appropriate technical assistance to its regional members, particularly by undertaking or commissioning pre-investment surveys and by assisting in the identification and preparation of project proposals;
- (e) to promote public and private investment in development projects by, among other means, aiding financial institutions in the region and supporting the establishment of consortia;
- (f) to co-operate and assist in other regional efforts designed to promote regional and locally controlled financial institutions and a regional market for credit and savings;
- (g) to stimulate and encourage the development of capital markets within the region, and
- (h) to undertake or promote such other activities as may advance its purpose.

2. The Bank shall, where appropriate, co-operate with national, regional or international organizations or other entities concerned with the development of the region.

Article 3 Membership

1. Membership in the Bank shall be open to:

- (a) States and Territories of the region; and
 - (b) non-regional States which are members of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency.
2. The States and Territories listed in Annex A to this Agreement the Governments of which sign this Agreement in accordance with paragraph 1 of Article 62 and ratify or accept it in accordance with paragraph 1 of Article 63 shall become members of the Bank.
 3. States and Territories eligible for membership under paragraph 1 of this Article which do not become members in accordance with paragraph 2 of this Article may be admitted to membership on such terms and conditions as the Bank may determine by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members, and on acceding to this Agreement in accordance with paragraph 2 of Article 63.
 4. For the purpose of Articles 26, 32 and 65 the last four Territories listed in Category A of Annex A to this Agreement shall be considered as a single member of the Bank.

Article 4 Participation of Non-Members

The Bank shall encourage and facilitate the fullest co-operation and participation in its activities of other regional or non-regional States which are members of the United Nations or any of its specialized agencies or of the International Atomic Energy Agency and which may further its purpose, and shall take such measures as it may deem appropriate under the provisions of this Agreement to promote such co-operation and participation.

CHAPTER II: CAPITAL AND OTHER RESOURCES

Article 5 Authorized Capital

1. The authorized capital stock of the Bank shall be the equivalent of fifty million dollars (\$50,000,000) in terms of United States dollars of the weight and fineness in effect on 1st September, 1969. The authorized capital stock shall be divided into ten thousand (10,000) shares with a par value of five thousand dollars (\$5,000) each, which shall be available for subscription only by members in accordance with the provisions of Article 6.
2. The original authorized capital stock shall be divided into paid-up shares and callable shares. Shares having an aggregate par value equivalent to twenty-five million dollars (\$25,000,000) shall be paid-up shares and shares having an aggregate par value equivalent to twenty-five million dollars (\$25,000,000) shall be callable shares.
3. The authorized capital stock may be increased by the Board of Governors at such time and on such terms and conditions as it may determine by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members.
4. In this Agreement the expression "dollar" means a United States dollar of the value specified in paragraph 1 of this Article.

Article 6 Subscription of Shares

1. Each member shall subscribe to shares of the capital stock of the Bank. Each subscription to the original authorized capital stock shall be for paid-up and callable shares in equal parts. The initial

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Caribbean Development Bank (<http://www.caribank.org/>).

number of shares to be subscribed by those States and Territories which become members in accordance with paragraph 2 of Article 3 shall be as set forth in Annex A to this Agreement which shall form an integral part thereof. The initial number of shares to be subscribed by those States and Territories which are admitted to membership in accordance with paragraph 3 of Article 3 shall be determined by the Board of Governors in accordance with that paragraph.

2. The authorized capital stock of the Bank shall at all times be held or be available for subscription in the following manner: (a) not less than sixty (60) per cent by regional members; and (b) not more than forty (40) per cent by other members.
3. In case of an increase in the authorized capital stock, each member shall have a right to subscribe, on such terms and conditions as the Board of Governors shall determine, to a proportion of the increase of stock equivalent to the proportion which its stock previously subscribed bears to the total subscribed capital stock immediately before such increase, provided, however, that this provision shall not apply in respect of any increase or portion of an increase in the authorized capital stock which is intended solely to give effect to determinations of the Board of Governors under paragraphs 1 and 4 of this Article. No member shall be obligated to subscribe to any part of an increase in capital stock.
4. Subject to the provisions of paragraph 2 of this Article, the Board of Governors may, at the request of a member, increase the subscription of such member on such terms and conditions as the Board may determine. The Board of Governors shall pay special regard to the request of any regional member having less than five (5) per cent of the subscribed capital stock to increase its subscription.
5. Shares initially subscribed by those States and Territories which become members in accordance with paragraph 2 of Article 3 shall be issued at par. Other shares shall be issued at par unless the Board of Governors by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members decides in special circumstances to issue them on other terms.
6. Shares shall not be pledged or encumbered in any manner whatsoever. They shall not be transferable except to the Bank.
7. Liability of the members on shares shall be limited to the unpaid portion of their issue price.
8. Except as provided in paragraph 7 of this Article, no member shall be liable, by reason of its membership, for obligations of the Bank.

Article 7 Payment of Subscriptions

1. Payment of the amount due in respect of paid-up shares initially subscribed by a State or Territory which becomes a member in accordance with paragraph 2 of Article 3 shall be made in six (6) instalments. The first instalment shall equal 20 per cent of that amount and the remaining five instalments shall each equal 16 per cent of that amount. The first instalment shall be paid by each member not later than 90 days after entry into force of this Agreement or on or before the date of deposit of its instrument of ratification or acceptance in accordance with Article 63, whichever is the later. The second instalment shall be paid not later than one (1) year from the entry into force of this Agreement. The remaining four instalments shall each be paid successively not later than one (1) year from the date on which the preceding instalment becomes payable.
2. Of each instalment of an initial subscription payable under paragraph 1 of this Article by a State or Territory which becomes a member pursuant to paragraph 2 of Article 3:
 - (a) fifty (50) per cent shall be paid in gold or in a convertible currency which is freely and effectively useable in the operations of the Bank or in a currency which is freely and fully convertible into such a currency, provided that if the currency of that member meets either of such requirements, such payment shall be made in the currency of that member; and
 - (b) fifty (50) per cent shall be paid in the currency of that member, subject to the provisions of paragraph 5 of this Article.
3. Each payment of a member in its own or another currency shall be in such amount as the Bank, after such consultation with the International Monetary Fund as it may consider necessary and utilizing the par value, if any, established with the International Monetary Fund, shall determine to be equivalent to the full value in terms of dollars of the portion of the subscription being paid. The first instalment payable pursuant to paragraph 1 of this Article shall be in such amount as that member considers appropriate in accordance with this paragraph, but shall be subject to such adjustment, to be effected within ninety (90) days of the date on which such payment was due, as the Bank shall determine to be necessary to constitute the full dollar equivalent of such payment.
4. Subject to the provisions of paragraphs 6 and 7 of this Article relating to callable shares, payment of other subscriptions in respect of original authorized shares and of increases in the capital stock of the Bank shall be made at such times and in gold or in such currencies as the Board of Governors shall determine and the Board may determine with the agreement of all members that different proportions of such capital be paid up by different members.
5. The Bank shall accept from a member, in place of any part of the member's currency paid or to be paid by the member under paragraph 2(b) of this Article or under paragraph 1 of Article 24 in respect of payments under paragraph 2(b) of this Article, provided such currency is not required by the Bank for the conduct of its operations, promissory notes or other obligations issued by the Government of the member or by the depository designated by the member pursuant to Article 37. Such notes or other obligations shall be non-negotiable, non-interest bearing, and payable at their par value upon demand. Subject to paragraph 5 of Article 23, demand for payment of such

notes or other obligations shall be made only as and when the funds are required by the Bank for the conduct of its operations, provided, however, that a member which has issued such promissory notes or other obligations may at the request of the Bank convert any of them into interest-bearing notes or into cash to be invested in government securities of that member. Demands upon such notes or obligations shall, as far as practicable over reasonable periods of time, be uniform in percentage of all such notes and obligations. Notwithstanding the issuance or acceptance of a note or other obligation by the Bank, the obligation of the member under paragraph 2(b) of this Article and under Article 24 shall subsist.

6. Callable shares shall be subject to call only as and when required by the Bank to meet its obligations incurred pursuant to sub-paragraphs (b) and (d) of Article 13 on borrowings of funds for inclusion in its ordinary capital resources or on guarantees chargeable to such resources. Such calls on unpaid subscriptions shall be uniform in percentage on all callable shares.
7. Payment of calls referred to in paragraph 6 of this Article may be made at the option of the member in gold, convertible currency or in the currency required to discharge the obligations of the Bank for the purpose of which the call is made.
8. The Bank shall determine the place for any payment under this Article, provided that, until the inaugural meeting of the Board of Governors the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the Government of Barbados as Trustee of the Bank.

Article 8 Special Funds

1. A special fund to be known as the Special Development Fund is hereby established into which the Bank may receive contributions or loans. The Special Development Fund may be used to make or guarantee loans of high developmental priority, with longer maturities, longer deferred commencement of repayment and lower interest rates than those determined by the Bank for its ordinary operations. The Bank shall, as soon as practicable, adopt rules and regulations for the administration and use of the Special Development Fund.
2. The Bank may establish, or be entrusted with the administration of, other special funds which are designed to serve its purpose and fall within its functions. It shall adopt such special rules and regulations as may be required for the establishment, administration and use of the resources of each special fund.
3. Subject to the provisions of paragraph 1 of this Article relating to the Special Development Fund, the terms and conditions upon which the Bank may receive contributions or loans for special funds, including the Special Development Fund, shall be such as may be agreed upon between the Bank and the contributor or lender, and special funds may be used in any manner and on any terms and conditions not inconsistent with the purpose and functions of the Bank or with any agreement relating to such funds.
4. No allocation may be made to the Special Development Fund provided for in paragraph 1 of this Article or to any other special fund from the paid-up capital or reserve of the Bank or from funds borrowed by the Bank for inclusion in its ordinary capital resources.

5. The rules and regulations relating to any special fund shall be consistent with the provisions of this Agreement except those which expressly apply only to ordinary operations of the Bank. Where such rules and regulations do not apply, special funds shall be governed by the provisions of this Agreement.

Article 9 Ordinary Capital Resources and Special Funds Resources

1. The resources of the Bank shall consist of ordinary capital resources and special funds resources.
2. In this Agreement, the expression “ordinary capital resources” includes the following:
 - (a) authorized capital stock of the Bank subscribed pursuant to Article 6;
 - (b) funds borrowed by the Bank to which the commitment to calls provided for in paragraph 6 of Article 7 is applicable;
 - (c) funds received in repayment of loans or guarantees made with the resources referred to in sub-paragraphs (a) and (b) of this paragraph;
 - (d) income derived from loans made from the aforementioned funds or from guarantees to which the commitment to calls provided for in paragraph 6 of Article 7 is applicable; and
 - (e) any other funds or income received by the Bank which do not form part of any special funds resources.
3. In this Agreement, the expression “special funds resources” refers to the resources of any special fund and includes the following:
 - (a) resources initially contributed to any special fund;
 - (b) funds accepted by the Bank for inclusion in any special fund;
 - (c) funds repaid in respect of loans or guarantees financed from the resources of any special fund which, under the rules and regulations of the Bank governing that special fund, are received by such special fund;
 - (d) income derived from operations of the Bank in which any of the aforementioned resources or funds are used or committed if, under the rules and regulations of the Bank governing the special fund concerned, that income accrues to such special fund; and
 - (e) any other resources placed at the disposal of any special fund.

CHAPTER III: OPERATIONS

Article 10 Use of Resources

The resources and facilities of the Bank shall be used exclusively to further the purpose and carry out the functions set forth, respectively, in Articles 1 and 2 of this Agreement.

Article 11 Ordinary and Special Operations

1. The operations of the Bank shall consist of ordinary operations and special operations.

2. Ordinary operations shall be those financed from the ordinary capital resources of the Bank.
3. Special operations shall be those financed from special funds resources.

Article 12 Separation of Operations

1. The ordinary capital resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of, entirely separate from special funds resources. Each special fund, its resources and accounts shall be kept entirely separate from other special funds, their resources and accounts.
2. The ordinary capital resources of the Bank shall not be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of any special fund. Special funds resources appertaining to any special fund shall not be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of the Bank financed from its ordinary capital resources or from special resources appertaining to any other special fund.
3. In the operations and other activities of any special fund, the liability of the Bank shall be limited to the resources appertaining to that special fund which are at the disposal of the Bank.
4. The financial statements of the Bank shall show the ordinary operations and the special operations of the Bank separately. Expenses appertaining to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses appertaining directly to special operations shall be charged to the special funds resources. Any other expenses shall be charged as the Bank shall determine.
5. The Bank shall adopt such other rules and regulations as may be required to ensure the effective separation of the two types of its operations.

Article 13 Recipients and Methods of Ordinary Operations

In its ordinary operations, the Bank may provide or facilitate financing for any regional member or any political subdivision or any agency thereof, or any other entity or enterprise in the public or private sector operating in the territory of such member, as well as for international or regional agencies or other entities concerned with the economic development of the region. The Bank may carry out such operations in any of the following ways:

- (a) by making or participating in direct loans with its unimpaired paid-up capital and, except as provided in Article 18, with its reserves and undistributed surplus;
- (b) by making or participating in direct loans with funds raised by the Bank in capital markets or borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources;
- (c) by investment of the funds referred to in paragraphs (a) and (b) of this Article in the equity capital of an entity or enterprise, provided, however, that no such investment shall be made until after the Board of Governors, by a vote of not less than two-thirds of the total number of governors representing not less than three-fourths of the total

voting power of the members, shall have determined that the Bank is in a position to begin such type of operations; or

- (d) by guaranteeing, whether as primary or secondary obligor, in whole or in part, loans for economic development.

Article 14 Limitations on Operations

1. The total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surplus and any other funds included in its ordinary capital resources, exclusive of the special reserve provided for in Article 18 and other reserves not available for ordinary operations.
2. The total amount outstanding in respect of the special operations of the Bank relating to any special fund shall not at any time exceed the total amount of the unimpaired resources appertaining to that special fund.
3. In the case of funds invested in equity capital out of the ordinary capital resources of the Bank, the total amount invested shall not at any time exceed ten (10) per cent of the aggregate amount of the unimpaired paid-up capital stock of the Bank actually paid up at any given time together with the reserves and surplus included in its ordinary capital resources, exclusive of the special reserve provided for in Article 18.
4. The amount of any equity investment shall not exceed such percentage of the equity capital of the entity or enterprise concerned as the Board of Directors shall from time to time or in each specific case determine to be appropriate. The Bank shall not seek to obtain by such an investment a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Bank.

Article 15 Operating Principles

Subject to the provisions of this Agreement, the operations of the Bank shall be conducted in accordance with the following principles:

- (a) The operations of the Bank shall provide principally for the financing of specific projects, including those forming part of a national, sub-regional or regional development programme. They may, however, include loans to, or guarantees of loans made to, national development banks or other suitable financial institutions, in order that the latter may finance development projects on terms approved by the Bank where the individual financing requirements of such projects are not, in the opinion of the Bank, large enough to warrant the direct supervision of the Bank.
- (b) The Bank shall not finance any undertaking in the territory of a member if that member objects to such financing.
- (c) Before a loan or guarantee is granted, the applicant shall have submitted an adequate loan or guarantee proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal together with his recommendations on the basis of a staff study.
- (d) In considering an application for a loan or guarantee, the Bank shall pay due regard to the ability of the borrower to obtain financing elsewhere on terms and conditions that the Bank considers reasonable for the recipient.

- (e) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract.
- (f) In making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Bank, appropriate for the loan concerned.
- (g) In guaranteeing a loan made by other investors, or in underwriting the sale of securities, the Bank shall receive suitable compensation for its risk.
- (h) The proceeds of financing in the ordinary operations of the Bank shall normally be used only for procurement, in territories of members, of goods and services produced in those territories. In special cases the Board of Directors may, however, determine the circumstances in which the procurement of goods and services may be permitted elsewhere, giving particular consideration wherever practicable to procurement of goods and services produced in the territory of countries which have contributed substantially to the resources of the Bank.
- (i) In procuring services, and in facilitating financing for entities or enterprises in the private sector, the Bank shall pay due regard to the need to develop and strengthen undertakings, entities and skills of individuals belonging to the region.
- (j) In the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures in connection with the project as they are actually incurred.
- (k) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed, or participated in by the Bank are used only for the purposes for which the loan was granted and with due regard to considerations of economy and efficiency.
- (l) The Bank shall pay due regard to the desirability of a reasonable distribution of the benefits from its operations among the members in the region.
- (m) The Bank shall seek to maintain reasonable diversification in its investments in equity capital.
- (n) The Bank may provide financing to meet either external or local expenditures in respect of a project being assisted, provided that in its ordinary operations the Bank shall provide financing for local expenditures in the territory in which the project is located only in exceptional circumstances and not exceeding a reasonable proportion of the total of such expenditures, or in circumstances where such financing may be provided with local currency restricted under paragraph 2 of Article 23.
- (o) The Bank shall be guided by sound development banking principles in its operations.

Article 16 Terms and Conditions for Direct Loans and Guarantees

1. In the case of direct loans made or participated in or loans guaranteed by the Bank, the contract shall establish the terms and conditions for the loan or guarantee concerned, including those relating to payment of principal, interest and other charges, maturities, and dates of payment in respect of the loan, or the fees and other charges in respect of the guarantee, respectively.
2. Subject in the case of special operations to any rules and regulations or other arrangements relating thereto, the contract relating to a loan made or guaranteed by the

Bank shall specify the currency or currencies to be used in making repayments to the Bank, or stipulate that repayments shall be made in the currency or currencies loaned, or make other appropriate provision for the currency or currencies of repayment. At the option of the borrower, however, such repayments may be made in gold or, subject to the agreement of the Bank, in any convertible currency. The contract may also provide that the amount of repayments to the Bank shall be equivalent, in terms of a currency specified for that purpose by the Bank, to the value of those repayments on the date or dates on which the loan was disbursed.

3. Where the recipient of a loan or guarantee of a loan is not itself a member, the Bank may, when it deems it advisable, make it a condition of the contract that the member in whose territory the project concerned is to be carried out, or a public agency of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.

Article 17 Commission and Fees

1. The Bank shall determine the rate and any other terms and conditions of the commission to be charged in connection with direct loans made or participated in as part of its ordinary operations. This commission shall be computed on the amount outstanding on each loan or participation and shall be at the rate of not less than one (1) per cent per annum in the first five (5) years of the operations of the Bank. At the end of this period, the rate of commission may be set at such level as the Bank considers appropriate in the light of the level of the reserves of the Bank.
2. In guaranteeing a loan as part of its ordinary operations, the Bank shall, in addition to any other charges, require a guarantee fee, at a rate determined by the Board of Directors, payable periodically on the amount of the loan outstanding.
3. Other charges of the Bank in its ordinary operations, and any commission, fees or other charges in its special operations, shall be determined by the Board of Directors.

Article 18 Special Reserve

The amount of commissions and guarantee fees received by the Bank pursuant to Article 17 of this Agreement shall be set aside as a special reserve which shall be kept for meeting liabilities of the Bank. The special reserve shall be held in such liquid form as the Board of Directors may decide, provided that whenever it is in the interest of the Bank the special reserve may be invested in the securities of the region.

Article 19 Methods of Meeting Liabilities of the Bank

1. Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Bank in its ordinary operations, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it, chargeable to its ordinary capital resources, the Bank may call an appropriate amount of callable shares in accordance with paragraph 6 of Article 7.
2. If the subscribed callable capital stock of the Bank shall be entirely called pursuant to paragraph 6 of Article 7, the Bank may, if necessary for the purpose specified in

paragraph 1 of this Article, use or exchange the currency of any member without restriction, including any restriction imposed pursuant to paragraph 2 of Article 23.

CHAPTER IV: BORROWING AND OTHER MISCELLANEOUS POWERS

Article 20 General Powers

In addition to the powers provided elsewhere in this Agreement, the Bank shall have the power to:

- (a) borrow funds in the territories of members or elsewhere, and in this connection to furnish such collateral or other security there for as the Bank shall determine, provided always that:
 - i. before making a sale of its obligations in a country, the Bank shall seek the approval of the competent authorities of that country;
 - ii. where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained the approval of the competent authorities of that member;
 - iii. the Bank shall obtain the approval of the competent authorities referred to in sub-paragraphs (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without restriction; and
 - iv. before determining whether to sell its obligations in a particular country, the Bank shall consider the amount of previous borrowing, if any, in that country, the amount of previous borrowings in other countries, and the possible availability of funds in such other countries and shall give due regard to the general principle that its borrowings should, as far as possible, be diversified as to the country of borrowing;
- (b) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of the competent authorities of the country where the securities are to be bought or sold;
- (c) guarantee securities in which it has invested, in order to facilitate their sale;
- (d) underwrite, or participate in the underwriting of, securities issued by any enterprise or entity for purposes consistent with the purpose and functions of the Bank;
- (e) invest or deposit funds, not needed in its operations, in the territories of members or of substantial contributors to the resources of the Bank, in such obligations or institutions of members or substantial contributors, or nationals thereof, as it may determine, except where the Board of Directors by a vote of not less than three-fourths of the total voting power of the members determines otherwise;
- (f) assist regional members in matters relating to the foreign placement of official loans;
- (g) borrow from Governments, their political sub-divisions and instrumentalities, and international organizations, on such terms and conditions as may be agreed upon between the Bank and the lender;
- (h) provide technical assistance which serves its purpose and comes within its functions, and where expenditures incurred in furnishing such services are not reimbursable, charge the income of the Bank therewith; and

- (i) exercise such other powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions and consistent with the provisions of this Agreement.

Article 21 Notice to be Placed on Securities

that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall so state.

CHAPTER V: CURRENCIES

Article 22 Valuation of Currencies and Determination of Convertibility

Whenever the Bank considers it necessary under this Agreement:

- (a) to value any currency in terms of another currency or of gold, or
- (b) to determine whether any currency is convertible,

such valuation or determination, as the case may be, shall be reasonably made by the Bank after consultation with the International Monetary Fund.

Article 23 Use of Currencies

1. The currency of any member held by the Bank as part of its ordinary capital resources, however acquired, may be used by the Bank or by any recipient from the Bank, without restriction by that member, to make payments for expenditures within, or for goods and services produced in, the territory of that member.
2. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of gold or any currency received by the Bank and included in its ordinary capital resources; except that a regional member may, after consultation with and subject to periodic review by the Bank, restrict, in whole or in part, to expenditure in the territory of that member the use of its currency paid in as, or derived as repayments of principal from, currency of the member paid pursuant to paragraph 2(b) of Article 7.
3. The use of any currency received and held by the Bank as part of its special funds resources shall be governed by the rules, regulations and agreements pertaining thereto and made by virtue of the provisions of Article 8.
4. Gold or currencies held by the Bank may not be used by the Bank to purchase currencies of members or non-members except with the approval of the member or members whose currencies are involved, but may be so used without such approval:
 - i. in order to meet the obligations of the Bank in the ordinary course of its business; or
 - ii. if the currency to be used for such purchase is the currency of a member received by the Bank as a payment on account of the subscription of another member; or
 - iii. pursuant to a decision of the Board of Directors by a vote of the Directors representing not less than two-thirds of the total voting power of the members.

5. Nothing in this Agreement shall preclude the Bank from using the currency of any member for administrative expenses incurred by the Bank in the territory of that member.

Article 24 Maintenance of Value of the Currency Holdings of the Bank

1. Whenever the par value in the International Monetary Fund of the currency of a member is reduced or the foreign exchange value of such currency has, in the opinion of the Bank, depreciated to a significant extent within its territories, that member shall pay to the Bank within a reasonable time an additional amount of its currency sufficient to maintain the value as of the time of subscription of the amount of such currency which is held or subsequently received by the Bank (whether or not any such currency is held in the form of notes or other obligations issued pursuant to paragraph 5 of Article 7) and consisting of, or derived as repayments of principal from, currency originally paid to the Bank by such member pursuant to paragraph 2(a) or paragraph 2(b) of Article 7, or any additional currency paid pursuant to the provisions of the present paragraph; provided, however, that, to the extent that the Bank shall, in its opinion, have received from any borrower of such currency, or from any guarantor, amounts paid solely as a result of such reduction in par value or of such depreciation, the Bank shall pro tanto relieve that member of its obligations under the present paragraph.
2. Whenever the par value of the currency of a member is increased, the Bank shall pay to that member within a reasonable time an amount of such currency equal to the increase in the value of that amount of the member's currency held or subsequently received by the Bank to which paragraph 1 of this Article would be applicable; provided, however, that the Bank shall not be obligated to make such payment to the extent that the benefit of any such increase in par value shall have been passed on by the Bank to any borrower or guarantor as a corollary of the obligation of either to make increased payments to the Bank in case of a decrease in the par value of such currency.
3. The provisions of the preceding two paragraphs may be waived or deemed inoperative by the Bank when a uniform change in the par values of the currencies of all its members is made by the International Monetary Fund.
4. Amounts paid by a member pursuant to the provisions of paragraph 1 of this Article to maintain the value of any of its currency shall be useable and convertible to the same extent as the original currency in respect of which such amounts are paid.
5. In the case of a member whose currency does not have a par value established with the International Monetary Fund, the initial value of such currency in terms of dollars shall be as determined by the Bank pursuant to paragraph 3 of Article 7, or otherwise, for purposes of payments by such member on account of its subscription. The Bank may, from time to time thereafter, make a similar determination with respect to the value in terms of dollars of such currency. For the purposes of the provisions of paragraphs 1 and 2 of this Article, the value so determined from time to time shall be treated as if it were the par value of such currency.

CHAPTER VI: ORGANIZATION AND MANAGEMENT

Article 25 Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, a Vice-President, and such other officers and staff as may be considered necessary.

Article 26 Board of Governors: Composition

1. Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate. Each governor and alternate shall serve at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. At each annual meeting, the Board of Governors shall elect one of the governors as Chairman who shall hold office until the election of the next Chairman.
2. Governors and alternates shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 27 Board of Governors: Powers

1. All the powers of the Bank shall be vested in the Board of Governors.
2. The Board of Governors may delegate to the Board of Directors any or all its powers, except the power to:
 - (a) admit new members and determine the conditions of their admission;
 - (b) increase or decrease the authorized capital stock of the Bank;
 - (c) suspend a member;
 - (d) decide appeals from decisions regarding the interpretation or application of this Agreement made by the Board of Directors;
 - (e) authorize the conclusion of general agreements for co-operation with Governments and with other international organizations;
 - (f) elect the directors and the President of the Bank;
 - (g) determine the remuneration of the directors and their alternates;
 - (h) determine the reserves and the distribution of the net profits of the Bank;
 - (i) amend this Agreement;
 - (j) decide to terminate the operations of the Bank and to distribute its assets;
 - (k) select external auditors to certify the general balance sheet and the statement of profit and loss of the Bank and to select such other experts as may be necessary to examine and report on the general management of the Bank;
 - (l) approve, after reviewing the report of the external auditors, the general balance sheet and statements of profit and loss of the Bank; and
 - (m) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.
3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors in accordance with paragraph 2 of this Article.

Article 28 Board of Governors: Procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board of Governors or called by the Board of Directors. Meetings of the Board of Governors other than the annual meeting shall be called by the Board of Directors whenever requested by a majority of the members of the Bank.
2. A majority of the total number of the governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.
3. The Board of Governors may by regulation establish a procedure whereby the Board of Directors, when the latter deems such action advisable, may obtain a vote of the governors on a specific question without calling a meeting of the Board of Governors.
4. The Board of Governors may establish such subsidiary bodies as may be necessary or appropriate for the conduct of the business of the Bank.

Article 29 Board of Directors: Composition

1.
 - (a) The Board of Directors shall be composed of seven (7) members of whom:
 - i. five (5) shall be selected by the governors representing regional members; and
 - ii. two (2) shall be selected by the governors representing non-regional members.
 - (b) When other States or Territories become members, the Board of Governors may, by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members, increase the total number of directors.
 - (c) The directors shall be selected in accordance with rules of procedure to be adopted by the Board of Governors by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members. The said rules shall give effect to the principles relating to regional directors set out in Part I of Annex B to this Agreement. Until such rules have been adopted, the directors shall be selected in accordance with Part II of the said Annex B.
2. Directors shall be persons of high competence in economic and financial matters and shall be selected with due regard to the principle of equitable geographical distribution.
3. Each director shall appoint an alternate with full power to act for him when he is not present.
4. Directors shall hold office for a term of two (2) years and shall be eligible for selection for a further term or terms of office. They shall continue in office until their successors shall have been selected and assumed office. If the office of a director becomes vacant before the expiration of his term of office the vacancy shall be filled by a new director who shall be selected by the governors representing the members who selected his predecessor and he shall hold office for the remainder of the term of office of his predecessor.

Article 30 Board of Directors: Powers

The Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly in this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (a) prepare the work of the Board of Governors;
- (b) in conformity with the general directions of the Board of Governors, take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, furnishing of technical assistance, and other operations of the Bank;
- (c) submit the accounts for each financial year to the Board of Governors at each annual meeting; and
- (d) approve the budget of the Bank.

Article 31 Board of Directors: Procedure

- 1. The Board of Directors shall normally function at the principal office of the Bank and shall meet as often as the business of the Bank may require.
- 2. A majority of the directors shall constitute a quorum for any meeting of the Board of Directors, provided that such majority represents not less than two-thirds of the total voting power of the members.
- 3. The Board of Governors shall adopt regulations under which a member may send a representative to attend any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

Article 32 Voting

- 1. Each member shall have 150 votes plus one additional vote for each share of capital stock held by it.
- 2. In voting in the Board of Governors, each governor shall be entitled to cast the votes of the members he represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be determined by a majority of the voting power of the members represented at the meeting.
- 3. In voting in the Board of Directors, each director shall be entitled to cast the number of votes of the member or members whose votes counted towards his selection, which votes must be cast as a unit. Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be determined by a majority of the voting power of the members represented at the meeting.

Article 33 The President

- 1. The Board of Governors, by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members, shall elect a President of the Bank. The President, while holding office, shall not be a governor or a director or an alternate for either.

2. The term of office of the President shall be for such period not exceeding five (5) years as the Board of Governors may determine. He may be re-elected. He shall, however, cease to hold office when the Board of Governors so decides by a vote of not less than two-thirds of the total number of the governors representing not less than three-fourths of the total voting power of the members.
3. The President shall be Chairman of the Board of Directors but shall have no right to vote, except to vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.
4. The President shall be chief executive officer of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank. He shall be responsible for the organization, appointment and dismissal of the officers and the staff, subject to the general control of the Board of Directors.
5. The President and the Vice-President shall be persons possessing extensive experience in matters relating to finance and development in the public or private sector.
6. In appointing the officers and staff, the President shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of personnel on as equitable a geographical basis as possible.

Article 34 The Vice-President

1. A Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. The Vice-President shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank as may be determined by the Board of Directors. In the absence or incapacity of the President, or while that office is vacant, the Vice-President shall exercise the authority and perform the functions of the President.
2. The Vice-President may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that the Vice-President shall cast the deciding vote when acting in place of the President.

Article 35 International Character of the Bank: Prohibition of Political Activity

1. The Bank shall not accept loans or assistance that may in any way prejudice or otherwise alter its purpose or functions.
2. The Bank, its President, Vice-President, officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations relevant to the purpose and functions of the Bank shall be brought to bear upon their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.
3. The President, Vice-President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 36 Office of the Bank

1. The principal office of the Bank shall be located in Barbados.
2. The Bank may establish agencies or branch offices elsewhere.

Article 37 Channel of Communications, Depositories

1. Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement.
2. Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository with which the Bank may keep any of its holdings of the currency of that member as well as other assets of the Bank.

Article 38 Official Language and Reports

1. The official language of the Bank shall be English.
2. The Bank shall transmit to members an Annual Report containing an audited statement of its accounts and shall publish such Report. It shall also transmit quarterly to its members a summary statement of its financial position and a profit and loss statement showing the results of its operations.
3. The Bank may also publish such other reports as it deems desirable in the carrying out of its purpose and functions. Such reports shall be transmitted to the members of the Bank.
4. The accounts of the Bank shall be audited by external auditors of high international standing selected by the Board of Governors.

Article 39 Allocation of Net Income

1. The Board of Governors shall determine at least annually the disposition of the net income of the Bank arising from its ordinary operations and what portion thereof, if any, shall be allocated, after making provision for reserves or other purposes, to surplus, and what portion, if any, shall, notwithstanding the provisions of Article 12, be allocated to any special fund, including the Special Development Fund, or distributed to the members.
2. The Board of Governors shall determine at least annually the disposition of the net income of the Bank arising from its special operations, subject to any rules or regulations governing each special fund and any agreement relating thereto.
3. Any distribution of net income under paragraph 1 of this Article shall be made to each member in the proportion which the total payments made by that member under paragraph 2(a) of Article 7 and the average amount of loans outstanding during the year made out of currency corresponding to its subscription under paragraph 2(b) of Article 7 bears to the total of such amounts for all members.
4. Payments shall be made in such manner and in such currency as the Board of Governors shall determine.

CHAPTER VII: WITHDRAWAL AND SUSPENSION OF MEMBERS: TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK

Article 40 Withdrawal

1. Any member may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office.
2. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice, but in no event less than six (6) months after the date that notice has been received by the Bank. However, at any time before the withdrawal becomes effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.
3. A member which has given notice of its withdrawal from the Bank shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice. If the withdrawal becomes effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the notice of withdrawal was received by the Bank.

Article 41 Suspension of Membership

1. If a member fails to fulfil any of its obligations to the Bank, the Board of Governors may suspend such member by a vote of not less than two-thirds of the total number of the governors of other members representing not less than three-fourths of the total voting power of the other members. The member concerned shall have no vote.
2. The member so suspended shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during that period, decides by the same majority necessary for suspension to restore the member to good standing.
3. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 42 Settlement of Accounts

1. After the date on which a State or Territory ceases to be a member, that former member shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member is outstanding; but it shall not incur liabilities with respect to loans and guarantees entered into thereafter by the Bank nor share either in the income or the expenses of the Bank.
2. At the time a State or Territory ceases to be a member, the Bank shall arrange for the repurchase of such member's shares by the Bank as a part of the settlement of accounts with such member in accordance with the provisions of paragraphs 3 and 4 of this Article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date of cessation of membership.

3. The repayment for shares repurchased by the Bank under this Article shall be governed by the following conditions:
- (a) Any amount due to the member concerned for its shares shall be withheld so long as that member, its central bank or any of its political sub-divisions or agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the contingent liability of the member for future calls on its subscription for shares in accordance with paragraph 6 of Article 7. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date on which its membership ceases.
 - (b) Payments for shares may be made from time to time, upon their surrender by the former member concerned, to the extent by which the amount due to the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans and guarantees referred to in sub-paragraph (a) of this paragraph, until the former member has received the full repurchase price.
 - (c) Payments shall be made in such available currencies as the Bank determines, taking into account its financial position.
 - (d) If losses are sustained by the Bank on any guarantees or loans which were outstanding on the date of cessation of membership and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the former member concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 6 of Article 7, to the same extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.
4. If the Bank terminates its operations pursuant to Article 44 within six (6) months of the date upon which the membership of any member ceases, all rights of the member concerned shall be determined in accordance with the provisions of Articles 44 to 46. That member shall be considered as still a member for purposes of such Articles but shall have no voting rights.

Article 43 Temporary Suspension of Operations

In an emergency, the Board of Directors may temporarily suspend operations in respect of new loans and guarantees, pending an opportunity for further consideration and action by the Board of Governors.

Article 44 Termination of Operations

1. The Bank may terminate its operations by resolution of the Board of Governors approved by a vote of not less than two-thirds of the total number of governors representing not less than three-fourths of the total voting power of the members.

2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 45 Liability of Members and Payment of Claims

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
2. All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank on unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgement, to ensure a pro rata distribution among holders of direct and contingent claims.

Article 46 Distribution of Assets

1. No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until all liabilities to creditors shall have been discharged or provided for. Moreover, such distribution must be approved by the Board of Governors by a vote of not less than two-thirds of the total number of governors representing not less than three-quarters of the total voting power of the members.
2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of assets. No member shall be entitled to receive its share in such a distribution of assets until it has settled all its obligations to the Bank.
3. Before any distribution of assets is made the Board of Directors shall value the assets to be distributed as at the date of distribution and then proceed to distribute in the following manner:
 - i. There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, insofar as they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.
 - ii. Any balance due to a member after payment has been made under (i) above shall be paid, in its own currency, insofar as it is held by the Bank, up to an amount equivalent in value to such balance,
 - iii. Any balance due to a member after payment has been made under (i) and (ii) above shall be paid in gold or currency acceptable to the member, insofar as they are held by the Bank, up to an amount equivalent in value to such balance,
 - iv. Any remaining balance due to a member after payment has been made under (i), (ii), and (iii) shall be satisfied out of the remaining assets held by the Bank.
4. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed before their distribution.

CHAPTER VIII: STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 47 Purpose of Chapter

To enable the Bank effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

Article 48 Legal Status

1. The Bank shall possess full juridical personality and, in particular, full capacity:
 - (a) to contract;
 - (b) to acquire, and dispose of, immovable and movable property; and
 - (c) to institute legal proceedings.
2. The Bank may enter into agreements with members, non-member States and other international organizations.

Article 49 Legal Process

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a member in which the Bank has its principal or a branch office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member. Members shall have recourse to such special procedures for the settlement of disputes between the Bank and its members as may be provided for in this Agreement, in by-laws and regulations of the Bank, or in contracts entered into with the Bank.
3. The Bank shall also make provision for appropriate modes of settlement of disputes in cases which do not come within the provisions of paragraph 2 of this Article and which are subject to the immunity of the Bank by virtue of paragraph 1 of that Article.
4. The Bank and its property and assets, wheresoever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Bank.

Article 50 Immunity of Assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 51 Immunity of Archives

The archives of the Bank and, in general, all documents, belonging to it, or held by it, shall be inviolable, wherever located.

Article 52 Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively and subject to the provisions of this Agreement, the Bank

- (a) may hold assets of any kind and operate accounts in any currency; and
- (b) shall be free to transfer its assets from one country to another or within any country and to convert any currency held by it into any other currency,

without being restricted by financial controls, regulations or moratoria of any kind.

Article 53 Privilege for Communications

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

Article 54 Immunities and Privileges of Bank Personnel

All governors, directors, alternates, officials and employees of, and experts performing missions for, the Bank:

- (a) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (b) where they are not local citizens or nationals, shall be accorded such immunities from immigration restrictions, alien registration requirements and national service obligations, and such facilities as regards exchange regulations, as are not less favourable than those accorded by the member concerned to the representatives, officials and employees of comparable rank of any other member; and
- (c) shall be given such repatriation facilities in time of international crisis as are not less favourable than those accorded by the member concerned to the representatives, officials and employees of comparable rank of any other member.

Article 55 Exemption from Taxation

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all direct taxation and from all customs duties on goods imported for its official use.

2. Notwithstanding the provisions of paragraph 1 of this Article, the Bank will not claim exemption from taxes which are no more than charges for public utility services.
3. The Bank will not normally claim exemption from excise duties, and from taxes on the sale of movable and immovable property, which form part of the price to be paid. Nevertheless, when the Bank is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.
4. Articles imported under an exemption from customs duties as provided by paragraph 1 of this Article, or in respect of which a remission or return of duty or tax has been made under paragraph 3, shall not be sold in the territory of the member which granted the exemption, remission or return except under conditions agreed with that member.
5. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, but members reserve the right to tax their own citizens or nationals or persons permanently resident in the territories of such members.
6. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (a) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (b) if the sole jurisdictional basis for such taxation is the place or the currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
7. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (a) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (b) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 56 Implementation

Each member shall promptly inform the Bank of the action which it has taken to make effective the provisions of this Chapter in its territory.

Article 57 Waiver of Immunities, Exemptions and Privileges

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, exemption or privilege in respect of any officer or employee of, or any expert performing a mission for, the Bank where, in his opinion, the immunity, exemption or

privilege would impede the course of justice and can be waived without pre-judice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive any immunity, exemption or privilege respecting the President and the Vice-President.

CHAPTER IX: AMENDMENTS, INTERPRETATION, ARBITRATION

Article 58 Amendments

1. This Agreement may be amended only by a resolution of the Board of Governors adopted by a vote of not less than two-thirds of the total number of governors representing not less than three-fourths of the total voting power of the members.
2. Notwithstanding the provisions of paragraph 1 of this Article, the unanimous agreement of the Board of Governors shall be required for the adoption of any amendment modifying:
 - (a) the right to withdraw from the Bank;
 - (b) the limitations on liability provided in paragraphs 7 and 8 of Article 6; and
 - (c) the rights pertaining to the subscriptions of capital stock provided in paragraph 3 of Article 6.
3. Any proposal to amend this Agreement, whether emanating from a member or from the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall communicate the proposal to each member and then bring it before the Board of Governors. When an amendment has been adopted, the Bank shall certify it in a formal communication addressed to all members. Amendments shall enter into force for all members three (3) months after the date of the formal communication unless the Board of Governors specifies therein a different period.
4. The foregoing provisions of this Article shall be subject to the terms of the Protocol annexed hereto which shall have effect only for the purposes and during the meeting specified therein.

Article 59 Interpretation and Application

1. Any question of interpretation or application of the provisions of this Agreement not otherwise expressly provided for shall be submitted to the Board of Directors for decision. A member particularly affected by the question under consideration shall have the right to make direct representation to the Board of Directors at the meeting of the Board at which the question is considered. Such right shall be regulated by the Board of Governors.
2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems it necessary, act on the basis of the decision of the Board of Directors.

Article 60 Arbitration

If a dispute should arise between the Bank and a State or Territory which ceases to be a member, or between the Bank and any member after adoption of a resolution to terminate the operations of the Bank, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the Chairman. If within thirty days of the request for arbitration either party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by regulations adopted by the Board of Governors, to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators. However, the third arbitrator shall be empowered to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

Article 61 Approval Deemed Given

Whenever the approval of any member is required before any act may be done by the Bank, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix when notifying the member of the proposed act.

CHAPTER X: FINAL PROVISIONS

Article 62 Signature and Deposit

1. This Agreement shall be deposited with the Secretary-General of the United Nations (hereinafter called the "Depositary") and shall remain open until 14 November, 1969 for signature by the Governments listed in Annex A to this Agreement.
2. In the case of Territories in the region which are not fully responsible for the conduct of their international relations and where the Government of the State responsible for the conduct of the international relations of the Territory does not sign, ratify, or accede to this Agreement on its behalf, such Territory shall at the time of signing or acceding to this Agreement in pursuance of Article 63 present an instrument issued by the Government of the State responsible for the conduct of the international relations of that Territory confirming that the latter has authority to conclude this Agreement and to assume rights and obligations under it.
3. The Depositary shall transmit certified copies of this Agreement to all the signatories and other States and Territories which become members of the Bank.

Article 63 Ratification, Acceptance, Accession and Acquisition of Membership

1.

- (a) This Agreement shall be subject to ratification or acceptance by the signatories. Instruments of ratification or acceptance shall be deposited by the signatories with the Depositary before 30 April 1970. The Depositary shall notify the other signatories of each deposit and the date thereof,
- (b) A signatory whose instrument of ratification or acceptance is deposited on or before the date on which this Agreement enters into force, shall become a member of the Bank on that date, and a signatory whose instrument of ratification or acceptance is deposited after that date, but before 30 April 1970, shall become a member on the date of deposit of its instrument of ratification or acceptance.

2. After 30 April 1970 a State or Territory may become a member of the Bank by accession to this Agreement on such terms as the Board of Governors shall determine in accordance with paragraph 3 of Article 3. Any such State or Territory shall deposit, on or before a date appointed by the Board, an instrument of accession with the Depositary who shall notify such deposit and the date thereof to the Bank and to the parties to this Agreement. Upon such deposit, the State or Territory shall become a member of the Bank on the appointed date in accordance with that paragraph.
3. A member may, when depositing its instrument of ratification or acceptance, declare that in its territory the immunity conferred by paragraph 1 of Article 49 and subparagraph (a) of Article 54 shall not apply in relation to a civil action arising out of an accident caused by a motor vehicle belonging to the Bank or operated on its behalf or to a traffic offence committed by the driver of such a vehicle.

The member may also declare that the privilege conferred by Article 53 shall be restricted in its territory to treatment not less favourable than the member accords to international financial institutions of which it is a member, and that the exemption referred to in paragraph 6(b) of Article 55 shall not extend to any bearer instrument issued by the Bank in its territory or issued elsewhere by the Bank and transferred in its territory.

Article 64 Entry Into Force

This Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by eight (8) signatories, including at least one non-regional State, whose initial subscriptions, as set forth in Annex A to this Agreement, in aggregate comprise not less than sixty (60) percent of the authorized capital stock of the Bank, provided that 1st December 1969 shall be the earliest date on which this Agreement may enter into force.

Article 65 Inaugural Meeting

As soon as this Agreement enters into force, each member shall appoint a governor, and the Secretary-General of the Commonwealth Caribbean Regional Secretariat shall call the inaugural meeting of the Board of Governors.

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

DONE AT Kingston, Jamaica, this eighteenth day of October, one thousand nine hundred and sixty-nine.

[The signatures and the two Annexes, on potential membership, subscriptions and the election of the Directors, are not reproduced here.]

CHAPTER THIRTY-TWO

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

The Hague, 18 March 1970

INTRODUCTION

Another product of the Hague Conference on Private International Law process, this Convention is meant to complement the one on service abroad of documents, signed five years previously. The object of the Convention is to facilitate judicial co-operation in the handling of the civil and commercial field. In cases before a court in a member country, the court can request the appropriate authority in another contracting state to obtain evidence or to perform some other judicial act. The evidence sought must be for the exclusive purpose of assisting with ongoing or planned judicial proceedings. The question immediately arises: what is a 'judicial act'? The Convention's definition is not very helpful. For one thing, it defines it in negative terms and excludes 'service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures'. The service of civil or commercial documents, or judicial documents, for that matter, is covered by the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (see above) and, therefore, it is proper that the same functions are not repeated here. However, the exclusion of provisional and protective orders from the definition of a judicial act is problematic. In some countries the distinction between judicial and extra-judicial acts may not be strict. Provisional or protective orders from courts will easily qualify as judicial acts.

The process for the operation of the Convention requires the existence of a central authority in the contracting state to receive and channel requests for the taking of evidence from a foreign contracting country to the appropriate quarter. Every letter of request must: be in the language of the jurisdiction where the evidence is taken or be translated into such a language; name the requesting authority and the executing authority; give the names and addresses of the parties to the proceedings and their representatives and the names of the persons to be examined; state the nature of the proceedings for which the evidence is required and the nature of the evidence to be obtained or of the judicial act to be performed; give the questions to be put or the subject matter of the evidence, documents or property to be inspected; say whether the evidence

is to be taken under oath or affirmation; specify any special method to be used in collecting the evidence; and inform the person of his rights to representation and the choice of refusing to appear.

The Convention relies significantly on the operation of the domestic juridical system of the country where the evidence is to be taken. For example, the execution of a letter of request may be refused by the state of execution if the letter is not within the purview of the judiciary. It can also be refused if the state considers that its sovereignty or national security would be compromised. These are quite nebulous grounds and derogate from certainty of expectation. There are also specific legal reasons for the possible refusal of a request for evidence to be taken in a foreign country. If the prescribed manner of taking the evidence is inconsistent with the law of the state where the evidence is to be taken, it would be refused. In other words, if there is a conflict between the procedural laws of the requesting country and the requested country, the laws of the requested country prevails. This follows logically from the sovereignty clause and conflict of law principles.

Curiously, the Convention is valid in the first instance for five years, and then is renewed explicitly every five years, provided that there has been no denunciation. It is not clear why this is so. Perhaps it is to allow flexibility in application.

The Convention first came into force on 7 October 1972. By the beginning of 2005 there were 43 contracting states.

CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS*

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

DESIRING to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose,

DESIRING to improve mutual judicial co-operation in civil or commercial matters,

HAVE RESOLVED to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I: LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organize the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify:

- (a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
- (b) the names and addresses of the parties to the proceedings and their representatives, if any;
- (c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;
- (d) the evidence to be obtained or other judicial act to be performed.

Where appropriate, the Letter shall specify, *inter alia*:

- (e) the names and addresses of the persons to be examined;
- (f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;
- (g) the documents or other property, real or personal, to be inspected;
- (h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;
- (i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legalization or other like formality may be required.

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorization by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence:

- (a) under the law of the State of execution; or
- (b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

* We have endeavoured to reproduce a complete and correct text of the above Convention, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Permanent Bureau of the Hague Conference on Private International Law (<http://www.hcch.net/>).

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Article 12

The execution of a Letter of Request may be refused only to the extent that:

- (a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or
- (b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II: TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents, if:

- (a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and
- (b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if:

- (a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and
- (b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Article 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, *inter alia*, as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence:

- (a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;

- (b) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;
- (c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;
- (d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;
- (e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III: GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process necessary to compel the

appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from:

- (a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;
- (b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;
- (c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from:

- (a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;
- (b) the provisions of Article 4 with respect to the languages which may be used;
- (c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;
- (d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;
- (e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;
- (f) the provisions of Article 14 with respect to fees and costs;
- (g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at The Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 8–16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed.

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following:

- (a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;
- (b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;
- (c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27;
- (d) any withdrawal or modification of the above designations and declarations;
- (e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37. The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession. The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following:

- (a) the signatures and ratifications referred to in Article 37;
- (b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;
- (c) the accessions referred to in Article 39 and the dates on which they take effect;
- (d) the extensions referred to in Article 40 and the dates on which they take effect;
- (e) the designations, reservations and declarations referred to in Articles 33 and 35;
- (f) the denunciations referred to in the third paragraph of Article 41.

IN WITNESS WHEREOF the undersigned [not reproduced], being duly authorised thereto, have signed the present Convention.

DONE at The Hague, on the 18th day of March 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

CHAPTER THIRTY-THREE

Treaty Establishing the Caribbean Community and Common Market or Treaty of Chaguaramas

Chaguaramas, 4 July 1973

INTRODUCTION

The 1970s was a period when many countries bonded together to promote their economic and other related interests. The Caribbean Community (CARICOM) was one such arrangement. Although the initial membership of the Caribbean Community was to the four fully independent countries of the Commonwealth Caribbean, Barbados, Guyana, Jamaica, and Trinidad and Tobago, CARICOM nevertheless replaced the larger Caribbean Free Trade Association (CARIFTA) formed in 1965 (effective from 1968), as planned. Other members of the now defunct CARIFTA—Antigua and Barbuda, Belize (then British Honduras), Dominica, Grenada, Montserrat (the only one still a British colony), Saint Christopher (Kitts) and Nevis, Saint Lucia, and Saint Vincent and the Grenadines—were expected to, and did, sign up to the new Community agreement. Then, in 1983 the Bahamas joined the Community, but not the Common Market.

The objectives of the Community, as deduced from the Preamble and the relevant articles, include full employment, economic integration of the member states through co-ordinated economic and trade policy and a functional pooling of resources and services. Other objectives include the co-ordination of foreign policies, greater social and cultural interaction and advancement, and co-operation in the area of technology. Member states are to take effective measures to achieve the goals of the Community. In terms of specific structure, the Community is headed and led by the Conference of Heads of Government of the members. The main function of the Conference is to set policy for the Community. It also decides on financial arrangements for the functioning of the Community. The outcomes of its proceedings could either be decisions or recommendations. Decisions are taken by votes, with each member having one vote. The decisions are binding, but recommendations are not, although there is an obligation to explain why a particular recommendation is not complied with by any country (or territory) member. Other institutions of the Community are the Conferences of Ministers for various portfolios and any other institution established by the Conference of Heads of Government. The Caribbean Development Bank, the Caribbean Investment Corporation, the Regional

Shipping Council, the East Caribbean Common Market Council of Ministers and the University of the West Indies are among those recognized as associate institutions of the Community.

The day-to-day operation of CARICOM is handled by its Secretariat (originally the Commonwealth Caribbean Regional Secretariat, which was created before the Community). The Secretariat is headed by a Secretary-General, appointed to a five-year term by the Conference of Heads of Government. The Secretary-General and his staff are to be independent and 'refrain from any action which might reflect on their position as officials of the Community, and shall be responsible only to the Community'.

By far the most important step taken under the Treaty of Chaguaramas is the creation of the Common Market of the Caribbean. Although established under the terms of the Treaty and with its membership open to the same members or potential members of the Community, the Common Market appears to have some independent orientation and organization. There is a Common Market Council of Ministers, a Common Market Secretariat (the same as the Community Secretariat) and a Common Market Tribunal, albeit *ad hoc*. The Common Market is to speed up trade liberalization by the removal of export duties, quantitative restrictions and unfair subsidies and by the promotion of freedom of transit. It is also to maintain a common policy against the business of non-members or third countries. Freedom of establishment, services and movement of capital is to be enhanced and, where any restriction is to be applied, the treatment of nationals must be the standard. Other important areas of cooperation under the Common Market regime are tourism, fiscal policy, the joint development of natural resources and industrial programmes, air transport, social security, broadcasting, education and health. It would appear that the objectives and arrangements of the Common Market are quite ambitious. Considering the capacity and resource restraints of the members, and the absence of a functioning regional court system (as the European Court of Justice for the European Community), it would have been realistic to move the agenda for the Common Market in piecemeal. A series of nine protocols amending the Treaty and designed to institute greater integration and to establish a CARICOM single market and economy were adopted between 1997 and 2001, but their provisions are not reproduced here.

The Treaty, which was signed by the four founding members near Port of Spain (Trinidad), came into effect a few weeks later, on 1 August 1973. The eight other territories of CARIFTA had joined by 1 May 1974, and the Bahamas became a Community member in 1983. Montserrat remains the only colony to have become a full member, although the other territories of the British West Indies have become associate members (the British Virgin Islands and the Turks and Caicos in 1991, Anguilla in 1999, the Cayman Islands in 2002 and Bermuda in 2003). Meanwhile, CARICOM moved beyond its Commonwealth Caribbean origins by admitting Suriname in 1995 and Haiti in 2002 (provisional membership since 1998).

TREATY OF CHAGUARAMAS*

TREATY ESTABLISHING THE CARIBBEAN COMMUNITY

PREAMBLE

THE GOVERNMENTS OF THE CONTRACTING STATES,

DETERMINED to consolidate and strengthen the bonds which have historically existed among their peoples;

SHARING a common determination to fulfil the hopes and aspirations of their peoples for full employment and improved standards of work and living;

CONSCIOUS that these objectives can most rapidly be attained by the optimum utilisation of available human and natural resources of the Region; by accelerated, coordinated and sustained economic development, particularly through the exercise of permanent sovereignty over their natural resources; by the efficient operation of common services and functional cooperation in the social, cultural, educational and technological fields; and by a common front in relation to the external world;

CONVINCED of the need to elaborate an effective regime by establishing and utilising institutions designed to enhance the economic, social and cultural development of their peoples;

HAVE AGREED AS FOLLOWS:

CHAPTER I: PRINCIPLES

Article 1 Establishment of the Caribbean Community

By this Treaty the Contracting Parties establish among themselves a Caribbean Community (hereinafter referred to as “the Community”) having the membership, powers and functions hereinafter specified.

Article 2 Membership

1. Membership of the Community shall be open to:

(a)

- i. Antigua and Barbuda
- ii. Bahamas
- iii. Barbados
- iv. Belize
- v. Dominica
- vi. Grenada
- vii. Guyana
- viii. Jamaica

- ix. Montserrat
- x. Saint Christopher [Kitts]-Nevis-Anguilla
- xi. Saint Lucia
- xii. Saint Vincent and the Grenadines
- xiii. Trinidad and Tobago.

(b) any other State of the Caribbean Region that is in the opinion of the Conference able and willing to exercise the rights and assume the obligations of membership in accordance with Article 29 of this Treaty.

2. States listed in paragraph (a) of this Article the Governments of which sign this Treaty in accordance with Article 22 and ratify it in accordance with Article 23 shall become Member States of the Community.

Article 3 Definition of Less Developed Countries and More Developed Countries

For the purposes of this Treaty the States specified in paragraph 1(a) (iii), (vii), (viii) and (xiii) of Article 2 shall be designated More Developed Countries and the remainder listed in the said paragraph, other than the Bahamas, shall be designated Less Developed Countries until such time as the Conference otherwise determine by majority decision.

Article 4 Objectives of the Community

The Community shall have as its objectives:

- (a) the economic integration of the Member States by the establishment of a common market regime (hereinafter referred to as “the Common Market”) in accordance with the provisions of the Annex to this Treaty with the following aims:
 - i. the strengthening, coordination and regulation of the economic and trade relations among Member States in order to promote their accelerated harmonious and balanced development;
 - ii. the sustained expansion and continuing integration of economic activities, the benefits of which shall be equitably shared taking into account the need to provide special opportunities for the Less Developed Countries;
 - iii. the achievement of a greater measure of economic independence and effectiveness of its Member States in dealing with States, groups of states and entities of whatever description;
- (b) the coordination of the foreign policies of Member States; and
- (c) functional cooperation, including:
 - i. the efficient operation of certain common services and activities for the benefit of its peoples;
 - ii. the promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development;

- iii. activities in the fields specified in the Schedule and referred to in Article 18 of this Treaty.

Article 5 General Undertaking as to Implementation

Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by the Organs of the Common Market. They shall facilitate the achievement of the objectives of the Common Market. They shall abstain from any measures which could jeopardise the attainment of the objectives of this Treaty.

CHAPTER II: ORGANS OF THE COMMUNITY

Article 6 Principal Organs

The principal organs of the Community shall be:

- (a) the Conference of Heads of Government (hereinafter referred to as “the Conference”);

* The document above is printed with kind permission of CARICOM. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document, and the revised Treaty, should be made to the Secretariat of CARICOM (<http://www.caricom.org/>).

- (b) The Common Market Council established under the Annex (hereinafter referred to as “the Council”).

Article 7 The Conference: Composition

The Conference shall consist of the Heads of Government of Member States.

Any member of the Conference may, as appropriate, designate an alternate to represent him at any meeting of the Conference.

Article 8 The Conference: Functions and Powers

1. The primary responsibility of the Conference shall be to determine the policy of the Community.
2. The Conference may establish, and designate as such, institutions of the Community in addition to those specified in paragraphs (a) to (g) of Article 10 of this Treaty, as it deems fit for the achievement of the objectives of the Community.
3. The Conference may issue directions of a general or special character as to the policy to be pursued by the Council and the Institutions of the Community for the achievement of the objectives of the Community, and effect shall be given to any such directions.
4. Subject to the relevant provisions of this Treaty, the Conference shall be the final authority for the conclusion of treaties on behalf of the Community and for entering into relationships between the Community and International Organisations and States.

5. The Conference shall take decisions for the purpose of establishing the financial arrangements necessary for meeting the expenses of the Community and shall be the final authority on questions arising in relation to the financial affairs of the Community.
6. The Conference may regulate its own procedure and may decide to admit at its deliberations observers, representatives of non-Member States or other entities.
7. The Conference may consult with entities and other organisations within the region and for this purpose may establish such machinery as it deems necessary.

Article 9 Voting in the Conference

1. Each member of the Conference shall have one vote.
2. The Conference shall make decisions and recommendations by the affirmative vote of all its members.
3. A decision shall be binding upon each Member State to which it is directed. A recommendation shall have no binding force. Where, however, a Member State fails to observe a recommendation of the Conference, it shall submit a report to the Conference as early as practicable and in any event not later than six months thereafter, giving reasons for its non-compliance.
4. For the purposes of this Article, abstentions shall not be construed as impairing the validity of decisions or recommendation of the Conference provided that not less than three-quarters of its members including at least two of the More Developed Countries vote in favour of any decision or recommendation.

Article 10 Institutions of the Community

Institutions of the Community shall be:

- (a) the Conference of Ministers responsible for Health
- (b) the Standing Committee of Ministers responsible for Education
- (c) the Standing Committee of Ministers responsible for Labour
- (d) the Standing Committee of Ministers responsible for Foreign Affairs
- (e) the Standing Committee of Ministers responsible for Finance
- (f) the Standing Committee of Ministers responsible for Agriculture
- (g) the Standing Committee of Ministers responsible for Mines
- (h) any other institution that may be established and designated as such by the Conference in accordance with Article 18.

Article 11 Composition of Institutions of the Community

1. Each Institution of the Community as set out in paragraphs (a) to (h) of Article 10 of this Treaty shall consist of representatives of Member States. Each Member State shall designate a Minister of Government as its representative on each such institution.
2. Where the Minister designated under paragraph 1 of this Article is unable to attend a meeting of the institution the Member State may designate any other person as an alternate to attend such meeting in his stead.

3. Where the Conference establishes any other institutions in the exercise of the power conferred on it by paragraph 2 of Article 8 of this Treaty, the composition of such institution shall be determined by the Conference.

Article 12 Functions and Powers

1. Subject to the relevant provisions of Article 8 of this Treaty, the institutions of the Community shall formulate such policies and perform such functions as are necessary for the achievement of the objectives of the Community within their respective spheres of competence.
2. The institutions of the Community may regulate their own procedure and:
 - (a) may establish such subsidiary committees, agencies and other bodies as they consider necessary for the efficient performance of their functions; and
 - (b) may decide to admit at their deliberations observers, representatives of non-Member States or other entities.

Article 13 Voting in Institutions

1. Each Member State represented on an Institution shall have one vote.
2. Unless otherwise provided for, decisions of an Institution shall be made by an affirmative vote of all its members. For the purposes of this paragraph, abstentions shall not be construed as impairing the validity of decisions of an Institution provided that not less than three-quarters of its members including at least two of the More Developed Countries vote in favour of such decisions.
3. Recommendation shall be made by a two-thirds majority vote of all its members including at least two of the More Developed Countries and shall have no binding force. Where a Member State fails to observe a recommendation of an Institution in whole or in part, it shall submit a report to the Institution making the recommendation as early as practicable and in any event not later than six months after receiving notice of such recommendation giving reasons for its non-compliance.
4. Observers at meetings of Institutions shall not have the right to vote.

Article 14 Associates Institutions

1. The following institutions shall be recognised as Associate Institutions of the Community:
 - (a) the Caribbean Development Bank;
 - (b) the Caribbean Investment Corporation;
 - (c) the West Indies Associated States Council of Ministers;
 - (d) the East Caribbean Common Market Council of Ministers;
 - (e) the Caribbean Examinations Council
 - (f) the Council of Legal Education;
 - (g) the University of Guyana;
 - (h) the University of the West Indies;

- (i) the Caribbean Meteorological Council;
 - (j) the Regional Shipping Council;
 - (k) any other institution designated as such by the Conference.
2. The Community shall seek to establish such relationships with its Associate Institutions as will promote the achievement of its objectives.

Article 15 The Community Secretariat

1. The Commonwealth Caribbean Regional Secretariat shall be recognised as the Community Secretariat. The Community Secretariat (hereinafter referred to as “the Secretariat”) shall be the principal administrative organ of the Community. The headquarters of the Secretariat shall be located in Georgetown, Guyana.
2. The Secretariat shall comprise a Secretary-General and such staff as the Community may require. The Secretary-General shall be appointed by the Conference (on the recommendation of the Council) for a term not exceeding 5 years and may be re-appointed by the Conference. He shall be the chief administrative officer of the Community.
3. The Secretary-General shall act in that capacity in all meetings of the Conference, the Council and of the institutions of the Community. The Secretary-General shall make an annual report to the Conference on the work of the Community.
4. In the performance of their duties the Secretary-General and his staff shall neither seek nor receive instructions from any government whether of Member States or otherwise or from any other authority. They shall refrain from any action which might reflect on their position as officials of the Community, and shall be responsible only to the Community.
5. Each Member State undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and his staff and shall not seek to influence them in the discharge of their responsibilities.
6. The Conference shall approve the staff Regulations governing the operation of the Secretariat.
7. The Secretary-General shall approve Staff Rules for the operation of the Secretariat.

Article 16 Functions of the Secretariat

The functions of the Secretariat shall be as follows:

- (a) to service meetings of the Community and any of its Institutions or Committees as may from time to time be determined by the Conference;
- (b) to take appropriate follow-up action on decisions made at such meetings;
- (c) to initiate, arrange and carry out studies on questions of economic and functional co-operation relating to the region as a whole;
- (d) to provide services to Member States at their request in respect of matters relating to the achievement of the objectives of the Community;
- (e) to undertake any other duties which may be assigned to it by the Conference or any of the Institutions of the Community.

CHAPTER III: COORDINATION AND FUNCTIONAL COOPERATION

Article 17 Coordination of Foreign Policies

1. To the end that Member States aim at the fullest possible coordination of their foreign policies within their respective competences and seek to adopt as far as possible common positions in major international issues, there is hereby established a Standing Committee of Ministers responsible for Foreign Affairs.
2. The Committee shall have the power to make recommendations to the Governments of Member States represented on the Committee.
3. Only member States possessing the necessary competence with respect to the matters under consideration from time to time may take part in the deliberations of the Committee.
4. Where after the coming into force of the Treaty a Member State achieves full sovereign status such State shall elect whether it wishes to be bound by the provisions of this Article.
5. The recommendations of the Committee shall be made by an affirmative vote of all the Member States competent and participating in the deliberations.
6. The provisions of Article 13 shall not apply to this Article.

Article 18 Functional Cooperation

Without prejudice to the requirements of any other provision of this Treaty, Member States, in furtherance of the objectives set out in Article 4 of this Treaty, undertake to make every effect to cooperate in the areas set out in the Schedule to this Treaty.

Article 19 Settlement of Disputes

Any dispute concerning the interpretation or application of this Treaty, unless otherwise provided for and particularly in Articles 11 and 12 of the Annex, shall be determined by the Conference.

CHAPTER IV: GENERAL AND FINAL PROVISIONS

Article 20 Legal Capacity

1. The Community shall have full juridical personality.
2. Each Member State shall in its territory accord to the Community the most extensive legal capacity accorded to legal persons under its municipal laws including the capacity to acquire and transfer movable and immovable property and to sue and be sued in its own name. In any legal proceedings the Community shall be represented by the Secretary-General of the Secretariat.
3. The Community may enter into agreement with Member States, non-Member States and International Organisations.

4. Each Member State hereby agrees to take such action as is necessary to make effective in its territory the provisions of this Article and shall promptly inform the Secretariat of such action.

Article 21 Privileges and Immunities

1. The privileges and immunities to be recognised and granted by the Member States in connection with the Community shall be laid down in a Protocol to this Treaty.
2. The Community shall conclude with the Government of the Member States in which the headquarters of the Secretariat is situated an agreement relating to the privileges and immunities to be recognized and granted in connection with the Secretariat.

Article 22 Signature

This Treaty shall be open for signature on the 4th July, 1973 by any State mentioned in paragraph 1(a) of Article 2 of this Treaty.

Article 23 Ratification

This Treaty and any amendments thereto shall be subject to ratification by the Contracting States in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Secretariat which shall transmit certified copies to the Government of each Member State.

Article 24 Entry into Force

This Treaty shall enter into force on the 1st August, 1973, if instruments of ratification have been previously deposited in accordance with Article 23 of this Treaty by the States mentioned in Article 2 paragraph 1(a)(iii), (vii), (viii) and (xiii), and if not, then on such later date on which the fourth such instrument has been so deposited.

Article 25 Registration

This Treaty and any amendments thereto shall be registered with the Secretariat of the United Nations.

Article 26 Amendments

1. Save as otherwise provided for in Article 66 of the Annex, upon a decision of the Conference for this purpose, this Treaty may be amended by the Contracting Parties.
2. Any such amendment shall enter into force one month after the date on which the last of the instruments of ratification is deposited.
3. Notwithstanding paragraph 1 hereof no amendments may be made to the Treaty prior to 1st May, 1974.

Article 27 Withdrawal

1. A Member State may withdraw from the Community by giving notice in writing to the Secretariat and the Secretariat shall promptly notify the other Member States. Such withdrawal shall take effect 12 months after the notice is received by the Secretariat.
2. A Member State so withdrawing undertakes to honour any financial obligations duly assumed during its membership of the Community.

Article 28 Negotiation and Conclusion of Agreements

1. For the purpose of negotiating agreements, the Conference may designate any institution of the Community to carry out negotiations.
2. Unless otherwise determined by the Conference in any particular case, the conclusion of agreements by the Community shall be undertaken by the Conference.

Article 29 Accession to the Treaty

1. Any State or Territory of the Caribbean Region may apply to the Conference to become a member of the Community and may, if the Conference so decides, be admitted to membership in accordance with paragraph 2 of this Article.
2. Admission to membership shall be upon such terms and conditions as the Conference may decide and shall take effect from the date on which an appropriate instrument of accession is deposited with the Secretariat.

Article 30 Associate Membership

1. Any State which in the opinion of the Heads of Government Conference is qualified for membership of the Community in accordance with paragraph 1(b) of Article 2 of this Treaty may, upon application to the Conference for associate membership of the Community, be admitted as an associate member of the Community in accordance with paragraph 2 of this Article.
2. On an application made under paragraph 1 of this Article the Conference shall determine the conditions under which the applicant State may be associated with the Community.

Article 31 Saving

1. Member States that are not also members of the Common Market shall not be entitled to participate in the decisions taken under the Treaty relating to the Common Market.
2. Decisions taken under this Treaty requiring such action shall be subject to the relevant constitutional procedures of the respective Member States.
3. Where necessary, Member States undertake to take steps as expeditiously as possible to give full effect in law to all decisions of the organs and institutions of the Community which are binding on them.
4. Member States shall not participate in decisions with respect to the subject of which they do not possess the necessary competence.

Article 32 Status of the Annex and Schedule

The Annex and Schedule to this Treaty shall form an integral part of this Treaty.

Article 33 General Provisions of the Common Market

The provisions of the Annex shall govern the establishment, membership and operation of the Common Market.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have affixed their signatures [not reproduced] below this Treaty.

Done at Chaguaramas on the fourth day of July in the year one thousand nine hundred and seventy-three.

ANNEX TO THE TREATY: THE CARIBBEAN COMMON MARKET

PREAMBLE

THE GOVERNMENTS OF THE CONTRACTING STATES:

NOTING that the Agreement establishing the Caribbean Free Trade Association had expressly foreshadowed “the ultimate creation of a viable economic community of Caribbean Territories”;

RECOGNISING that over the past five years the Caribbean Free Trade Association has laid the foundation for further progress in regional economic integration;

CONVINCED that closer economic integration among Member States will contribute to the creation of a viable economic community of the Commonwealth Caribbean Countries;

ACKNOWLEDGING that it is the intention to establish a Common External Tariff as an integral feature of the Caribbean Common Market;

HAVE AGREED AS FOLLOWS:

CHAPTER I: PRINCIPLES

Article 1 Establishment of the Caribbean Common Market

There is hereby established a Caribbean Common Market (herein-after referred to as the ‘Common Market’) which shall have membership powers and functions hereinafter specified.

Article 2 Membership

1.

(a) Membership of the Common Market shall be open to:

- i. Antigua
- ii. Barbados
- iii. Belize
- iv. Dominica
- v. Grenada
- vi. Guyana
- vii. Jamaica
- viii. Montserrat
- ix. Saint Christopher-Nevis-Anguilla
- x. Saint Lucia
- xi. Saint Vincent
- xii. Trinidad and Tobago

(b) any other state of the Caribbean region that is in the opinion of the Conference of Heads of Government (hereinafter referred to as the ‘Conference’) mentioned in Article 6 of the Treaty establishing the Caribbean Community, able and willing to exercise the rights and assume the obligations of membership in accordance with Article 65 of this Annex.

2. States listed in paragraph 1(a) of this Article the Governments of which are parties to the Treaty establishing the Caribbean Community (hereinafter referred to as the ‘Treaty’) shall become members of the Common Market.

Article 3 Objectives of the Common Market

The Common Market shall have as its objectives:

- (a) the strengthening, coordination and regulation of the economic and trade relations among Member States in order to promote their accelerated harmonious and balanced development;
- (b) the sustained expansion and continuing integration of economic activities, the benefits of which shall be equitably shared taking into account the need to provide special opportunities for the Less Developed Countries;
- (c) the achievement of a greater measure of economic independence and effectiveness of its Member States in dealing with states, groups of states and entities of whatever description.

Article 4 General Undertaking as to Implementation

Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of the obligations arising out of this Annex or resulting from decisions taken by the Organs and Institutions of the Common Market. They shall facilitate the achievement of the objectives of the Common Market. They shall abstain from any measures which could jeopardise the attainment of the objectives of this Annex.

CHAPTER II: ORGANS OF THE COMMON MARKET THE COUNCIL

Article 5 Establishment

1. There shall be established a Common Market Council (herein-after referred to as “the Council”) which, subject to paragraph 3 of Article 8 of the Treaty, shall be the principal organ of the Common Market.
2. Each Member State shall be represented on the Council.

Article 6 Composition

1. The Council shall consist of one Minister of Government designated by each Member State.
2. Where the Minister designated under paragraph 1 of this Article is unable to attend a meeting of the Council the Member State may designate any person as an alternate to attend in his stead.

Article 7 Functions and Powers

1. The Council shall, in order to ensure the achievement of the objectives set out in this Annex and in accordance with the provisions thereof, be responsible for:
 - (a) exercising such powers and performing such duties as are conferred or imposed upon it by this Annex;
 - (b) ensuring the efficient operation and development of the Common Market including the settlement of problems arising out of its functioning;
 - (c) keeping this Annex under constant review with a view to making proposals to the Conference for the progressive development of the Common Market;
 - (d) receiving and considering references alleging breaches of any obligations arising under this Annex and deciding thereon;
 - (e) considering what further action should be taken by Member States and the Common Market and making proposals to the Conference to facilitate the establishment of closer economic and commercial links with other States, association of States or international organisations.
2. The Council may regulate its own procedure including the establishment of such committees and other bodies as it may deem necessary to perform its functions and may decide to admit to its deliberations observers, representatives of non-Member States or other entities.
3. The Council may regulate its own procedure including the establishment of such committees and other bodies as it may deem necessary to perform its functions and may decide to admit to its deliberations observers, representatives of non-Member States or other entities.

Article 8 Voting

1. Each Member State represented on the Council shall have one vote.
2. Except in so far as this Annex provide otherwise, decisions and recommendations of the Council shall be made by an affirmative vote of all its representatives.
3. A decision shall be binding upon each Member State to which it is directed. A recommendation shall have no binding force.
4. For the purposes of this Article, abstentions shall not be construed as impairing the validity of decisions or recommendations of the Council provided that not less than three-quarters of its members including at least two of the More Developed Countries vote in favour of any decision or recommendation.

Article 9 The Common Market Secretariat

The Secretariat referred to in Article 15 of the Treaty shall be the Secretariat responsible for the administrative functions of the Common Market.

Article 10 Functions of the Secretariat

The Secretariat shall:

- (a) service meetings of the Common Market and any of its Committees;
- (b) take appropriate follow-up action on decisions arrived at such meetings;
- (c) initiate, arrange, and carry out studies on questions of economic integration relating to the region;
- (d) provide services to Member States at their request in respect of matters relating to the achievement of the objectives of the Common Market;
- (e) undertake any other duties which may be assigned to it by the Council.

Article 11 Disputes Procedure within the Common Market

1. If any Member State considers that any benefit conferred upon it by this Annex or any objective of the Common Market is being or may be frustrated and if no satisfactory settlement is reached between the Member States concerned any of those Member States may refer the matter to the Council.
2. The Council shall promptly, make arrangements for examining the matter. Such arrangements may include a reference to a Tribunal constituted in accordance with Article 12 of this Annex. The Council shall refer the matter at the request of any Member State concerned to the Tribunal. Member States shall furnish all information which may be required by the Tribunal or the Council in order that the facts may be established and the issue determined.
3. If in pursuance of the foregoing provisions of this Article the Council or the Tribunal, as the case may be, finds that any benefit conferred on a Member State by this Annex or any objective of the Common Market is being or may be frustrated, the Council may, by majority vote, make to the Member State concerned such recommendations as it considers appropriate.

4. If a Member State to which a recommendation is made under paragraph 3 of this Article does not or is unable to comply with such recommendation the Council may, by majority vote, authorise any Member State to suspend to the Member State which has not complied with the recommendation the application of such obligations under this Annex as the Council considers appropriate.
5. Any Member State may at any time while any matter is under consideration under this Article request the Council to authorise, as a matter of urgency, interim measures to safeguard its position. If the matter is being considered by the Tribunal such request shall be referred by the Council to the Tribunal for its recommendation. If it is found by a majority vote of the Council that the circumstances are sufficiently serious to justify interim action, and without prejudice to any action which it may subsequently take in accordance with the preceding paragraphs of this Article, the Council may, by majority vote, authorise a Member State to suspend its obligations under this Annex to such an extent and for such period as the Council considers appropriate.

Article 12 Reference to Tribunal

1. The establishment and composition of the Tribunal referred to in Article 11 of this Annex shall be governed by the following provisions of this Article.
2. For the purposes of establishing an ad hoc tribunal referred to in Article 11 of this Annex, a list of arbitrators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General. To this end, every Member State shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list. The term of an arbitrator, including that of any arbitrator nominated to fill a vacancy, shall be five years and may be renewed.
3. Each party to the dispute shall be entitled to appoint from the list an arbitrator to an ad hoc tribunal. The two arbitrators chosen by the parties shall be appointed within 30 days following the date on which the notification was received by the Secretary-General. The two arbitrators shall within 15 days following the date of the last of their own appointments, appoint a third arbitrator from the list who shall be the chairman; as far as practicable the chairman shall not be a national of any of the parties to the dispute.
4. Where the first two arbitrators fail to appoint a chairman within the period prescribed, the Secretary-General shall within 15 days following the expiry of that period appoint a chairman. If any party fails to appoint an arbitrator within the period prescribed for such an appointment, the Secretary-General shall appoint an arbitrator within 15 days following the expiry of such period. Any vacancy shall be filled in the manner specified for the initial appointment.
5. Where more than two Member States are parties to a dispute, the parties concerned shall agree among themselves on the two arbitrators to be appointed from the list. In the absence of such appointment within the prescribed period, the Secretary-General shall appoint a sole arbitrator whether from the list or otherwise, for the purpose.
6. An ad hoc tribunal shall decide its own procedure and may, with the consent of the parties to the dispute, invite any party to this Annex to submit its views orally or in writing.

7. The Secretary-General shall provide the ad hoc tribunal with such assistance and facilities as it may require.
8. The expenses of the ad hoc tribunal shall be defrayed in such manner as determined by the Council.
9. Member States undertake to employ the procedures set out in this Article for the settlement of any dispute specified in paragraph 1 of Article 11 and to refrain from any other method of disputes settlement.

CHAPTER III: TRADE LIBERALISATION

Article 13 Exclusion from this Annex

1. Subject to the provisions of this Article, nothing in this Annex shall be taken to prevent the Member State concerned from imposing import duties or quantitative restrictions on the products listed in Schedule I to this Annex for such periods as are specified therein for the purpose of giving effect to any undertaking by such Member State respecting import duties or quantitative restrictions.
2. Each Member State shall take all reasonable steps open to it in connection with any undertaking referred to in paragraph 1 of this Article in order to implement any of its obligations under this Annex respecting import duties or quantitative restrictions on such products.
3. Where no expiry date is specified in Schedule I to this Annex, the Member State concerned shall take all reasonable steps open to it to implement any of its obligations in respect of commodities under this Annex respecting corresponding import duties or quantitative restrictions on such products at the earliest practicable date.
4. Where in consequence of any Member State availing itself of any exemption under paragraphs 1 to 3 any other Member State considers that a benefit conferred on it by this Annex respecting import duties or quantitative restrictions on such products is being or may be frustrated that other Member State may refer the matter to Council.
5. Upon reference under paragraph 4 of this Article the Council may unless the matter is otherwise resolved, authorise upon such terms and conditions as it thinks fit the Member State making the reference to suspend, in relation to the Member State availing itself of the exemption, the performance of such of its obligations in respect of commodities under this Annex respecting import duties or quantitative restrictions on such products as the Council considers appropriate.
6. The Council shall keep under continuous review the observance by Member States of the provisions of paragraphs 2 and 3 of this Article and may from time to time, by majority vote, recommend to any Member State such measures as it thinks fit for the purposes of those paragraphs.

Article 14 Common Market Origin

1. Subject to Schedule II to this Annex, in this Annex goods shall be treated as being of Common Market origin if they are consigned from a Member State to a consignee in

another Member State and comply with any one of the following conditions, that is to say, the goods must:

- (a) have been wholly produced within the Common Market;
- (b) fall within a description of goods listed in a Process List to be established by the decision of Council and have been produced within the Common Market by the appropriate qualifying process described in that List; or
- (c) have been produced within the Common Market and the value of any materials imported from outside the Common Market or of undetermined origin which have been used at any stage of the production of the goods does not exceed:

- i. in a Less Developed Member Country 60 per cent of the export price of the goods;
- ii. in any other Member State 50 per cent of the export price of the goods.

- 2. For the purposes of sub-paragraphs (a) to (c) of paragraph 1 of this Article, materials listed in the Basic Materials List which forms the Appendix to Schedule II to this Annex which have been used in the state described in that List in a process of production within the Common Market shall be deemed to contain no element from outside the Common Market.
- 3. Nothing in this Annex shall prevent a Member State from treating as of Common Market origin any imports consigned from another Member State, provided that the like imports consigned from any other Member State are accorded the same treatment.
- 4. The Council shall keep Schedule II and the Process List established under sub-paragraph (b) of Paragraph 1 of this Article under continuous review and may amend them in order to ensure the smooth operation of the rules of origin of the Common Market.

Article 15 Import Duties

- 1. Except as provided in Article 52 and Schedule III to this Annex Member States shall not apply any import duties on goods of Common Market origin.
- 2. Nothing in paragraph 1 of this Article shall be construed to extend to the imposition of non-discriminatory internal charges on any products or a substitute not produced in the importing Member State.
- 3. For the purposes of this Article and Schedule III to this Annex the term “import duties” means any tax or surtax of customs and any other charges of equivalent effect whether fiscal, monetary or exchange, which are levied on imports except duties notified under Article 17 of this Annex and other charges which fall within that Article.
- 4. Nothing in Paragraph 3 of this Article shall be construed to exclude from the application of paragraph 1 of this Article any tax or surtax of Customs on any product or a substitute not produced in the importing State.
- 5. This Article does not apply to fees and similar charges commensurate with the cost of services rendered.

Article 16 Export Drawback

1. Each Member State may refuse to treat as of Common Market origin goods which benefit from export drawback allowed by Member States in which the goods have undergone the processes of production which form the basis of the claim to Common Market origin. In applying this paragraph, each Member State shall accord the same treatment to imports consigned from all other Member States.
2. For the purposes of this Article:
 - (a) “export drawback” means any arrangement for the refund or remission, wholly or in part, of import duties applicable to imported materials, provided that the arrangement, expressly or in effect, allows refund or remission if certain goods or materials are exported, but not if they are retained for home use;
 - (b) “remission” includes exemption for materials brought into free ports and other places which have similar customs privileges;
 - (c) “duties” means
 - i. all charges on or in connection with importation, except fiscal charges to which Article 17 of this Annex applies; and
 - ii. any protective element in such fiscal charges;
 - (d) “materials” and “process of production” have the meanings assigned to them in Rule 1 of Schedule II to this Annex.

Article 17 Revenue Duties And Internal Taxation

1. Except as provided in Article 52 of Schedule IV to this Annex Member States shall not:
 - (a) apply directly or indirectly to imported goods any fiscal charges in excess of those applied directly or indirectly to like domestic goods, or otherwise apply such charges so as to protect like domestic goods; or
 - (b) apply fiscal charges to imported goods of a kind which they do not produce, or which they do not produce in substantial quantities, in such a way as to protect the domestic production of substitutes which enter into direct competition with them and which do not bear, directly or indirectly, in the country of importation, fiscal charges of equivalent incidence.
2. A Member State shall notify the Council of all fiscal charges applied by it where, although the rates of charge, or the conditions governing the imposition or collection of the charge, are not identical in relation to the imported goods and to the like domestic goods, the Member State applying the charge considers that the charge is, or has been made, consistent with sub-paragraph (a) of paragraph 1 of this Article. Each Member State shall, at the request of any other Member State, supply information about the application of paragraph 1 of this Article.
3. For the purposes of this Article and Schedule IV to this Annex:
 - (a) “fiscal charges” means revenue duties, internal taxes and other internal charges on goods;

(b) revenue duties” means customs duties and other similar charges applied primarily for the purpose of raising revenue; and “imported goods” means goods which are treated as of Common Market origin.

Article 18 Prohibition of Export Duties

1. Member States shall not apply any export duties.
2. Nothing in this Article shall preclude any Member State from taking such measures as are necessary to prevent evasion, by means of re-export of duties, which it applies to exports to territories outside the Common Market.
3. For the purposes of this Article, “export duties” means any duties or charges with equivalent effect imposed on or in connection with the exportation of goods from any Member State to a consignee in any other Member State.
4. Notwithstanding paragraph 1 of this Article, a Member State may for a period not exceeding 5 years from the date of entry into force of this Annex, apply to any commodity listed in Schedule V, export duties not exceeding those applied immediately before that date.
5. Any Member State that pursuant to paragraph 4 of this Article, applies export duties to any commodity listed in Schedule V shall notify the Council of such duties. The Council shall keep such export duties under review and may at any time by majority vote make recommendations to the Member State concerned so as to avoid as far as possible any adverse consequences on any other Member State.

Article 19 Dumped and Subsidized Imports

1. Nothing in this Annex shall prevent any Member State from taking action against dumped or subsidized imports that conforms with any other international obligations.
2. Any products which have been exported from one Member State to a consignee in another Member State and have not undergone any manufacturing process since exportation shall, when re-imported into the first Member State be admitted free of quantitative restrictions or measures with equivalent effect. Such products shall also be admitted free of customs duties or charges with equivalent effect except that any allowance by way of drawback, relief from duty or otherwise, given by reason of the exportation from the Member State, may be recovered.
3. If any industry in a Member State is suffering or is threatened with material injury as the result of the import of dumped or subsidized products into any other Member State, the latter Member State shall, at the request of the former Member State, examine the possibility of taking in conformity with any other international obligations action to remedy the injury or prevent the threatened injury.

Article 20 Freedom of Transit

1. Products imported into, or exported from, a Member State shall enjoy freedom of transit within the Common Market and shall only be subject to the payment of the normal rates for services rendered.

2. For the purposes of paragraph 1 of this Article, 'transit' means transit within the meaning of Article V. of the General Agreement on Tariffs and Trade.

Article 21 Quantitative Import Restrictions

1. Except where otherwise provided in this Annex, and particularly in Articles 13, 23, 24, 28, 29 and 56, and in Schedules VII, VIII, IX, X, and XI a Member State shall not apply any quantitative restrictions on the import of goods which are of Common Market Origin.
2. "Quantitative restrictions" means prohibitions or restrictions on imports into, or exports from, any other Member State as the case may be, whether made effective through quotas, import licences or other measures with equivalent effect, including administrative measures and requirements restricting imports or exports.
3. This Article shall not prevent any Member State from taking such measures as are necessary to prevent evasion of any prohibitions or restrictions which it applies to imports from outside the Common Market. In taking action in pursuance of the foregoing provisions, a Member State shall not accord to products imported from other Member States treatment less favourable than that accorded to products imported from third countries.

Article 22 Quantitative Export Restrictions

1. Except where otherwise provided in this Annex and particularly in Articles 23 and 24 and in Schedules VIII, IX and XI a Member State shall not apply any quantitative restrictions on exports to any other Member State.
2. This Article shall not prevent any Member State from taking such measures as are necessary to prevent evasion of any prohibitions or restrictions which it applies to exports outside the Common Market, provided that less favourable treatment is not granted to Member States than to countries outside the Common Market.

Article 23 General Exceptions

Nothing in Articles 21 and 22 of this Annex shall prevent the adoption or enforcement by any Member State of measures:

- (a) necessary to protect public morals;
- (b) necessary for the prevention of disorder or crime;
- (c) necessary to protect human, animal or plant life or health;
- (d) necessary to secure compliance with laws or regulations relating to customs enforcement, or to the classification, grading or marketing of goods, or to the operation of monopolies by means of state enterprise or enterprises given exclusive or special privileges;
- (e) necessary to protect industrial property or copyrights or to prevent deceptive practices;
- (f) relating to gold or silver;
- (g) relating to the products of prison labour;

- (h) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (i) necessary to prevent or relieve critical shortages of foodstuffs in any exporting Member State; or
- (j) relating to conservation of exhaustible natural resources; but only if such measures are not used as a means of arbitrary or unjustifiable discrimination between Member States, or as a disguised restriction on trade within the Common Market.

Article 24 Security Exceptions

1. Nothing in this Annex shall prevent any Member State from taking action which it considers necessary for the protection of its essential security interests.
2. Nothing in this Annex shall prevent any Member State from taking action in pursuance of any obligations to which it is subject for the purpose of maintaining international peace and security.

Article 25 Government Aids

1. Except as provided in this Annex, a Member State shall not maintain or introduce:
 - (a) the forms of aid to export of goods to any other part of the Common Market of the kinds which are described in Schedule VI to this Annex; or
 - (b) any other forms of aid, the main purpose or effect of which is to frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Annex.
2. If the application of any form of aid by a Member State, although not contrary to paragraph 1(b) of this Article, nevertheless frustrates the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Annex, the Council may, by majority decision, authorize any Member State to suspend to the Member State which is applying the aid the application of such obligations under this Annex as the Council considers appropriate, provided always that the procedure set out in paragraphs 3 to 5 of Article 11 of this Annex has been followed.
3. This Article:
 - Shall not apply in respect of trade within the Common Market in any agricultural products until such time as Member States agree upon a Common Market policy with respect to the production and marketing, including the subsidization, of agricultural products.
4. The Council may amend the provisions of Schedule VI of this Annex.

Article 26 Public Undertakings

1. Member States shall ensure the elimination in the practices of public undertakings, of
 - (a) measures the effect of which is to afford protection to domestic production which would be inconsistent with this Annex if achieved by means of a duty or charge with equivalent effect or quantitative restrictions or Government aid; or

(b) trade discrimination on grounds of territorial origin in so far as it frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Annex.

2. In so far as Article 25 of this Annex is relevant to the activities of public undertakings, that Article shall apply to them in the same way as it applies to other enterprises.
3. Member States shall ensure that new practice of the kind described in paragraph 1 of this Article are not introduced.
4. For the purposes of this Article, 'public undertakings' means central, regional, or local government authorities, public enterprises and any other organization by means of which a Member State by law or in practice controls or appreciably influences imports from, or exports to any other part of the Common Market.
5. This Article shall not apply in respect of trade within the Common Market in agricultural products until such time as Member States agree upon a Common Market Policy with respect to the production and marketing, including the subsidization, of agricultural products.

Article 27 Cooperation in Customs Administration

Member States shall take appropriate measures, including arrangements regarding administrative co-operation to ensure that the provisions of Articles 14, 15, 16 and 17, and Schedules II, III and IV of this Annex are effectively and harmoniously applied, taking account of the need to reduce as far as possible the formalities imposed on trade and of the need to achieve mutually satisfactory solutions of any difficulties arising out of the operation of these provisions.

Article 28 Import Restrictions arising from Balance of Payments Difficulties

1. Notwithstanding Article 21 of this Annex a Member State may consistently with any international obligations to which it is subject introduce quantitative restrictions on imports for the purpose of safeguarding its balance of payments.
2. A Member State taking measures in accordance with paragraph 1 of this Article shall notify them to the Council, if possible, before they come into force. The Council shall examine the situation and keep it under review and may at any time by majority vote make recommendations designed to moderate any damaging effect of these restrictions or to assist the Member State concerned to overcome its difficulties. If the balance of payments difficulties persist for more than 18 months and the measures applied seriously disturb the operation of the Common Market, the Council shall examine the situation and may, taking into account the interests of all Member States, by majority vote, devise special procedures to attenuate or compensate for the effect of such measures.
3. A Member State which has taken measures in accordance with paragraph 1 of this Article shall have regard to its obligations to resume the full application of Article 21 of this Annex and shall, as soon as its balance of payments situation improves, make proposals to the Council on the way in which this should be done. The Council, if it is

not satisfied that these proposals are adequate, may recommend to Member States alternative arrangements to the same end. Decisions of the Council pursuant to this paragraph shall be made by majority vote.

Article 29 Difficulties in Particular Industries

1. If, in a Member State:

- (a) any industry or particular sector of an industry experiences serious difficulties due to a substantial decrease in internal demand for a domestic product; or
- (b) this decrease in demand is due to an increase in imports consigned from other Member States as a result of the establishment of the Common Market, that Member State may, notwithstanding any other provisions of this Annex:
 - i. limit those imports by means of quantitative restrictions to a rate not less than the rate of such imports during any period of 12 months which ended within 12 months of the date on which the restrictions came into force; the restrictions shall not be continued for a period longer than 18 months, unless the Council, by majority vote, authorize their continuance for such further period and on such conditions as the Council considers appropriate; and
 - ii. take such measures, either instead of or in addition to restriction of imports in accordance with sub-paragraph (i) of this paragraph, as the Council, may by majority vote authorize.

2. In applying measures in accordance with paragraph 1 of this Article a Member State shall give like treatment to imports consigned from all Member States.

3. A Member State applying restrictions in accordance with sub-paragraph (i) of paragraph 1 of this Article shall notify them to the Council, if possible, before they come into force. The Council may at any time consider these restrictions and may, by majority vote, make recommendations designed to moderate any damaging effect of those restrictions or to assist the Member State concerned to over-come its difficulties.

Article 30 Restrictive Business Practices

1. Member States recognize that the following practices are incompatible with this Annex in so far as they frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Annex:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or result the prevention, restriction or distortion of competition within the Common Market;
- (b) actions by which one or more enterprises take unfair advantage of a dominant position, within the Common Market or a substantial part of it.

2. If any practice of the kind described in paragraph 1 of this Article is referred to the Council in accordance with Article 11 of this Annex the Council may, in any recommendation in accordance with paragraph 3 or in any decision in accordance with

paragraph 4 of that Article, make provision for publication of a report on the circumstances of the matter.

3.

(a) In the light of experience, the Council shall, as soon as practicable, consider whether further or different provisions are necessary to deal with the effect of restrictive business practices or dominant enterprises on the trade within the Common Market.

(b) Such review shall include consideration of the following matters:

- i. specification of restrictive business practices or dominant enterprises with which the Council should be concerned;
- ii. methods of securing information about restrictive business practices or dominant enterprises;
- iii. procedures for investigation;
- iv. whether the right to initiate inquiries should be conferred on the Council.

The Council may decide to make the provisions found necessary as a result of the review envisaged in sub-paragraphs (a) and (b) of this paragraph.

4. Member States undertake to introduce as soon as practicable business enterprises giving particular attention to the practices uniform legislation for the control of restrictive practices by referred to in paragraph 1 of this Article.

CHAPTER IV: COMMON PROTECTIVE POLICY

Article 31 Establishment of Common External Tariff

1. Member States agree to establish and maintain a Common External Tariff in respect of all commodities imported from third countries in accordance with a plan and Schedule to be adopted by the Conference immediately upon the entry into force of this Annex, provided that:

- (a) In so far as the Less Developed Countries, except Belize and Montserrat are concerned, their existing Tariffs under the East Caribbean Common Market Agreement shall be deemed as fulfilling their initial obligations in relation to the Common External Tariff of the Caribbean Common Market.
- (b) Wherever the Plan and Schedule of rates in the existing customs tariff of the East Caribbean Common Market Agreement differ from those in the Common External Tariff of the Caribbean Common Market, the Plans and Schedules of rates in both the East Caribbean Common Market and the Caribbean Common Market Tariffs will be subject to annual review in the light of the prevailing economic situation of the Less Developed Countries for the purpose of determining the appropriate Plan and Schedule that will be introduced provided that the introduction of such a Plan and Schedule will commence not later than 1st August, 1977 and the phasing period will end not later than 1st August, 1981.

(c) In so far as Belize and Montserrat are concerned, their existing Tariffs on 1st May, 1974, shall be deemed as fulfilling their initial obligations in relation to the Common External Tariff of the Caribbean Common Market. They shall progressively phase their tariffs in accordance with the annual reviews mentioned in paragraph (b) of this proviso provided that in the case of Montserrat the introduction of the Plan and Schedule will commence not later than 1st August, 1981, and the phasing period will end not later than 1st August, 1985.

Article 32 Operation of the Common External Tariff

1. Any alteration or suspension of the Common External Tariff on any item shall be decided by the Council by unanimous vote.
2. During the transitional period in respect of any item, a Member State may decide as a temporary measure to reduce or suspend a duty in its national tariff for the purpose of domestic price control provided that goods originating from Member States on which duties are payable are accorded treatment no less favourable. Any such action shall be promptly reported to the other Member States through the Secretariat. If any Member State so requests, the Council shall hold consultations on the matter and may by majority vote make such recommendations as it considers appropriate to mitigate any damaging effects of such reduction or suspension of duty on the exports of the Member States concerned.
3. Where a commodity is not being produced in one or more Member States or is being produced but in insufficient quantities to satisfy the requirements of the Common Market, the Council may decide to authorize the reduction or suspension of the tariff in respect of imports of that commodity subject to such terms and conditions as it may decide, provided that in no case the commodity imported from third countries be accorded more favourable treatment than similar products produced by Member States.
4. Within two weeks of the coming into force of this Annex, every member State shall notify to the Council the duties applied on all goods imported from non-member countries immediately before the entry into force of this Annex.
5. Upon the expiration of the period of three years from the entry into force of the Common External Tariff the Council shall review such rates as are posing or as are likely to pose difficulties in their application.

Article 33 Treatment of Imports from Third Countries

1. During the transitional period, that is, until the 1st August, 1981, Member States individually or otherwise undertake to pursue such policies regarding quantitative restrictions on imports from third countries as would facilitate the implementation of a common protective policy for the Common Market as soon as practicable after the transitional period. The Council may make recommendations to Member States for this purpose.
2. As soon as possible after the entry into force of this Annex Member States shall notify to the Council all existing quantitative restrictions applied on imports from third countries. Any new quantitative restrictions shall be promptly notified to the Council.

3. The Council of Ministers shall keep under continuous review the application of quantitative restrictions by Member States whether on an individual, sub-group or Common Market basis and shall make such recommendations to Member States as it considers necessary.

Article 34 External Trade Policy

1. Member States shall seek a progressive co-ordination of their trade relations with third countries or groups of third countries.
2. Member States undertake to transmit to the Secretariat particulars of any trade or aid agreements entered into after the entry into force of this Annex.

CHAPTER V: ESTABLISHMENT, SERVICES AND MOVEMENT OF CAPITAL

Article 35 Establishment

1. Each Member State recognizes that restrictions on the establishment and operation of economic enterprises therein by nationals of other Member States should not be applied, through accord to such persons of treatment which is less favourable than accorded in such matters to nationals of that Member State, in such a way as to frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Annex.
2. Member States shall not apply new restrictions in such a way that they conflict with the principle set out in paragraph 1 of this Article.
3. A Member State shall notify the Council within such period as the Council may decide of particulars of any restrictions which it applies in such a way that persons belonging to another Member State are accorded in the first-mentioned State less favourable treatment in respect of the matters set out in paragraph 1 of this Article than is accorded to persons belonging thereto.
4. The Council shall consider from time to time, whether further or different provisions are necessary to give effect to the principles set out in paragraph 1 of this Article.
5. Nothing in this Article shall prevent the adoption and enforcement by a Member State of measures for the control of entry, residence, activity and departure of persons where such measures are justified by reasons of public order, public health or morality, or national security of that Member State.
6. For the purposes of this Article and Articles 36 and 38 of this Annex:
 - (a) a person shall be regarded as a national of a Member State if such person:
 - i. is a citizen of that State;
 - ii. has a connection with that State of a kind which entitles him to be regarded as belonging to, or, if it be so expressed, as being a native or resident of the State for the purposes of such laws thereof relating to immigration as are for the time being in force; or

- iii. is a company or other legal person constituted in the Member State in conformity with the law thereof and which that State regards as belonging to it, provided that such company or other legal person has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Common Market and which is substantially owned and effectively controlled by persons falling under (i) and (ii) above.
- (b) “economic enterprises” means any type of economic enterprises for production of or commerce in goods which are of Common Market origin, whether conducted by individuals or through agencies, branches or companies or other legal persons.

Article 36 Right to Provide Services

1. Each Member State agrees as far as practicable to extend to persons belonging to other Member States preferential treatment over persons belonging to States outside the Common Market with regard to the provision of services.
2. For the purposes of this Article the term “services” shall be considered as services for remuneration provided that they are not governed by provisions relating to trade, the right of establishment or movement of capital and includes, in particular, activities of an industrial or commercial character, artisan activities and activities of the professions, excluding activities of employed persons.

Article 37 Movement of Capital

The Council shall examine ways and means for the introduction of a scheme for the regulated movement of capital within the Common Market, giving particular attention to the development needs of the Less Developed Countries and shall recommend to Member States proposals for the establishment of such a scheme.

Article 38 Saving in Respect of Movement of Persons

Nothing in this Treaty shall be construed as requiring, or imposing any obligation on, a Member State to grant freedom of movement to persons into its territory whether or not such persons are nationals of other Member States of the Common Market.

CHAPTER VI: COORDINATION OF ECONOMIC POLICIES AND DEVELOPMENT PLANNING

Article 39 Consultation on Economic Policies

1. Member States recognize that the economic and financial policies of each of them affect the economies of other Member States and intend to pursue those policies in a manner which serves to promote the objectives of the Common Market. In particular but without prejudice to the generality of the foregoing, Member States shall seek as far as practicable to:

- i. co-ordinate their economic policies and for this purpose facilitate collaboration between appropriate ministries, administrative departments and agencies;
 - ii. co-ordinate their statistical services in matters affecting the operation of the Common Market; and
 - iii. co-ordinate their positions and presentations at all international economic, financial and trade meetings at which they are represented.
2. The Council may make recommendations to Member States on matters relating to those policies and on how best to achieve such co-ordination and collaboration.

Article 40 Harmonisation of Fiscal Incentives

1. Member States shall seek to harmonize, such legislation and practices as directly affect fiscal incentives to industry.
2. Member States shall seek also to establish regimes for the harmonization of fiscal incentives to Agriculture and Tourism with appropriate differentials in favour of the Less Developed Countries.
3. Member States agree to study the possibility of approximating income tax systems and rates with respect to companies and individuals.

Article 41 Intra-Regional and Extra-Regional Double Taxation Agreements

1. Member States shall approach their negotiations for Agreements for the avoidance of Double Taxation with countries outside the Common Market on the basis of a set of mutually agreed principles.
2. With a view to encouraging the regulated movement of capital within the Common Market, particularly to the Less Developed Countries, Member States agree to adopt among themselves Agreements for the Avoidance of Double Taxation.

Article 42 Harmonisation of Laws

1. Member States recognise the desirability to harmonise as soon as practicable such provisions imposed by law or administrative practices as affect the establishment and operation of the Common Market in the following areas:
 - (a) companies;
 - (b) trade marks;
 - (c) patents;
 - (d) designs and copyrights;
 - (e) industrial standards;
 - (f) marks of origin;
 - (g) labeling of food and drugs;
 - (h) plant and animal quarantine restrictions;
 - (i) restrictive business practices;
 - (j) dumping and subsidization of exports.

2. The Council shall keep the provisions of this Article under review and may make recommendations for the achievement of this objective.

Article 43 Monetary, Payments and Exchange Rate Policies

1. Member States undertake to permit within the Common Market freedom of payments on
 - (a) current account and
 - (b) capital account necessary to further the objectives of the Common Market.
2. Member States recognizing that exchange-rate stability as between themselves is necessary to promote the smooth functioning of the Common Market agree to:
 - (a) a policy of continuing consultation and the fullest possible exchange of relevant information on monetary payments and exchange rate matters, and
 - (b) to examine ways and means of harmonizing their monetary and exchange-rate and payments policies in the interest of the smooth functioning of the Common Market.
3. Member States further agree:
 - (a) to the policy whereby through arrangements by their Central Banks or Monetary Authorities the notes and coins of other Member States shall be exchanged within their own States at official par value without exchange commission.
 - (b) to develop arrangements for co-operation in other monetary matters including the operation of a clearing arrangement by their Central Monetary Authorities.

Article 44 Ownership and Control of Regional Resources

1. Member States recognise the need for continuing inflows of extra-regional capital and the urgent necessity to promote development in the Less Developed Countries.
2. Member States shall keep under review the question of ownership and control of their resources, with a view to increasing the extent of national participation on their economies and working towards the adoption as far as possible of a common policy on foreign investment

Article 45 Coordination of National Development Planning

1. Member States recognise the desirability of a long-term Common Market Perspective plan as a framework for co-ordinating their development efforts and agree to work jointly in the formulation of such a Plan.
2. In order to promote maximum complementarity between industries and economic sectors of Member States, each Member State agrees to consult with other Member States in drawing up its national medium-term operational development plans. Member States shall establish a Committee of Officials in charge of national planning agencies for the purpose of promoting collaboration in development planning.

Article 46 Common Market Industrial Programming

1. Member States undertake to promote a process of industrial development through industrial programming aimed at achieving the following objectives:
 - (a) the greater utilization of the raw materials of the Common Market;
 - (b) the creation of production linkages both within and between the national economies of the Common Market;
 - (c) to minimize product differentiation and achieve economies of large scale production, consistent with the limitation of market size;
 - (d) the encouragement of greater efficiency in industrial production;
 - (e) the promotion of exports to markets both within and outside the Common Market;
 - (f) an equitable distribution of the benefits of industrialization paying particular attention to the need to locate more industries in the Less Developed States.
2. The Council may make recommendations from time to time to promote achievement of the objectives stated in paragraph 1 of this Article.

Article 47 Joint Development of Natural Resources

1. Member States agree to a policy of regular exchange of information on their natural resources with a view to the development of joint projects for the increased utilisation of these resources within the Common Market and to collaborate in promoting research in these areas.
2. With a view to facilitating negotiations with mining companies, Member States agree to exchange information on exploration leases, exploitation licences and on taxation of mining companies.
3. The Council advised by the Standing Committee of Ministers responsible for Mines and Natural Resources may make recommendations for achieving the objectives stated in paragraphs 1 and 2 of this Article.

Article 48 Marketing of Agricultural Products

1. Member States agree to work towards the rationalization of trade within the Common Market of certain selected agricultural products having special regard to the agricultural development of the Less Developed Countries.
2. In pursuance of this objective Member States agree to arrangements for the marketing of oils and fats and other agricultural products as set out in Schedules VII, VIII and IX to this Annex.
3. The Council may make recommendations for the development of agricultural trade between Member States.

Article 49 Rationalization of Agricultural Production

1. Member States agree to adopt a scheme for the rationalization of agricultural production within the Common Market with a view to promoting complementarity in

national agricultural programmes and providing special opportunities for the development of agriculture in the Less Developed Countries.

2. The Scheme shall have the following objectives:

- (a) the development of a regional plan for the integration of agricultural development in the Common Market;
 - (b) the achievement of the optimum utilization of agricultural resources;
 - (c) the improvement of the efficiency of agricultural production in order to increase the supply of agricultural products for:
 - i. domestic consumption;
 - ii. export to regional as well as extra-regional markets; and
 - iii. inputs for agro-based industries.
 - (d) replacement of imports on a regional basis;
 - (e) increasing the income and standard of living of the rural population;
 - (f) contributing to the achievement of full employment for the peoples of the Common Market;
 - (g) the provision of greater opportunities to the Less Developed Countries for the expansion of agricultural production for export to markets within and outside the Common Market.
3. Member States recognise the desirability of joint action in the exporting of non-traditional agricultural products to countries outside the Common Market and agree to the promotion of schemes towards this objective.
4. With regard to the production of non-traditional agricultural products, Member States shall pursue a policy of collaboration with a view to improving productivity and promoting a more efficient allocation of the resources of the Common Market giving special consideration to the need for increasing production in the Less Developed Countries.
5. The Council shall keep this Article under review and shall make recommendations to Member States for achieving its objectives.

Article 50 Cooperation in Tourism

Member States agree to collaborate in the promotion and development of the tourist industry within the Common Market.

CHAPTER VII: SPECIAL REGIME FOR THE LESS DEVELOPED COUNTRIES

Article 51 Purpose of the Chapter

The provisions of this Chapter shall have effect for the purposes of establishing within the frame-work of this Annex a special regime for the Less Developed Countries.

Article 52 Import Duties, Revenue Duties and Internal Taxation

For the purposes of Articles 15 and 17 of this Annex the special arrangements contained in Schedules III and IV to this Annex concerning import duties, revenue duties and internal taxation shall apply to the Less Developed Countries.

Article 53 Common Market Origin

Member States agree that in the compilation of the process list pursuant to paragraph 1(b) of Article 14 of this Annex, the special needs of the Less Developed Countries shall be taken into account.

Article 54 Harmonisation of Fiscal Incentives

Member States agree that in the establishment of the Scheme for Harmonisation of Fiscal Incentives to Industry, provided for in Article 40 of this Annex, the special needs of the Less Developed Countries shall be taken into account.

Article 55 The Common External Tariff and Common Protective Policy

Member States agree that in the establishment of the Scheme for a Common External Tariff provided for in Article 31 of this Annex, the special needs of the Less Developed Countries shall be taken into account.

Article 56 Promotion of Industrial Development in the Less Developed Countries

1. Upon any application made in that behalf by the Less Developed Countries the Council may, if necessary, as a temporary measure in order to promote the development of an industry in any of those States, authorise by majority decision such States to suspend Common Market Tariff treatment of any description of imports eligible therefor on grounds of production in the other Member States
2. Upon any application made in that behalf by the Less Developed Countries the Council may, if necessary, as a temporary measure in order to promote the development of an industry in any of those States, authorise by majority decision such States to impose quantitative restrictions on like imports from the other Member States.
3. In the light of the special position of Barbados that State may; in relation to trade with the Less Developed Countries, during the period for which the authorisations referred to in paragraphs 1 and 2 of this Article are in force, suspend Common Market tariff

treatment of, or apply quantitative restrictions on, the like description of imports from the Less Developed Countries.

4. The Council may, in taking decisions pursuant to paragraphs 1 and 2 of this Article, impose terms and conditions to which such authorisation shall be subject.
5. For the purposes of this Article a majority means a decision supported by the affirmative votes of all the Less Developed Countries and at least two of the More Developed Countries.

Article 57 Government Aids

Paragraph 1(a) of Article 25 of this Annex shall not apply to exports from a Less Developed Country except where such exports are consigned to Barbados.

Article 58 Public Undertaking

Paragraph 1(a) of Article 26 of this Annex shall not apply to the Less Developed Countries.

Article 59 Financial Assistance from More Developed Countries

1. With a view to promoting the flow of investment capital to the Less Developed Countries, the More Developed Countries agree to co-operate in:
 - (a) facilitating, whether by means of private investment capital or otherwise, joint ventures in those States;
 - (b) negotiating double taxation agreements in respect of the income from investments in the Less Developed Countries by residents of other Member States, and (c) facilitating the flow of loan capital to the Less Developed Countries.
2. In furtherance of the objectives stated in paragraph 1 above, primary consideration should be given to ventures which are substantially owned and effectively controlled by nationals of Member States within the meaning of Article 35 of this Annex.
3. Member States agree that in order to promote the development of industries in the Less Developed Countries an appropriate investment institution shall be established.

Article 60 Use of Technological and Research Facilities in More Developed Countries

The More Developed Countries undertake to provide opportunities for the use of their technological and research facilities by the Less Developed Countries.

Article 61 Additional Special Arrangements for Belize

Without prejudice to any other provision of this Chapter, the provisions of Schedule XI to this Annex shall apply for the purpose of establishing additional special arrangements in regard to the participation of Belize in the Common Market.

Article 62 Review of Mechanisms for the Less Developed Countries

The Council shall review annually the need for strengthening existing mechanisms or introducing new ones to provide greater benefits to the Less Developed Countries and shall submit a Report thereon to the Heads of Government Conference.

CHAPTER VIII: GENERAL AND FINAL PROVISIONS

Article 63 Legal Capacity

1. The Common Market shall have international juridical personality.
2. Each Member State shall, in its territory, accord to the Common Market the most extensive legal capacity accorded to legal persons under its municipal law including the capacity to acquire and transfer movable and immovable property and to sue and be sued in its own name. In any legal proceedings the Common Market shall be represented by the Secretary-General of the Secretariat.
3. Each Member State hereby agrees to take such action as is necessary to make effective in its territory the provisions of this Article and shall promptly inform the Secretariat of such action.

Article 64 Privileges and Immunities

1. The privileges and immunities to be recognised and granted by the Member States in connection with the Common Market shall be laid down in a Protocol to this Annex.
2. The Common Market shall conclude with the Government of the Member State in which its headquarters is situated on the Common Market privileges and immunities to be recognized and granted in connection with the Common Market.

Article 65 Accession

1. A State mentioned in paragraph 1(b) of Article 2 of this Annex may become a Member of the Common Market on such terms and conditions as the Conference may determine.
2. Any such State shall deposit on or before a date appointed by the Conference an instrument of accession with the Secretariat which shall transmit certified copies to the Government of each Member State.
3. Upon such deposit the State shall become a Member of the Common Market on the appointed date.

Article 66 Amendments

1. Except where this Annex provides otherwise, amendments thereto shall enter into force when they have been approved by the Council and ratified by all Member States in accordance with their respective constitutional procedures.
2. Instruments of ratification shall be deposited with the Secretariat which shall transmit certified copies thereof to each Member State.

Article 67 Recognition of Existing Integration Agreement within the Common Market

Nothing in this Annex shall affect any decisions or things done under the ECCM Agreement immediately before the coming into force of this Annex or the continued application and development of that Agreement to the extent that the objectives of that Agreement are not achieved in the application of the objectives of this Annex, provided such application or development does not conflict with the obligations under this Annex of the Member States which are parties to that Agreement.

Article 68 Participation in Other Arrangements

Nothing in this Annex shall preclude any Member State from participating in other arrangements to the extent that those arrangements are not incompatible with the obligations of Member States under this Annex.

Article 69 Withdrawal

1. A Member State may withdraw from the Common Market by giving notice in writing to the Secretariat, and the Secretariat shall promptly notify the other Member States. Such withdrawal shall take effect twelve (12) months after the notice is received by the Secretariat.
2. A Member State so withdrawing undertakes to honour any financial obligations duly assumed during its membership of the Common Market.
3. A Member State that withdraws from the Treaty in accordance with Article 27 thereof shall, if a member of the Common Market, be deemed to have withdrawn from the Common Market with effect from the expiration of the time limited by the said Article 27.

Article 70 Relations with Other States and International Organizations

1. The Council may, on behalf of the Common Market, negotiate Agreements with Member States, non-member States and other International Organisations in order to promote the objectives of the Common Market.

2. Such agreements, however, shall be subject to ratification by the Conference.

Article 71 Transitional Provisions

On entry into force of this Annex in accordance with the provisions of Article 24 of the Treaty, the Agreement establishing the Caribbean Free Trade Association done at Dickenson-Bay, Antigua, on the Fifteenth day of December, 1965 and the Supplementary Agreement under Article 31(3) of the former Agreement done at Georgetown, Guyana, on the Fifteenth day of March, 1968, and at St. John's, Antigua, on the Eighteenth day of March, 1968 shall be superseded by the provisions of this Annex as between the Parties to whom the provisions of this Annex apply.

Article 72 Associate Membership

1. Any State which in the opinion of the Conference is qualified for membership of the Common Market in accordance with Article 2(1)(b) of this Annex may, upon application to the Council for associate membership of the Common Market, be admitted as an associate member of the Common Market in accordance with paragraph 2 of this Article.
2. On the application made under paragraph 1 of this Article the Conference shall determine the conditions under which the applicant State may be associated with the Common Market.

Article 73 Status of Schedules

Schedules to this Annex shall form an integral part thereof.

CHAPTER THIRTY-FOUR

Agreement on an International Energy Program

Paris, 18 November 1974

INTRODUCTION

This Agreement was clearly a knee-jerk reaction to the oil crisis of 1973, prompted by the Arab petroleum embargo following the Arab-Israeli crisis. The Agreement was designed to secure regular supplies of petroleum on 'reasonable and equitable' price terms. What is equitable and reasonable can hardly be objective, but those circumstances that led to a more than 500% increase in crude oil prices in a space of less than three years undoubtedly affected the global economy adversely, especially countries that depended on crude petroleum imports for their energy and industrial needs. The determination, therefore, was to adopt measures to respond to supply emergencies, as well as to consider policies that would reduce demand for and consumption of petroleum in the countries party to this Agreement.

Given the background, it is not surprising that self-sufficiency in emergencies is a priority of the programme. Each participating country is obligated to maintain emergency reserves that would meet consumption needs for at least 60 days in the absence of imports. This can be extended to 90 days. The emergency supplies can be satisfied by petroleum stocks, capacity to switch from one fuel to another and stand-by oil production.

Provisionally in effect from signature, the Agreement, which established an International Energy Agency (IEA), came into definitive force on 19 January 1976. By then the Agreement had already been amended (5 February 1975), and the text below includes that and subsequent revisions up to 2001 and the accession of the 25th participant in the IEA, the Czech Republic.

AGREEMENT ON AN INTERNATIONAL ENERGY PROGRAM (AS AMENDED)*

THE GOVERNMENTS OF THE REPUBLIC OF AUSTRIA, THE KINGDOM OF BELGIUM, CANADA, THE KINGDOM OF DENMARK, THE FEDERAL REPUBLIC

OF GERMANY, IRELAND, THE ITALIAN REPUBLIC, JAPAN, THE GRAND DUCHY OF LUXEMBOURG, THE KINGDOM OF THE NETHERLANDS, SPAIN, THE KINGDOM OF SWEDEN, THE SWISS CONFEDERATION, THE REPUBLIC OF TURKEY, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNITED STATES OF AMERICA,

DESIRING to promote secure oil supplies on reasonable and equitable terms,

DETERMINED to take common effective measures to meet oil supply emergencies by developing an emergency self-sufficiency in oil supplies, restraining demand and allocating available oil among their countries on an equitable basis,

DESIRING to promote co-operative relations with oil producing countries and with other oil consuming countries, including those of the developing world, through a purposeful dialogue, as well as through other forms of co-operation, to further the opportunities for a better understanding between consumer and producer countries,

MINDFUL of the interests of other oil consuming countries, including those of the developing world,

DESIRING to play a more active role in relation to the oil industry by establishing a comprehensive international information system and a permanent framework for consultation with oil companies,

DETERMINED to reduce their dependence on imported oil by undertaking long-term co-operative efforts on conservation of energy, on accelerated development of alternative sources of energy, on research and development in the energy field and on uranium enrichment,

CONVINCED that these objectives can only be reached through continued co-operative efforts within effective organs,

EXPRESSING the intention that such organs be created within the framework of the Organisation for Economic Co-operation and Development,

RECOGNISING that other Member countries of the Organisation for Economic Co-operation and Development may desire to join in their efforts,

CONSIDERING the special responsibility of governments for energy supply,

CONCLUDE that it is necessary to establish an International Energy Program to be implemented through an International Energy Agency, and to that end,

HAVE AGREED as follows:

Article 1

1. The Participating Countries shall implement the International Energy Program as provided for in this Agreement through the International Energy Agency, described in Chapter IX, herein-after referred to as the "Agency".
2. The term "Participating Countries" means States to which this Agreement applies provisionally and States for which the Agreement has entered into and remains in force.
3. The term "group" means the Participating Countries as a group.

CHAPTER I: EMERGENCY SELF-SUFFICIENCY

Article 2

1. The Participating Countries shall establish a common emergency self-sufficiency in oil supplies. To this end, each Participating Country shall maintain emergency reserves sufficient to sustain consumption for at least 60 days with no net oil imports. Both consumption and net oil imports shall be reckoned at the average daily level of the previous calendar year.
2. The Governing Board shall, acting by special majority, not later than 1st July, 1975, decide the date from which the emergency reserve commitment of each Participating Country shall, for the purpose of calculating its supply right referred to in Article 7, be deemed to be raised to a level of 90 days. Each Participating Country shall increase its actual level of emergency reserves to 90 days and shall endeavour to do so by the date so decided.
3. The term “emergency reserve commitment” means the emergency reserves equivalent to 60 days of net oil imports as set out in paragraph 1 and, from the date to be decided according to paragraph 2, to 90 days of net oil imports as set out in paragraph 2.

Article 3

1. The emergency reserve commitment set out in Article 2 may be satisfied by:
oil stocks,
fuel switching capacity,
stand-by oil production, in accordance with the provisions of the Annex which forms an integral part of this Agreement.
2. The Governing Board shall, acting by majority, not later than 1st July, 1975, decide the extent to which the emergency reserve commitment may be satisfied by the elements mentioned in paragraph 1.

Article 4

1. The Standing Group on Emergency Questions shall, on a continuing basis, review the effectiveness of the measures taken by each Participating Country to meet its emergency reserve commitment.
2. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

CHAPTER II: DEMAND RESTRAINT

Article 5

1. Each Participating Country shall at all times have ready a program of contingent oil demand restraint measures enabling it to reduce its rate of final consumption in accordance with Chapter IV.
2. The Standing Group on Emergency Questions shall, on a continuing basis, review and assess: each Participating Country's program of demand restraint measures, the effectiveness of measures actually taken by each Participating Country.
3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

CHAPTER III: ALLOCATION

Article 6

1. Each Participating Country shall take the necessary measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV.
2. The Standing Group on Emergency Questions shall, on a continuing basis, review and assess: each Participating Country's measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV, the effectiveness of measures actually taken by each Participating Country.
3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.
4. The Governing Board shall, acting by majority, decide promptly on the practical procedures for the allocation of oil and on the

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procedures and modalities for the participation of oil companies therein within the framework of this Agreement.

Article 7

1. When allocation of oil is carried out pursuant to Article 13, 14, or 15, each Participating Country shall have a supply right equal to its permissible consumption less its emergency reserve draw-down obligation.

2. A Participating Country whose supply right exceeds the sum of its normal domestic production and actual net imports available during an emergency shall have an allocation right which entitles it to additional net imports equal to that excess.
3. A Participating Country in which the sum of normal domestic production and actual net imports available during an emergency exceeds its supply right shall have an allocation obligation which requires it to supply, directly or indirectly, the quantity of oil equal to that excess to other Participating Countries. This would not preclude any Participating Country from maintaining exports of oil to non-participating countries.
4. The term “permissible consumption” means the average daily rate of final consumption allowed when emergency demand restraint at the applicable level has been activated; possible further voluntary demand restraint by any Participating Country shall not affect its allocation right or obligation.
5. The term “emergency reserve drawdown obligation” means the emergency reserve commitment of any Participating Country divided by the total emergency reserve commitment of the group and multiplied by the group supply shortfall.
6. The term “group supply shortfall” means the shortfall for the group as measured by the aggregate permissible consumption for the group minus the daily rate of oil supplies available to the group during an emergency.
7. The term “oil supplies available to the group” means all crude oil available to the group, all petroleum products imported from outside the group, and all finished products and refinery feedstocks which are produced in association with natural gas and crude oil and are available to the group.
8. The term “final consumption” means total domestic consumption of all finished petroleum products.

Article 8

1. When allocation of oil to a Participating Country is carried out pursuant to Article 17, that Participating Country shall sustain from its final consumption the reduction in its oil supplies up to a level equal to 7 per cent of its final consumption during the base period,
 have an allocation right equal to the reduction in its oil supplies which results in a reduction of its final consumption over and above that level.
2. The obligation to allocate this amount of oil is shared among the other Participating Countries on the basis of their final consumption during the base period.
3. The Participating Countries may meet their allocation obligations by any measures of their own choosing, including demand restraint measures or use of emergency reserves.

Article 9

1. For purposes of satisfying allocation rights and allocation obligations, the following elements will be included:
 - all crude oil, all petroleum products,
 - all refinery feedstocks, and
 - all finished products produced in association with natural gas and crude oil.

2. To calculate a Participating Country's allocation right, petroleum products normally imported by that Participating Country, whether from other Participating Countries or from non-participating countries, shall be expressed in crude oil equivalent and treated as though they were imports of crude oil to that Participating Country.
3. Insofar as possible, normal channels of supply will be maintained as well as the normal supply proportions between crude oil and products and among different categories of crude oil and products.
4. When allocation takes place, an objective of the Program shall be that available crude oil and products shall, insofar as possible, be shared within the refining and distributing industries as well as between refining and distributing companies in accordance with historical supply patterns.

Article 10

1. The objectives of the Program shall include ensuring fair treatment for all Participating Countries and basing the price for allocated oil on the price conditions prevailing for comparable commercial transactions.
2. Questions relating to the price of oil allocated during an emergency shall be examined by the Standing Group on Emergency Questions.

Article 11

1. It is not an objective of the Program to seek to increase, in an emergency, the share of world oil supply that the group had under normal market conditions. Historical oil trade patterns should be preserved as far as is reasonable, and due account should be taken of the position of individual non-participating countries.
2. In order to maintain the principles set out in paragraph 1, the Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on such proposals.

CHAPTER IV: ACTIVATION

Article 12

Whenever the group as a whole or any Participating Country sustains or can reasonably be expected to sustain a reduction in its oil supplies, the emergency measures, which are the mandatory demand restraint referred to in Chapter II and the allocation of available oil referred to in Chapter III, shall be activated in accordance with this Chapter.

Article 13

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 7 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 7 per

cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9,10 and 11.

Article 14

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 12 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 10 per cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9,10 and 11.

Article 15

When cumulative daily emergency reserve drawdown obligations as defined in Article 7 have reached 50 per cent of emergency reserve commitments and a decision has been taken in accordance with Article 20, each Participating Country shall take the measures so decided, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9,10 and 11.

Article 16

When demand restraint is activated in accordance with this Chapter, a Participating Country may substitute for demand restraint measures use of emergency reserves held in excess of its emergency reserve commitment as provided in the Program.

Article 17

1. Whenever any Participating Country sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies which results in a reduction of the daily rate of its final consumption by an amount exceeding 7 per cent of the average daily rate of its final consumption during the base period, allocation of available oil to that Participating Country shall take place in accordance with Articles 8 to 11.
2. Allocation of available oil shall also take place when the conditions in paragraph 1 are fulfilled in a major region of a Participating Country whose oil market is incompletely integrated. In this case, the allocation obligation of other Participating Countries shall be reduced by the theoretical allocation obligation of any other major region or regions of the Participating Country concerned.

Article 18

1. The term “base period” means the most recent four quarters with a delay of one-quarter necessary to collect information. While emergency measures are applied with regard to the group or to a Participating Country, the base period shall remain fixed.

2. The Standing Group on Emergency Questions shall examine the base period set out in paragraph 1, taking into account in particular such factors as growth, seasonal variations in consumption and cyclical changes and shall, not later than 1st April, 1975, report to the Management Committee. The Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on these proposals not later than 1st July, 1975.

Article 19

1. The Secretariat shall make a finding when a reduction of oil supplies as mentioned in Article 13, 14 or 17 has occurred or can reasonably be expected to occur, and shall establish the amount of the reduction or expected reduction for each Participating Country and for the group. The Secretariat shall keep the Management Committee informed of its deliberations, and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof. The report shall include information on the nature of the reduction.
2. Within 48 hours of the Secretariat's reporting a finding, the Committee shall meet to review the accuracy of the data compiled and the information provided. The Committee shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any views regarding the handling of the emergency.
3. Within 48 hours of receiving the Management Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of that report. The activation of emergency measures shall be considered confirmed and Participating Countries shall implement such measures within 15 days of such confirmation unless the Governing Board, acting by special majority, decides within a further 48 hours not to activate the emergency measures, to activate them only in part or to fix another time limit for their implementation.
4. If, according to the finding of the Secretariat, the conditions of more than one of the Articles 14, 13 and 17 are fulfilled, any decision not to activate emergency measures shall be taken separately for each Article and in the above order. If the conditions in Article 17 are fulfilled with regard to more than one Participating Country any decision not to activate allocation shall be taken separately with respect to each Country.
5. Decisions pursuant to paragraphs 3 and 4 may at any time be reversed by the Governing Board, acting by majority.
6. In making its finding under this Article, the Secretariat shall consult with oil companies to obtain their views regarding the situation and the appropriateness of the measures to be taken.
7. An international advisory board from the oil industry shall be convened, not later than the activation of emergency measures, to assist the Agency in ensuring the effective operation of such measures.

Article 20

1. The Secretariat shall make a finding when cumulative daily emergency reserve drawdown obligations have reached or can reasonably be expected to reach 50 per cent of emergency reserve commitments. The Secretariat shall immediately report its finding to the members of the Management Committee and inform the Participating Countries thereof. The report shall include information on the oil situation.
2. Within 72 hours of the Secretariat's reporting such a finding, the Management Committee shall meet to review the data compiled and the information provided. On the basis of available information the Committee shall report to the Governing Board within a further 48 hours proposing measures required for meeting the necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary. The report shall set out the views expressed by the members of the Committee.
3. The Governing Board shall meet within 48 hours of receiving the Committee's report and proposal. The Governing Board shall review the finding of the Secretariat and the report of the Management Committee and shall within a further 48 hours, acting by special majority, decide on the measures required for meeting the necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary.

Article 21

1. Any Participating Country may request the Secretariat to make a finding under Article 19 or 20.
2. If, within 72 hours of such request, the Secretariat does not make such a finding, the Participating Country may request the Management Committee to meet and consider the situation in accordance with the provisions of this Agreement.
3. The Management Committee shall meet within 48 hours of such request in order to consider the situation. It shall, at the request of any Participating Country, report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee and by the Secretariat, including any views regarding the handling of the situation.
4. The Governing Board shall meet within 48 hours of receiving the Management Committee's report. If it finds, acting by majority, that the conditions set out in Article 13, 14, 15 or 17 are fulfilled, emergency measures shall be activated accordingly.

Article 22

The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement if the situation so requires.

DEACTIVATION

Article 23

1. The Secretariat shall make a finding when a reduction of supplies as mentioned in Article 13, 14 or 17 has decreased or can reasonably be expected to decrease below the level referred to in the relevant Article. The Secretariat shall keep the Management Committee informed of its deliberations and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof.
2. Within 72 hours of the Secretariat's reporting a finding, the Management Committee shall meet to review the data compiled and the information provided. It shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any views regarding the handling of the emergency.
3. Within 48 hours of receiving the Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of the report from the Management Committee. The deactivation of emergency measures or the applicable reduction of the demand restraint level shall be considered confirmed unless the Governing Board, acting by special majority, decides within a further 48 hours to maintain the emergency measures or to deactivate them only in part.
4. In making its finding under this Article, the Secretariat shall consult with the international advisory board, mentioned in Article 19, paragraph 7, to obtain its views regarding the situation and the appropriateness of the measures to be taken.
5. Any Participating Country may request the Secretariat to make a finding under this Article.

Article 24

When emergency measures are in force, and the Secretariat has not made a finding under Article 23, the Governing Board, acting by special majority, may at any time decide to deactivate the measures either wholly or in part.

CHAPTER V: INFORMATION SYSTEM ON THE INTERNATIONAL OIL MARKET

Article 25

1. The Participating Countries shall establish an Information System consisting of two sections:
 - a General Section on the situation in the international oil market and activities of oil companies,
 - a Special Section designed to ensure the efficient operation of the measures described in Chapters I to IV.

2. The System shall be operated on a permanent basis, both under normal conditions and during emergencies, and in a manner which ensures the confidentiality of the information made available.
3. The Secretariat shall be responsible for the operation of the Information System and shall make the information compiled available to the Participating Countries.

Article 26

The term “oil companies” means international companies, national companies, non-integrated companies and other entities which play a significant role in the international oil industry.

GENERAL SECTION

Article 27

1. Under the General Section of the Information System, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 29 on the following subjects relating to oil companies operating within their respective jurisdictions:
 - (a) Corporate structure;
 - (b) Financial structure, including balance sheets, profit and loss accounts, and taxes paid;
 - (c) Capital investments realised;
 - (d) Terms of arrangements for access to major sources of crude oil;
 - (e) Current rates of production and anticipated changes therein;
 - (f) Allocations of available crude supplies to affiliates and other customers (criteria and realisations);
 - (g) Stocks;
 - (h) Cost of crude oil and oil products;
 - (i) Prices, including transfer prices to affiliates;
 - (j) Other subjects, as decided by the Governing Board, acting by unanimity.
2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to fulfil its obligations under paragraph 1, taking into account such relevant information as is already available to the public or to Governments.
3. Each Participating Country shall provide information on a non-proprietary basis and on a company and/or country basis as appropriate, and in such a manner and degree as will not prejudice competition or conflict with the legal requirements of any Participating Country relating to competition.
4. No Participating Country shall be entitled to obtain, through the General Section, any information on the activities of a company operating within its jurisdiction which could not be obtained by it from that company by application of its laws or through its institutions and customs if that company were operating solely within its jurisdiction.

Article 28

Information provided on a “non-proprietary basis” means information which does not constitute or relate to patents, trademarks, scientific or manufacturing processes or developments, individual sales, tax returns, customer lists or geological and geophysical information, including maps.

Article 29

1. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market shall submit a report to the Management Committee identifying the precise data within the list of subjects in Article 27, paragraph 1, which are required for the efficient operation of the General Section, and specifying the procedures for obtaining such data on a regular basis.
2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the General Section.

Article 30

In preparing its reports under Article 29, the Standing Group on the Oil Market shall:

- consult with oil companies to ensure that the System is compatible with industry operations;
- identify specific problems and issues which are of concern to Participating Countries;
- identify specific data which are useful and necessary to resolve such problems and issues;
- work out precise standards for the harmonization of the required information in order to ensure comparability of the data;
- work out procedures to ensure the confidentiality of the information.

Article 31

1. The Standing Group on the Oil Market shall on a continuing basis review the operation of the General Section.
2. In the event of changes in the conditions of the international oil market, the Standing Group on the Oil Market shall report to the Management Committee. The Committee shall make proposals on appropriate changes to the Governing Board which, acting by majority, shall decide on such proposals.

SPECIAL SECTION

Article 32

1. Under the Special Section of the Information System, the Participating Countries shall make available to the Secretariat all information which is necessary to ensure the efficient operation of emergency measures.
2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to enable it to fulfil its obligations under paragraph 1 and under Article 33.
3. The Secretariat shall, on the basis of this information and other information available, continuously survey the supply of oil to and the consumption of oil within the group and each Participating Country.

Article 33

Under the Special Section, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 34 on the following subjects:

- (a) Oil consumption and supply;
- (b) Demand restraint measures;
- (c) Levels of emergency reserves;
- (d) Availability and utilisation of transportation facilities;
- (e) Current and projected levels of international supply and demand;
- (f) Other subjects, as decided by the Governing Board, acting in unanimity.

Article 34

1. Within 30 days of the first day of the provisional application of this Agreement, the Standing Group on Emergency Questions shall submit a report to the Management Committee identifying the precise data within the list of subjects in Article 33 which are required under the Special Section to ensure the efficient operation of emergency measures and specifying the procedures for obtaining such data on a regular basis, including accelerated procedures in times of emergency.
2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the Special Section.

Article 35

In preparing its report under Article 34, the Standing Group on Emergency Questions shall:

consult with oil companies to ensure that the System is compatible with industry operations;

work out precise standards for the harmonization of the required information in order to ensure comparability of the data;

work out procedures to ensure the confidentiality of the information.

Article 36

The Standing Group on Emergency Questions shall on a continuing basis review the operation of the Special Section and shall, as appropriate, report to the Management Committee. The Committee shall make proposals on appropriate changes to the Governing Board, which, acting by majority, shall decide on such proposals.

CHAPTER VI: FRAMEWORK FOR CONSULTATION WITH OIL COMPANIES

Article 37

1. The Participating Countries shall establish within the Agency a permanent framework for consultation within which one or more Participating Countries may, in an appropriate manner, consult with and request information from individual oil companies on all important aspects of the oil industry, and within which the Participating Countries may share among themselves on a cooperative basis the results of such consultations.
2. The framework for consultation shall be established under the auspices of the Standing Group on the Oil Market.
3. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market, after consultation with oil companies, shall submit a report to the Management Committee on the procedures for such consultations. The Management Committee shall review the report and make proposals to the Governing Board, which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall decide on such procedures.

Article 38

1. The Standing Group on the Oil Market shall present a report to the Management Committee on consultations held with any oil company within 30 days thereof.
2. The Management Committee shall consider the report and may make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 39

1. The Standing Group on the Oil Market shall, on a continuing basis, evaluate the results of the consultations with and the information collected from oil companies.
2. On the basis of these evaluations, the Standing Group may examine and assess the international oil situation and the position of the oil industry and shall report to the Management Committee.
3. The Management Committee shall review such reports and make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 40

The Standing Group on the Oil Market shall submit annually a general report to the Management Committee on the functioning of the framework for consultation with oil companies.

CHAPTER VII: LONG TERM CO-OPERATION ON ENERGY

Article 41

1. The Participating Countries are determined to reduce over the longer term their dependence on imported oil for meeting their total energy requirements.
2. To this end, the Participating Countries will undertake national programs and promote the adoption of co-operative programs, including, as appropriate, the sharing of means and efforts, while concerning national policies, in the areas set out in Article 42.

Article 42

1. The Standing Group on Long Term Co-operation shall examine and report to the Management Committee on co-operative action. The following areas shall in particular be considered:
 - (a) Conservation of energy, including co-operative programs on: exchange of national experiences and information on energy conservation;
ways and means for reducing the growth of energy consumption through conservation.
 - (b) Development of alternative sources of energy such as domestic oil, coal, natural gas, nuclear energy and hydroelectric power, including co-operative programs on: exchange of information on such matters as resources, supply and demand, price and taxation;
ways and means for reducing the growth of consumption of imported oil through the development of alternative sources of energy;
concrete projects, including jointly financed projects;
criteria, quality objectives and standards for environmental protection.

(c) Energy research and development, including as a matter of priority co-operative programs on:

- coal technology;
- solar energy;
- radioactive waste management;
- controlled thermonuclear fusion;
- production of hydrogen from water;
- nuclear safety;
- waste heat utilisation;
- conservation of energy;
- municipal and industrial waste utilisation for energy conservation;
- overall energy system analysis and general studies.

(d) Uranium enrichment, including co-operative programs: to monitor developments in natural and enriched uranium supply;

- to facilitate development of natural uranium resources and enrichment services;
- to encourage such consultations as may be required to deal with international issues that may arise in relation to the expansion of enriched uranium supply;
- to arrange for the requisite collection, analysis and dissemination of data related to the planning of enrichment services.

2. In examining the areas of co-operative action, the Standing Group shall take due account of ongoing activities elsewhere.

3. Programs developed under paragraph 1 may be jointly financed. Such joint financing may take place in accordance with Article 64, paragraph 2.

Article 43

1. The Management Committee shall review the reports of the Standing Group and make appropriate proposals to the Governing Board, which shall decide on these proposals not later than 1st July, 1975.

2. The Governing Board shall take into account possibilities for cooperation within a broader framework.

CHAPTER VIII: RELATIONS WITH PRODUCER COUNTRIES AND WITH OTHER CONSUMER COUNTRIES

Article 44

The Participating Countries will endeavour to promote co-operative relations with oil producing countries and with other oil consuming countries, including developing countries. They will keep under review developments in the energy field with a view to identifying opportunities for and promoting a purposeful dialogue, as well as other forms of co-operation, with producer countries and with other consumer countries.

Article 45

To achieve the objectives set out in Article 44, the Participating Countries will give full consideration to the needs and interests of other oil consuming countries, particularly those of the developing countries.

Article 46

The Participating Countries will, in the context of the Program, exchange views on their relations with oil producing countries. To this end, the Participating Countries should inform each other of cooperative action on their part with producer countries which is relevant to the objectives of the Program.

Article 47

The Participating Countries will, in the context of the Program:

seek, in the light of their continuous review of developments in the international energy situation and its effect on the world economy, opportunities and means of encouraging stable international trade in oil and of promoting secure oil supplies on reasonable and equitable terms for each Participating Country;

consider, in the light of work going on in other international organisations, other possible fields of co-operation including the prospects for co-operation in accelerated industrialisation and socio-economic development in the principal producing areas and the implications of this for international trade and investment;

keep under review the prospects for co-operation with oil producing countries on energy questions of mutual interest, such as conservation of energy, the development of alternative sources, and research and development.

Article 48

1. The Standing Group on Relations with Producer and other Consumer Countries will examine and report to the Management Committee on the matters described in this Chapter.
2. The Management Committee may make proposals on appropriate co-operative action regarding these matters to the Governing Board, which shall decide on such proposals.

CHAPTER IX: INSTITUTIONAL AND GENERAL PROVISIONS

Article 49

1. The Agency shall have the following organs:
 - a Governing Board,
 - a Management Committee,
 - Standing Groups on
 - Emergency Questions
 - The Oil Market

Long Term Co-operation

Relations with Producer and Other Consumer Countries.

2. The Governing Board or the Management Committee may, acting by majority, establish any other organ necessary for the implementation of the Program.
3. The Agency shall have a Secretariat to assist the organs mentioned in paragraphs 1 and 2.

GOVERNING BOARD

Article 50

1. The Governing Board shall be composed of one or more ministers or their delegates from each Participating Country.
2. The Governing Board, acting by majority, shall adopt its own rules of procedure. Unless otherwise decided in the rules of procedure, these rules shall also apply to the Management Committee and the Standing Groups.
3. The Governing Board, acting by majority, shall elect its Chairman and Vice-Chairmen.

Article 51

1. The Governing Board shall adopt decisions and make recommendations which are necessary for the proper functioning of the Program.
2. The Governing Board shall review periodically and take appropriate action concerning developments in the international energy situation, including problems relating to the oil supplies of any Participating Country or Countries, and the economic and monetary implications of these developments. In its activities concerning the economic and monetary implications of developments in the international energy situation, the Governing Board shall take into account the competence and activities of international institutions responsible for overall economic and monetary questions.
3. The Governing Board, acting by majority, may delegate any of its functions to any other organ of the Agency.

Article 52

1. Subject to Article 61, paragraph 2, and Article 65, decisions adopted pursuant to this Agreement by the Governing Board or by any other organ by delegation from the Board shall be binding on the Participating Countries.
2. Recommendations shall not be binding.

MANAGEMENT COMMITTEE

Article 53

1. The Management Committee shall be composed of one or more senior representatives of the Government of each Participating Country.
2. The Management Committee shall carry out the functions assigned to it in this Agreement and any other function delegated to it by the Governing Board.
3. The Management Committee may examine and make proposals to the Governing Board, as appropriate, on any matter within the scope of this Agreement.
4. The Management Committee shall be convened upon the request of any Participating Country.
5. The Management Committee, acting by majority, shall elect its Chairman and Vice-Chairmen.

STANDING GROUPS

Article 54

1. Each Standing Group shall be composed of one or more representatives of the Government of each Participating Country.
2. The Management Committee, acting by majority, shall elect the Chairmen and Vice-Chairmen of the Standing Groups.

Article 55

1. The Standing Group on Emergency Questions shall carry out the functions assigned to it in Chapters I to V and the Annex and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters I to V and the Annex.
3. The Standing Group may consult with oil companies on any matter within its competence.

Article 56

1. The Standing Group on the Oil Market shall carry out the functions assigned to it in Chapters V and VI and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters V and VI.
3. The Standing Group may consult with oil companies on any matter within its competence.

Article 57

1. The Standing Group on Long Term Co-operation shall carry out the functions assigned to it in Chapter VII and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VII.

Article 58

1. The Standing Group on Relations with Producer and other Consumer Countries shall carry out the functions assigned to it in Chapter VIII and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VIII.
3. The Standing Group may consult with oil companies on any matter within its competence.

SECRETARIAT

Article 59

1. The Secretariat shall be composed of an Executive Director and such staff as is necessary.
2. The Executive Director shall be appointed by the Governing Board.
3. In the performance of their duties under this Agreement the Executive Director and the staff shall be responsible to and report to the organs of the Agency.
4. The Governing Board, acting by majority, shall take all decisions necessary for the establishment and the functioning of the Secretariat.

Article 60

The Secretariat shall carry out the functions assigned to it in this Agreement and any other function assigned to it by the Governing Board.

VOTING

Article 61

1. The Governing Board shall adopt decisions and recommendations for which no express voting provision is made in this Agreement, as follows:

(a) by majority:

decisions on the management of the Program, including decisions applying provisions of this Agreement which already impose specific obligations on Participating Countries
decisions on procedural questions

recommendations;

(b) by unanimity:

all other decisions, including in particular decisions which impose on Participating Countries new obligations not already specified in this Agreement.

2. Decisions mentioned in paragraph 1(b) may provide:

(a) that they shall not be binding on one or more Participating Countries;

(b) that they shall be binding only under certain conditions.

Article 62

1. Unanimity shall require all of the votes of the Participating Countries present and voting. Countries abstaining shall be considered as not voting.

2. When majority or special majority is required, the Participating Countries shall have the following voting weights:

	General voting weights	Oil consumption voting weights	Combined voting weights
Australia	3	1	4
Austria	3	1	4
Belgium	3	1	4
Canada	3	4	7
Czech Republic	3	1	4
Denmark	3	1	4
Finland	3	1	4
France	3	6	9
Germany	3	8	11
Greece	3	0	3
Hungary	3	1	4
Ireland	3	0	3
Italy	3	5	8
Japan	3	14	17
Korea (Republic of)	3	1	4
Luxembourg	3	0	3
The Netherlands	3	1	3
New Zealand	3	0	3

Portugal	3	0	3
Spain	3	2	5
	General voting weights	Oil consumption voting weights	Combined voting weights
Sweden	3	2	5
Switzerland	3	1	4
Turkey	3	1	4
United Kingdom	3	5	8
United States	3	43	46
Totals	75	100	175

3. Majority shall require 60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast.

4. Special majority shall require:

(a) 60 per cent of the total combined voting weights and 57 general voting weights for:
the decision under Article 2, paragraph 2, relating to the increase in the emergency reserve commitment;
decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Articles 13 and 14;
decisions under Article 20, paragraph 3, on the measures required for meeting the necessities of the situation;
decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Articles 13 and 14;
decisions under Article 24 to deactivate the emergency measures referred to in Articles 13 and 14.

(b) 66 general voting weights for:
decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Article 17;
decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Article 17;
decisions under Article 24 to deactivate the emergency measures referred to in Article 17.

5. The Governing Board, acting by unanimity, shall decide on the necessary increase, decrease, and redistribution of the voting weights referred to in paragraph 2, as well as on amendment of the voting requirements set out in paragraphs 3 and 4 in the event that:

a Country accedes to this Agreement in accordance with Article 71, or
a Country withdraws from this Agreement in accordance with Article 68, paragraph 2, or Article 69, paragraph 2.

6. The Governing Board shall review annually the number and distribution of voting weights specified in paragraph 2, and, on the basis of such review, acting by unanimity, shall decide whether such voting weights should be increased or decreased, or redistributed, or both, because a change in any Participating Country's share in total oil consumption has occurred or for any other reason.
7. Any change in paragraph 2, 3 or 4 shall be based on the concepts underlying those paragraphs and paragraph 6.

RELATIONS WITH OTHER ENTITIES

Article 63

In order to achieve the objectives of the Program, the Agency may establish appropriate relations with non-participating countries, international organisations, whether governmental or non-governmental, other entities and individuals.

FINANCIAL ARRANGEMENTS

Article 64

1. The expenses of the Secretariat and all other common expenses shall be shared among all Participating Countries according to a scale of contributions elaborated according to the principles and rules set out in the Annex to the "OECD Resolution of the Council on Determination of the Scale of Contributions by Member Countries to the Budget of the Organisation" of 10th December, 1963. After the first year of application of this Agreement, the Governing Board shall review this scale of contributions and, acting by unanimity, shall decide upon any appropriate changes in accordance with Article 73.
2. Special expenses incurred in connection with special activities carried out pursuant to Article 65 shall be shared by the Participating Countries taking part in such special activities in such proportions as shall be determined by unanimous agreement between them.
3. The Executive Director shall, in accordance with the financial regulations adopted by the Governing Board and not later than 1st October of each year, submit to the Governing Board a draft budget including personnel requirements. The Governing Board, acting by majority, shall adopt the budget.
4. The Governing Board, acting by majority, shall take all other necessary decisions regarding the financial administration of the Agency.
5. The financial year shall begin on 1st January and end on 31st December of each year. At the end of each financial year, revenues and expenditures shall be submitted to audit.

SPECIAL ACTIVITIES

Article 65

1. Any two or more Participating Countries may decide to carry out within the scope of this Agreement special activities, other than activities which are required to be carried out by all Participating Countries under Chapters I to V. Participating Countries which do not wish to take part in such special activities shall abstain from taking part in such decisions and shall not be bound by them. Participating Countries carrying out such activities shall keep the Governing Board informed thereof.
2. For the implementation of such special activities, the Participating Countries concerned may agree upon voting procedures other than those provided for in Articles 61 and 62.

IMPLEMENTATION OF THE AGREEMENT

Article 66

Each Participating Country shall take the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board.

CHAPTER X: FINAL PROVISIONS

Article 67

1. Each Signatory State shall, not later than 1st May, 1975, notify the Government of Belgium that, having complied with its constitutional procedures, it consents to be bound by this Agreement.
2. On the tenth day following the day on which at least six States holding at least 60 per cent of the combined voting weights mentioned in Article 62 have deposited a notification of consent to be bound or an instrument of accession, this Agreement shall enter into force for such States.
3. For each Signatory State which deposits its notification thereafter, this Agreement shall enter into force on the tenth day following the day of deposit.
4. The Governing Board, acting by majority, may upon request from any Signatory State decide to extend, with respect to that State, the time limit for notification beyond 1st May, 1975.

Article 68

1. Notwithstanding the provisions of Article 67, this Agreement shall be applied provisionally by all Signatory States, to the extent possible not inconsistent with their legislation, as from 18th November, 1974 following the first meeting of the Governing Board.

2. Provisional application of the Agreement shall continue until:
 - the Agreement enters into force for the State concerned in accordance with Article 67, or
 - 60 days after the Government of Belgium receives notification that the State concerned will not consent to be bound by the Agreement, or
 - the time limit for notification of consent by the State concerned referred to in Article 67 expires.

Article 69

1. This Agreement shall remain in force for a period of ten years from the date of its entry into force and shall continue in force thereafter unless and until the Governing Board, acting by majority, decides on its termination.
2. Any Participating Country may terminate the application of this Agreement for its part upon twelve months' written notice to the Government of Belgium to that effect, given not less than three years after the first day of the provisional application of this Agreement.

Article 70

1. Any State may, at the time of signature, notification of consent to be bound in accordance with Article 67, accession or at any later date, declare by notification addressed to the Government of Belgium that this Agreement shall apply to all or any of the territories for whose international relations it is responsible, or to any territories within its frontiers for whose oil supplies it is legally responsible.
2. Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn in accordance with the provisions of Article 69, paragraph 2.

Article 71

1. This Agreement shall be open for accession by any Member of the Organisation for Economic Co-operation and Development which is able and willing to meet the requirements of the Program. The Governing Board, acting by majority, shall decide on any request for accession.
2. This Agreement shall enter into force for any State whose request for accession has been granted on the tenth day following the deposit of its instrument of accession with the Government of Belgium, or on the date of entry into force of the Agreement pursuant to Article 67, paragraph 2, whichever is the later.
3. Accession may take place on a provisional basis under the conditions set out in Article 68, subject to such time limits as the Governing Board, acting by majority, may fix for an acceding State to deposit its notification of consent to be bound.

Article 72

1. This Agreement shall be open for accession by the European Communities.
2. This Agreement shall not in any way impede the further implementation of the treaties establishing the European Communities.

Article 73

This Agreement may at any time be amended by the Governing Board, acting by unanimity. Such amendment shall come into force in a manner determined by the Governing Board, acting by unanimity and making provision for Participating Countries to comply with their respective constitutional procedures.

Article 74

This Agreement shall be subject to a general review after 1st May, 1980.

Article 75

The Government of Belgium shall notify all Participating Countries of the deposit of each notification of consent to be bound in accordance with Article 67, and of each instrument of accession, of the entry into force of this Agreement or any amendment thereto, of any denunciation thereof, and of any other declaration or notification received.

Article 76

The original of this Agreement, of which the English, French and German texts are equally authentic, shall be deposited with the Government of Belgium, and a certified copy thereof shall be furnished to each other Participating Country by the Government of Belgium.

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

DONE at Paris, this eighteenth day of November, Nineteen Hundred and Seventy Four.

[Signatures are not reproduced here, nor is the Annex, on Emergency Reserves.]

CHAPTER THIRTY-FIVE

Treaty of the Economic Community of West African States

Lagos, 28 May 1975

INTRODUCTION

This is one of the regional economic co-operation treaties of the 1970s. This Treaty of Lagos followed on the heels of the African continental Declaration on Cooperation, Development and Economic Independence, exactly two years before the document creating the Economic Community of West African States (ECOWAS) was signed. All 15 countries in the West African region had signed the ECOWAS Treaty by 1977 (when Cape Verde joined). The objectives, as with similar associations elsewhere, include the promotion of economic co-operation and development in all fields. Specific sectors that may be considered priority areas, or those most suited for immediate co-operation and harmonization, are: telecommunications; transport; industry; energy; infrastructure; agriculture; natural resources; fiscal policies; and social interaction.

To avoid being overly ambitious, the Community proposed to deal with specific matters in phases. The areas targeted for the first phase were: quantitative and administrative restrictions on trade among members; the removal of custom duties and charges having equivalent effect between members; the adoption of a common trade policy towards third countries; and the abolition of restrictions on the freedom of movement of persons, services and capital between members. Economic, fiscal and industrial policies were also to be harmonized, while there were also plans for joint transport, energy and other infrastructure projects. One means of funding is the Fund for Co-operation, Compensation and Development established under the Treaty.

The institutions to achieve these objectives in practice are: the Authority of the Heads of State and Government; the Council of Ministers; the Executive Secretariat; the Tribunal of the Community; and a number of specialized technical commissions. The Authority is the highest body of the Community and it gives the general policy direction. The Chairmanship of the Authority is on an annual rotational basis. Its decisions and directions are binding on all the institutions of the Community. Nothing is said about the effect of its decisions on individual member states. The Council of Ministers does most of the political and related work for the Authority. It keeps under constant review the functioning of the Community and advises the Authority accordingly. The Executive

Secretariat is the administrative machinery of the Community. It is headed by an Executive Secretary, appointed by the Authority for a renewable term of four years. The Executive Secretary and his staff are independent and owe their loyalty only to the Community. The technical and specialized commissions are in those areas that the Community deems it most important to succeed in: fiscal policy, transport, natural resources, agriculture etc.

For a long while, ECOWAS appeared to be yet another initiative noted for its ineffectiveness. There are, however, some notable achievements. There is largely freedom of movement of peoples in the West African region. Any obstacles have more to do with political crisis rather than proper legal restrictions. More recently, the West African Central Bank has been established, the West African Gas Pipeline project is underway and efforts are underway to have a monetary zone. Nevertheless, for the Community to attain its goals, the need for political stability and good governance in the individual member states is inescapable.

The ECOWAS Treaty came into force on 20 June 1975. A revised Treaty was signed and accepted on 24 July 1993, in Cotonou (Benin), entering into force later that year. That text is reproduced below.

TREATY OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (AS REVISED)*

PREAMBLE

We, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS):

REAFFIRMING the Treaty establishing the Economic Community of West African States signed in Lagos on 28 May 1975 and considering its achievements;

CONSCIOUS of the over-riding need to encourage, foster and accelerate the economic and social development of our states in order to improve the living standards of our peoples;

CONVINCED that the promotion of harmonious economic development of our states calls for effective economic co-operation and integration largely through a determined and concerted policy of self-reliance;

BEARING IN MIND the African Charter on Human and Peoples' Rights and the Declaration of Political Principles of the Economic Community of West African States adopted in Abuja by the Fourteenth Ordinary Session of the Authority of Heads of State and Government on 6 July 1991;

CONVINCED that the integration of the Member States into a viable regional community may demand the partial and gradual pooling of national sovereignties to the community within the context of a collective political will;

ACCEPTING the need to establish community institutions vested with relevant and adequate powers;

NOTING that the present bilateral and multilateral forms of economic co-operation within the region open up perspectives for more extensive co-operation;

ACCEPTING the need to face together the political, economic and socio-cultural challenges of the present and the future, and to pool together the resources of our peoples while respecting our diversities for the most rapid and optimum expansion of the region's productive capacity;

BEARING IN MIND ALSO the Lagos Plan of Action and the Final Act of Lagos of April 1980 stipulating the establishment, by the year 2000, of an African Economic Community based on existing and future regional economic communities;

MINDFUL of the Treaty establishing the African Economic Community signed in Abuja on 3 June 1991;

AFFIRMING that our final goal is the accelerated and sustained economic development of Member States, culminating in the economic union of West Africa;

BEARING IN MIND our Decision A/Dec. 10/5/90 of 30 May 1990 relating to the establishment of a Committee of Eminent Persons to submit proposals for the review of the Treaty;

AWARE that the review of the Treaty arises, inter alia, from the need for the Community to adapt to the changes on the international scene in order to derive greater benefits from those changes;

CONSIDERING ALSO the need to modify the Community's strategies in order to accelerate the economic integration process in the region;

ACCEPTING the need to share the benefits of economic co-operation and integration among Member States in a just and equitable manner;

HAVE DECIDED to revise the Treaty of 28 May 1975 establishing the Economic Community of West African States (ECOWAS) and have accordingly agreed as follows:

CHAPTER II: ESTABLISHMENT, COMPOSITION, AIMS AND OBJECTIVES AND FUNDAMENTAL PRINCIPLES OF THE COMMUNITY

Article 2: Establishment and Composition

1. THE HIGH CONTRACTING PARTIES, by this Treaty, hereby re-affirm the establishment of the Economic Community of West African States (ECOWAS): and decide that it shall ultimately be the sole economic community in the region for the purpose of economic integration and the realisation of the objectives of the African Economic Community.
2. The members of the Community, hereinafter referred to as "the Member States", shall be the states that ratify this Treaty.

Article 3: Aims and Objectives

1. The aims of the Community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African continent.

2. In order to achieve the aims set out in the paragraph above, and in accordance with the relevant provisions of this Treaty, the Community shall, by stages, ensure;
- (a) the harmonisation and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;
 - (b) the harmonisation and co-ordination of policies for the protection of the environment;
 - (c) the promotion of the establishment of joint production enterprises;
 - (d) the establishment of a common market through:
 - i. the liberalisation of trade by the abolition, among Member States, of customs, of non-tariff barriers in order to establish a free trade area at the Community level;
 - ii. the adoption of a common external tariff and a common trade policy vis-à-vis third countries;
 - iii. the removal, between Member States, of obstacles to the free movement of persons, goods, service and capital, and to the right of residence and establishment;
 - (e) the establishment of an economic union through the adoption of common policies in the economic, financial social and cultural sectors, and the creation of a monetary union;
 - (f) the promotion of joint ventures by private sector enterprises and other economic operators, in particular through the adoption of a regional agreement on cross-border investments;
 - (g) the adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises;
 - (h) the establishment of an enabling legal environment;
 - (i) the harmonisation of national investment codes leading to the adoption of a single Community investment code;
 - (j) the harmonisation of standards and measures;
 - (k) the promotion of balanced development of the region, paying attention to the special problems of each member state particularly those of landlocked and small island Member States;
 - (l) the encouragement and strengthening of relations and the promotion of the flow of information particularly among rural populations, women and youth organisations and socio-professional organisations such as associations of the media, business men and women, workers, and trade unions;
 - (m) the adoption of a Community population policy which takes into account the need for a balance between demographic factors and socio-economic development;
 - (n) the establishment of a fund for co-operation, compensation and development; and
 - (o) any other activity that Member States may decide to undertake jointly with a view to attaining Community objectives.

Article 4: Fundamental Principles

The high contracting parties, in pursuit of the objectives stated in article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles:

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of ECOWAS (<http://www.ecowas.int/>).

- a) equality and inter-dependence of Member States;
- b) solidarity and collective self-reliance;
- c) inter-state co-operation, harmonisation of policies and integration of programmes;
- d) non-aggression between Member States;
- e) maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness;
- f) peaceful settlement of disputes among Member States, active cooperation between neighbouring countries and promotion of a peaceful environment as a prerequisite for economic development;
- g) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- h) accountability, economic and social justice and popular participation in development;
- i) recognition and observance of the rules and principles of the Community;
- j) promotion and consolidation of a democratic system of governance in each member state as envisaged by the Declaration of Political Principles adopted in Abuja on 6 July 1991; and
- k) equitable and just distribution of the costs and benefits of economic co-operation and integration.

Article 5: General Undertakings

1. Member states undertake to create favourable conditions for the attainment of the objectives of the Community, and particularly to take all necessary measures to harmonise their strategies and policies, and to refrain from any action that may hinder the attainment of the said objectives.
2. Each member state shall, in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty.
3. Each member state undertakes to honour its obligations under this Treaty and to abide by the decisions and regulations of the Community.

CHAPTER III: INSTITUTIONS OF THE COMMUNITY- ESTABLISHMENT, COMPOSITION AND FUNCTIONS

Article 6: Institutions

1. The institutions of the Community shall be:

- a) the Authority of Heads of State and Government;
 - b) the Council of Ministers;
 - c) the Community Parliament;
 - d) the Economic and Social Council;
 - e) the Community Court of Justice;
 - f) the Executive Secretariat;
 - g) the Fund for Co-operation, Compensation and Development;
 - h) Specialised Technical Commissions; and
 - i) any other institutions that may be established by the Authority.
2. The institutions of the Community shall perform their functions and act within the limits of the powers conferred on them by this Treaty and by the Protocols relating thereto.

Article 7: Authority of Heads of State and Government Establishment, Composition and Functions

1. There is hereby established the Authority of Heads of State and Government of Member States which shall be the supreme institution of the Community and shall be composed of Heads of State and/or Government of Member States.
2. The Authority shall be responsible for the general direction and control of the Community and shall take all measures to ensure its progressive development and the realisation of its objectives.
3. Pursuant to the provisions of Paragraph 2 of this Article, the Authority shall:
 - (a) determine the general policy and major guidelines of the Community, give directives, harmonise and co-ordinate the economic, scientific, technical, cultural and social policies of Member States;
 - (b) oversee the functioning of Community institutions and follow-up implementation of Community objectives;
 - (c) prepare and adopt its Rules of Procedure;
 - (d) appoint the Executive Secretary in accordance with the provisions of Article 18 of this Treaty;
 - (e) appoint, on the recommendation of Council, the External Auditors;
 - (f) delegate to the Council, where necessary, the authority to take such decisions as are stipulated in Article 9 of this Treaty;
 - (g) refer where it deems necessary any matter to the Community Court of Justice when it confirms that a Member State or institution of the Community has failed to honour any of its obligations or an institution of the Community has acted beyond the limits of its authority or has abused the powers conferred on it by the provisions of this Treaty, by a decision of the Authority or a regulation of the Council;
 - (h) request the Community Court of Justice, as and when necessary, to give advisory opinion on any legal questions; and
 - (i) exercise any other powers conferred on it under this Treaty.

Article 8: Sessions

1. The Authority shall meet at least once a year in ordinary session. An extra ordinary session may be convened by the Chairman of the Authority or at the request of a Member State provided that such a request is supported by a simple majority of the Member States.
2. The office of the Chairman shall be held every year by a Member State elected by the Authority.

Article 9: Decisions

1. The Authority shall act by decisions.
2. Unless otherwise provided in this Treaty or in a Protocol decisions of the Authority shall be adopted, depending on the subject matter under consideration by unanimity, consensus or by a two-thirds majority of the Member States.
3. Matters referred to in paragraph 2 above shall be defined in a Protocol. Until the entry into force of the said Protocol, the Authority shall continue to adopt its decisions by consensus.
4. Decisions of the Authority shall be binding on the Member States and institutions of the Community, without prejudice to the provisions of paragraph (3) of Article 15 of this Treaty.
5. The Executive Secretary shall publish the decisions thirty (30) days after the date of their signature by the Chairman of Authority.
6. Such decisions shall automatically enter into force sixty (60) days after the date of their publication in the Official Journal of the Community.
7. Decisions shall be published in the National Gazette of each Member State within the period stipulated in paragraph 6 of this Article.

Article 10: The Council of Ministers—Establishment, Composition and Functions

1. There is hereby established a Council of Ministers of the Community.
2. The Council shall comprise the Minister in charge of ECOWAS Affairs and any other Minister of each Member State.
3. Council shall be responsible for the functioning and development of the Community. To this end, unless otherwise provided in this Treaty or a Protocol, Council shall:
 - (a) make recommendations to the Authority on any action aimed at attaining the objectives of the Community;
 - (b) appoint all statutory appointees other than the Executive Secretary;
 - (c) by the powers delegated to it by the Authority, issue directives on matters concerning co-ordination and harmonisation of economic integration policies;
 - (d) make recommendations to the Authority on the appointment of the External Auditors;
 - (e) prepare and adopt its rules of procedure;
 - (f) adopt the Staff Regulations and approve the organisational structure of the institutions of the Community;

- (g) approve the work programmes and budgets of the Community and its institutions;
- (h) request the Community Court of Justice, where necessary, to give advisory opinion on any legal questions;
- (i) carry out all other functions assigned to it under this Treaty and exercise all powers delegated to it by the Authority.

Article 11: Meetings

1. The Council shall meet at least twice a year in ordinary session. One of such sessions shall immediately precede the ordinary session of the Authority. An extraordinary session may be convened by the Chairman of Council or at the request of a Member State provided that such request is supported by a simple majority of the Member States.
2. The office of Chairman of Council shall be held by the Minister responsible for ECOWAS Affairs of the Member State elected as Chairman of the Authority.

Article 12: Regulations

1. The Council shall act by regulations.
2. Unless otherwise provided in this Treaty regulations of the Council shall be adopted, depending on the subject matter under consideration, by unanimity, consensus or by a two-thirds majority of Member States, in accordance with the Protocol referred to in Article 9 paragraph 3 of this Treaty. Until the entry into force of the said Protocol, the Council shall continue to adopt its regulations by consensus.
3. Regulations of the Council shall be binding on institutions under its authority. They shall be binding on Member States after their approval by the Authority. However, in the case of regulations made pursuant to a delegation of powers by the Authority in accordance with paragraph 3(f) of Article 7 of this Treaty, they shall be binding forthwith.
4. Regulations shall be published and shall enter into force within the same period and under the same conditions stipulated in paragraphs 5, 6 and 7 of Article 9 of this Treaty.

Article 13: The Community Parliament

1. There is hereby established a Parliament of the Community.
2. The method of election of the Members of the Community Parliament, its composition, functions, powers and organisation shall be defined in a Protocol relating thereto.

Article 14: The Economic and Social Council

1. There is hereby established an Economic and Social Council which shall have an advisory role and whose composition shall include representatives of the various categories of economic and social activity.
2. The composition, functions and organisation of the Economic and Social Council shall be defined in a Protocol relating thereto.

Article 15: The Court of Justice—Establishment and Functions

1. There is hereby established a Court of Justice of the Community.
2. The status, composition, powers, procedure and other issues concerning the Court of Justice shall be as set out in a Protocol relating thereto.
3. The Court of Justice shall carry out the functions assigned to it independently of the Member States and the institutions of the Community.
4. Judgements of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.

Article 16: Arbitration Tribunal—Establishment and Functions

1. There is hereby established an Arbitration Tribunal of the Community.
2. The status, composition, powers, procedure and other issues concerning the Arbitration Tribunal shall be as set out in a Protocol relating thereto.

Article 17: The Executive Secretariat—Establishment and Composition

1. There is hereby established an Executive Secretariat of the Community.
2. The Secretariat shall be headed by the Executive Secretary assisted by Deputy Executive Secretaries and such other staff as may be required for the smooth functioning of the Community.

Article 18: Appointments

1. The Executive Secretary shall be appointed by the Authority for a 4-year term renewable only once for another 4-year period. He can only be removed from office by the Authority upon its own initiative or on the recommendation of the Council of Ministers.
2. The Ministerial Committee on the Selection and Evaluation of the Performance of Statutory Appointees shall evaluate the three (3) candidates nominated by the Member State to which the statutory post has been allocated and make recommendations to the Council of Ministers. Council shall propose to the Authority the appointment of the candidate adjudged the best.
3. The Executive Secretary shall be a person of proven competence and integrity, with a global vision of political and economic problems and regional integration.
4.
 - (a) The Deputy Executive Secretaries and other Statutory Appointees shall be appointed by the Council of Ministers on the proposal of the Ministerial Committee on the Selection and Evaluation of the Performance of Statutory Appointees following the evaluation of the three (3) candidates nominated by their respective Member States to whom the posts have been allocated. They shall be appointed for a period of 4 years renewable only once for a further 4-year term.
 - (b) Vacancies shall be advertised in all Member States to which statutory posts have been allocated.

5. In appointing professional staff of the community, due regard shall be had, subject to ensuring the highest standards of efficiency and technical competence, to maintaining equitable geographical distribution of posts among nationals of all Member States.

Article 19: Functions

1. Unless otherwise provided in the Treaty or in a Protocol, the Executive Secretary shall be the chief executive officer of the Community and all its institutions.
2. The Executive Secretary shall direct the activities of the Executive Secretariat and shall, unless otherwise provided in a Protocol, be the legal representative of the Institutions of the Community in their totality.
3. Without prejudice to the general scope of his responsibilities, the duties of the Executive Secretary shall include:
 - (a) execution of decisions taken by the Authority and application of the regulations of the Council;
 - (b) promotion of Community development programmes and projects as well as multinational enterprises of the region;
 - (c) convening as and when necessary meetings of sectoral Ministers to examine sectoral issues which promote the achievement of the objectives of the Community;
 - (d) preparation of draft budgets and programmes of activity of the Community and supervision of their execution upon their approval by Council;
 - (e) submission of reports on Community activities to all meetings of the Authority and Council;
 - (f) preparation of meetings of the Authority and Council as well as meetings of experts and technical commissions and provision of necessary technical services;
 - (g) recruitment of staff of the Community and appointment to posts other than statutory appointees in accordance with the Staff Rules and Regulations;
 - (h) submission of proposals and preparation of such studies as may assist in the efficient and harmonious functioning and development of the Community;
 - (i) initiation of draft texts for adoption by the Authority or Council.

Article 20: Relations between the Staff of the Community and Member States

1. In the performance of their duties, the Executive Secretary, the Deputy Executive Secretaries, and other staff of the Community shall owe their loyalty entirely and be accountable only to the Community. In this regard, they shall neither seek nor accept instructions from any government or any national or international authority external to the Community. They shall refrain from any activity or any conduct incompatible with their status as international civil servants.
2. Every Member State undertakes to respect the international character of the office of the Executive Secretary, the Deputy Executive Secretaries, and other staff of the Community and undertakes not to seek to influence them in the performance of their duties.

3. Member States undertake to co-operate with the Executive Secretariat and other institutions of the Community and to assist them in the discharge of the duties assigned to them under this Treaty.

Article 21: Fund for Co-operation, Compensation and Development—Establishment, Status and Functions

1. There is hereby established a Fund for Co-operation, Compensation and Development of the Community.
2. The status, objectives and functions of the fund are defined in the Protocol relating thereto.

Article 22: Technical Commissions—Establishment and Composition

1. There is hereby established the following Technical Commissions:
 - (a) Food and Agriculture;
 - (b) Industry, Science and Technology and Energy;
 - (c) Environment and Natural Resources;
 - (d) Transport, Communications and Tourism;
 - (e) Trade, Customs, Taxation, Statistics, Money and Payments;
 - (f) Political, Judicial and Legal Affairs, Regional Security and
 - (g) Human Resources, Information, Social and Cultural Affairs; Immigration; and
 - (h) Administration and Finance Commission.
2. The Authority may, whenever it deems appropriate, restructure the existing Commissions or establish new Commissions.
3. Each commission shall comprise representatives of each Member State.
4. Each Commission may, as it deems necessary, set up subsidiary commissions to assist it in carrying out its work. It shall determine the composition of any such subsidiary commission.

Article 23: Functions

Each Commission shall, within its field of competence:

- (a) prepare Community projects and programmes and submit them for the consideration of Council through the Executive Secretary, either on its own initiative or at the request of Council or the Executive Secretary;
- (b) ensure the harmonisation and co-ordination of projects and programmes of the Community;
- (c) monitor and facilitate the application of the provisions of this Treaty and related Protocols pertaining to its area of responsibility;
- (d) carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Treaty.

Article 24: Meetings

Subject to any directives given by the Council, each Commission shall meet as often as necessary. It shall prepare its rules of procedure and submit them to the Council for approval.

CHAPTER IV: CO-OPERATION IN FOOD AND AGRICULTURE

Article 25: Agricultural Development and Food Security

1. Member states shall co-operate in the development of agriculture, forestry, livestock and fisheries in order to:
 - (a) ensure food security;
 - (b) increase production and productivity in agriculture, live-stock, fisheries and forestry, and improve conditions of work and generate employment opportunities in rural areas;
 - (c) enhance agricultural production through processing locally, animal and plant products; and
 - (d) protect the prices of export commodities on the international market.
2. To this end, and in order to promote the integration of production structures, Member States shall co-operate in the following fields:
 - (a) the production of agricultural inputs, fertilizers, pesticides, selected seeds, agricultural machinery and equipment and veterinary products;
 - (b) the development of river and lac basins;
 - (c) the development and protection of marine and fishery resources;
 - (d) plant and animal protection;
 - (e) the harmonisation of agricultural development strategies and policies particularly pricing and price support policies on the production, trade and marketing of major agricultural products and inputs; and
 - (f) the harmonisation of food security policies paying particular attention to:
 - i. the reduction of losses in food production;
 - ii. the strengthening of existing institutions for the management of natural calamities, agricultural diseases and pest control;
 - iii. the conclusion of agreements on food security at the regional level; and
 - iv. the provision of food aid to Member States in the event of serious food shortage.
 - (g) the establishment of an early warning system; and
 - (h) the adoption of a common agricultural policy especially in the fields of research, training, production, preservation, processing and marketing of the products of agriculture, forestry, livestock and fisheries.

CHAPTER V: CO-OPERATION IN INDUSTRY, SCIENCE AND TECHNOLOGY AND ENERGY

Article 26: Industry

1. For the purpose of promoting industrial development of Member States and integrating their economies, Member States shall harmonise their industrialisation policies.
2. In this connection, Member States shall:
 - (a) strengthen the industrial base of the Community, modernise the priority sectors and foster self-sustained and self-reliant development;
 - (b) promote joint industrial development projects as well as the creation of multinational enterprises in priority industrial sub-sectors likely to contribute to the development of agriculture, transport and communications, natural resources and energy.
3. In order to create a solid basis for industrialisation and promote collective self-reliance, Member States shall:
 - (a) ensure, on the one hand, the development of industries essential for collective self-reliance and, on the other, the modernisation of priority sectors of the economy especially:
 - i. food and agro-based industries;
 - ii. building and construction industries;
 - iii. metallurgical industries;
 - iv. mechanical industries;
 - v. electrical, electronics and computer industries;
 - vi. pharmaceutical, chemical and petrochemical industries;
 - vii. forestry industries;
 - viii. energy industries;
 - ix. textile and leather industries;
 - x. transport and communications industries;
 - xi. bio-technology industries;
 - xii. tourist and cultural industries.
 - (b) give priority and encouragement to the establishment and strengthening of private and public multinational industrial projects likely to promote integration;
 - (c) ensure the promotion of medium and small-scale industries;
 - (d) promote intermediate industries that have strong linkages to the economy in order to increase the local component of industrial output within the Community;
 - (e) prepare a regional master plan for the establishment of industries particularly those whose construction cost and volume of production exceed national, financial and absorptive capacities;
 - (f) encourage the establishment of specialised institutions for the financing of West African multinational industrial projects;

- (g) facilitate the establishment of West African multinational enterprises and encourage the participation of West African entrepreneurs in the regional industrialisation process;
- (h) promote the sale and consumption of strategic industrial products manufactured in Member States;
- (i) promote technical co-operation and the exchange of experience in the field of industrial technology and implement technical training programmes among Member States;
- (j) establish a regional data and statistical information base to support industrial development at the regional and continental levels;
- (k) promote, on the basis of natural resource endowments, industrial specialisation in order to enhance complementarity and expand the intra-Community trade base; and
- (l) adopt common standards and appropriate quality control systems.

Article 27: Science and Technology

1. Member States shall:

- (a) strengthen their national scientific and technological capabilities in order to bring about the socioeconomic transformation required to improve the quality of life of their population;
- (b) ensure the proper application of science and technology to the development of agriculture, transport and communications, industry, health and hygiene, energy, education and manpower and the conservation of the environment;
- (c) reduce their dependence on foreign technology and promote their individual and collective technological self-reliance;
- (d) co-operate in the development, acquisition and dissemination of appropriate technologies; and
- (e) strengthen existing scientific research institutions and take all necessary measures to prepare and implement joint scientific research and technological development programmes.

2. In their co-operation in this field, Member States shall:

- (a) harmonise, at the Community level, their national policies on scientific and technological research with a view to facilitating their integration into the national economic and social development plans;
- (b) co-ordinate their programmes in applied research, research for development, scientific and technological services;
- (c) harmonise their national technological development plans by placing special emphasis on indigenous and adapted technologies as well as their regulations on industrial property and transfer of technology;
- (d) co-ordinate their positions on all scientific and technical questions forming the subject of international negotiations;
- (e) carry out a permanent exchange of information and documentation and establish Community data networks and data banks;

- (f) develop joint programmes for training scientific and technological cadres, including the training and further training of skilled manpower;
- (g) promote exchanges of researchers and specialists among Member States in order to make full use of the technical skills available within the Community; and
- (h) harmonise the educational systems in order to adapt better educational scientific and technical training to the specific development needs of the West African environment.

Article 28: Energy

1. Member States shall co-ordinate and harmonise their policies and programmes in the field of energy.
2. To this end, they shall:
 - (a) ensure the effective development of the energy resources of the region;
 - (b) establish appropriate co-operation mechanisms with a view to ensuring a regular supply of hydrocarbons;
 - (c) promote the development of new and renewable energy particularly solar energy in the framework of the policy of diversification of sources of energy;
 - (d) harmonise their national energy development plans by ensuring particularly the inter-connection of electricity distribution networks;
 - (e) articulate a common energy policy, particularly, in the field of research, exploitation, production and distribution;
 - (f) establish an adequate mechanism for the collective solution of the energy development problems within the Community, particularly those relating to energy transmission, the shortage of skilled technicians and financial resources for the implementation of energy projects of Member States.

CHAPTER VI: CO-OPERATION IN ENVIRONMENT AND NATURAL RESOURCES

Article 29: Environment

1. Member states undertake to protect, preserve and enhance the natural environment of the region and co-operate in the event of natural disasters.
2. To this end, they shall adopt policies, strategies and programmes at national and regional levels and establish appropriate institutions to protect, preserve and enhance the environment, control erosion, deforestation, desertification, locusts and other pests.

Article 30: Hazardous and Toxic Wastes

1. Member states undertake, individually and collectively, to take every appropriate step to prohibit the importation, transiting, dumping and burying of hazardous and toxic wastes in their respective territories.

2. They further undertake to adopt all necessary measures to establish a regional Dumpwatch to prevent the importation, transiting, dumping and burying of hazardous and toxic wastes in the region.

Article 31: Natural Resources

1. Member states shall harmonise and co-ordinate their policies and programmes in the field of natural resources.
2. To this end, they shall:
 - (a) seek better knowledge and undertake an assessment of their natural resources potential;
 - (b) improve methods of pricing and marketing of raw materials through a concerted policy;
 - (c) exchange information on the prospection, mapping, production and processing of mineral resources, as well as on the prospection, exploitation and distribution of water resources;
 - (d) co-ordinate their programmes for development and utilisation of mineral and water resources;
 - (e) promote vertical and horizontal inter-industrial relationships which may be established among Member States in the course of developing such resources;
 - (f) promote the continuous training of skilled manpower and prepare and implement joint training and further training programmes for cadres in order to develop the human resources and the appropriate technological capabilities required for the exploration, exploitation and processing of mineral and water resources;
 - (g) co-ordinate their positions in all international negotiations on raw materials; and
 - (h) develop a system of transfer of expertise and exchange of scientific, technical and economic remote sensing data among Member States.

CHAPTER VII: CO-OPERATION IN TRANSPORT, COMMUNICATIONS AND TOURISM

Article 32: Transport and Communications

1. For the purpose of ensuring the harmonious integration of the physical infrastructures of Member States and the promotion and facilitation of the movement of persons, goods and services within the Community, Member States undertake to:
 - (a) evolve common transport and communications policies, laws and regulations;
 - (b) develop an extensive network of all-weather highways within the Community, priority being given to the inter-State highways;
 - (c) formulate plans for the improvement and integration of railway and road networks in the region;
 - (d) formulate programmes for the improvement of coastal shipping services and inter-state inland waterways and the harmonisation of policies on maritime transport and services;

- (e) co-ordinate their positions in international negotiations in the area of maritime transport;
 - (f) encourage co-operation in flight-scheduling, leasing of aircraft and granting and joint use of fifth freedom rights to airlines of the region;
 - (g) promote the development of regional air transportation services and endeavour to bring about the merger of national airlines in order to promote their efficiency and profitability;
 - (h) facilitate the development of human resources through the harmonisation and coordination of their national training programmes and policies in the area of transportation in general and air transport in particular;
 - (i) endeavour to standardise equipment used in transport and communications and establish common facilities for production, maintenance and repair.
2. Member States also undertake to encourage the establishment and promotion of joint ventures and Community enterprises and the participation of the private sector in the areas of transport and communications.

Article 33: Posts and Telecommunications

1. In the area of postal services, Member States undertake to:
- (a) foster closer co-operation between their postal administrations;
 - (b) ensure, within the Community, efficient, speedier and more frequent postal services;
 - (c) harmonise mail routing;
2. In the area of telecommunications, Member States shall:
- (a) develop, modernise, co-ordinate and standardise their national telecommunications networks in order to provide reliable interconnection among Member States;
 - (b) complete, with despatch, the section of the pan-African telecommunications network situated in West Africa;
 - (c) co-ordinate their efforts with regard to the operation and maintenance of the West African portion of the pan-African telecommunications network and in the mobilisation of national and international financial resources.
3. Member States also undertake to encourage the participation of the private sector in offering postal and telecommunications services, as a means of attaining the objectives set out in this Article.

Article 34: Tourism

For the purposes of ensuring the harmonious and viable development of tourism within the Community, Member States undertake to:

- (a) strengthen regional co-operation in tourism, particularly through:
 - i. the promotion of intra-Community tourism by facilitating movement of travellers and tourists;

- ii. the harmonisation and co-ordination of tourism development policies, plans and programmes;
 - iii. the harmonisation of regulations governing tourism and hotel management activities;
 - iv. the institution of a Community reference framework for tourism statistics; and
 - v. the joint promotion of tourism products portraying the natural and socio-cultural values of the region.
- (b) promote the establishment of efficient tourism enterprises to cater for the needs of the peoples of the region and foreign tourists through:
- i. the adoption of measures aimed at promoting investment in tourism and hotel management;
 - ii. the promotion of the establishment in Member States of professional tourism and hotel management associations;
 - iii. the development and optimum utilisation of human resources for tourism in the region; and
 - iv. the strengthening or establishment of regional tourism training institutions where necessary.
- (c) eliminate all discriminating measures and practices against Community citizens in the area of tourist and hotel services.

CHAPTER VIII: CO-OPERATION IN TRADE, CUSTOMS, TAXATION, STATISTICS, MONEY AND PAYMENTS

Article 35: Liberalisation of Trade

There shall be progressively established in the course of a period of ten (10) years effective from 1 January, 1990 as stipulated in Article 54, a Customs Union among the Member States. Within this union, Customs duties or other charges with equivalent effect on Community originating imports shall be eliminated. Quota, quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.

Article 36: Customs Duties

1. Member States shall reduce and ultimately eliminate Customs duties and any other charges with equivalent effect except duties notified in accordance with Article 40 and other charges which fall within that Article, imposed on or in connection with the importation of goods which are eligible for Community tariff treatment in accordance with Article 38 of this Treaty. Any such duties or other charges are herein after referred to as "import duties".
2. Community-originating unprocessed goods and traditional handicraft products shall circulate within the region free of all import duties and quantitative restrictions. There

shall be no compensation for loss of revenue resulting from the importation of these products.

3. Member States undertake to eliminate import duties on industrial goods which are eligible for preferential Community tariff treatment in accordance with the decisions of the Authority and Council relating to the liberalisation of intra-Community trade in industrial products.
4. The Authority may at any time, on the recommendation of the Council, decide that any import duties shall be reduced more rapidly or eliminated earlier than stipulated in any previous instrument or decision. However, the Council shall, not later than one calendar year preceding the date in which such reductions or eliminations come into effect, examine whether such reductions or eliminations shall apply to some or all goods and in respect of some or all the Member States and shall report the result of such examination for the decision of the Authority.

Article 37: Common External Tariff

1. Member States agree to the gradual establishment of a common external tariff in respect of all goods imported into the Member States from third countries in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, Money and Payments Commission.
2. Member States shall, in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, Money and Payments Commission, abolish existing differences in their external Customs tariffs.
3. Member States undertake to apply the common Customs nomenclature and Customs statistical nomenclature adopted by Council.

Article 38: Community Tariff Treatment

1. For the purposes of this Treaty, goods shall be accepted as eligible for Community tariff treatment if they have been consigned to the territory of the importing Member States from the territory of another Member State and originate from the Community.
2. The rules governing products originating from the Community shall be as contained in the relevant Protocols and Decisions of the Community.
3. The Trade, Customs, Taxation, Statistics, Money and Payments Commission shall from time to time examine whether the rules referred to in paragraph 2 of this Article can be amended to make them simpler and more liberal. In order to ensure their smooth and equitable operation, the Council may from time to time amend them.

Article 39: Trade Deflection

1. For the purposes of this Article, trade is said to be deflected if,
 - (a) imports of any particular product by a Member State from another Member State increase,
 - i. as a result of the reduction or elimination of duties and charges on that product, and

- ii. because duties and charges levied by the exporting Member States on imports of raw materials used for manufacture of the product in question are lower than the corresponding duties and charges levied by the importing Member State; and
 - (b) this increase in imports causes or could cause serious injury to production which is carried on in the territory of the importing Member State.
2. The Council shall keep under review the question of trade deflection and its causes. It shall take such decisions as are necessary, in order to deal with the causes of this deflection.
 3. In case of trade deflection to the detriment of a Member State resulting from the abusive reduction or elimination of duties and charges levied by another Member State, the Council shall study the question in order to arrive at a just solution.

Article 40 Fiscal Charges and Internal Taxation

1. Member States shall not apply directly or indirectly to imported goods from any Member State fiscal charges in excess of those applied to like domestic goods or otherwise impose such charges for the effective protection of domestic goods.
2. Member States shall eliminate all effective internal taxes or other internal charges that are made for the protection of domestic goods not later than four (4) years after the commencement of the trade liberalisation scheme referred to in Article 54 of this Treaty. Where by virtue of obligations under an existing contract entered into by a Member State such a Member State is unable to comply with the provisions of this Article, the Member State shall duly notify the Council of this fact and shall not extend or renew such contract at its expiry.
3. Member States shall eliminate progressively all revenue duties designed to protect domestic goods not later than the end of the period for the application of the trade liberalisation scheme referred to in Article 54 of this Treaty.
4. Member States undertake to be bound by the consolidated import duties contained in the ECOWAS Customs Tariff for the purposes of trade liberalisation within the Community.
5. Member States undertake to avoid double taxation of Community citizens and grant assistance to one another in combating international tax evasion.

The conditions and modalities for granting such assistance shall be as contained in a Double Taxation and Assistance Convention.

Article 41: Quantitative Restrictions on Community Goods

1. Except as may be provided for or permitted by this Treaty, Member States undertake to relax gradually and to remove over a maximum period of four (4) years after the launching of the trade liberalisation scheme referred to in Article 54, all the then existing quota, quantitative or like restrictions or prohibitions which apply to the import into that State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions. Where by virtue of

obligations under an existing contract entered into by a Member State such a Member State is unable to comply with the provisions of this Article, the member State shall duly notify Council of this fact and shall not extend or renew such contract at its expiry.

2. The Authority may at any time, on the recommendation of the Council decide that any quota, quantitative or like restrictions or prohibitions shall be relaxed more rapidly or removed earlier than agreed upon under paragraph 1 of this Article.
3. A Member State may, after having given notice to the Executive Secretary and the other Member States of its intention to do so, introduce or continue to execute restrictions or prohibitions affecting:
 - (a) the application of security laws and regulations;
 - (b) the control of arms, ammunition and other war equipment and military items;
 - (c) the protection of human, animal or plant health or life, or the protection of public morality;
 - (d) the transfer of gold, silver and precious and semi-precious stones;
 - (e) the protection of national artistic and cultural property;
 - (f) the control of narcotics, hazardous and toxic wastes, nuclear materials, radioactive products or any other material used in the development or exploitation of nuclear energy.
4. Member States shall not so exercise the right to introduce or continue to execute the restrictions or prohibitions referred to in paragraph 3 of this Article as to stultify the free movement of goods envisaged in paragraph 1 of this Article.

Article 42: Dumping

1. Member States undertake to prohibit the practice of dumping goods within the Community.
2. For the purposes of this Article, “dumping” means the transfer of goods originating in a Member State to another Member State for sale:
 - (a) at a price lower than the comparable price charged for similar goods in the Member States where such goods originate (due allowance being made for the differences in the conditions of sale or in taxation or for any other factors affecting the comparability of prices); and
 - (b) under circumstances likely to prejudice the production of similar goods in that Member State.
3. In the event of alleged dumping the importing Member State shall appeal to Council to resolve the matter.
4. Council shall consider the issue and take appropriate measures to determine the causes of the dumping.

Article 43: Most Favoured Nation Treatment

1. Member States shall accord to one another in relation to trade between them the most favoured nation treatment. In no case shall tariff concessions granted to a third country by a Member State be more favourable than those applicable under this Treaty.
2. Any agreement between a Member State and a third country under which tariff concessions are granted, shall not derogate from the obligations of that Member State under this Treaty.
3. Copies of such agreements referred to in paragraph 2 of this Article shall be transmitted by the Member States which are parties to them, to the Executive Secretariat of the Community.

Article 44: Internal Legislation

Member States undertake not to enact legislation and/or make regulations which directly or indirectly discriminate against the same or like products of another Member State.

Article 45: Re-exportation of Goods and Transit Facilities

1. Where Customs duty has been charged and collected on any goods imported from third country into a Member State the re-exportation of such goods into another Member State shall be subject to the provisions of the Protocol relating to the re-exportation of goods within the Community.
2. Each Member State, in accordance with international regulations and the ECOWAS Convention relating to Inter-State Road Transit of Goods, shall grant full and unrestricted freedom of transit through its territory for goods proceeding to or from a third country indirectly through that territory to or from other Member States; and such transit shall not be subject to any discrimination, quantitative restrictions, duties or other charges.
3. Notwithstanding paragraph 2 of this Article,
 - (a) goods in transit shall be subject to the Customs law; and
 - (b) goods in transit shall be liable to the charges usually made for carriage and for any services which may be rendered, provided such charges are not discriminatory and are in conformity with international transit regulations.
4. Where goods are imported from a third country into one Member State, each of the other Member States shall be free to regulate the transfer to it of such goods whether by a system of licensing and controlling importers or by other means.
5. The provisions of paragraph 4 of this Article shall apply to goods which, under the Provisions of Article 38 of this Treaty, fail to be accepted as originating in a Member State.

Article 46: Customs Co-operation and Administration

Member States shall in accordance with the advice of the Trade, Customs, Taxation, Statistics, Money and Payments Commission and the provisions of the Convention for

Mutual Administrative Assistance in Customs Matters, take appropriate measures to harmonise and standardise their Customs regulations and procedures to ensure the effective application of the provisions of this Chapter and to facilitate the movement of goods and services across their frontiers.

Article 47: Drawback

1. The procedure to determine the eligibility for Community tariff treatment of goods in relation to which drawback is claimed or made use of in connection with their exportation from the Member States in the territory of which the goods have undergone the last process of production, shall be the subject of an additional Protocol.
2. For the purposes of this Article:
 - (a) “drawback” means any arrangement, including temporary duty-free admission, for the refund of all or part of the duties applicable to imported raw materials, provided that the arrangement, expressly or in effect, allows such refund or remission if goods are exported but not if they are retained for home use;
 - (b) “remission” includes exemption from duties for goods imported into free ports, free zones or other places which have similar Customs privileges; and
 - (c) “duties” means Customs duties and any other charge, with equivalent effect imposed on imported goods, except the non-protective element in such duties or charges.

Article 48: Compensation for Loss of Revenue

1. The Council shall, on the report of the Executive Secretary and the recommendation of the Trade, Customs, Taxation, Statistics, Money and Payments Commission, determine the compensation to be paid to a Member State which has suffered loss of import duties as a result of the application of this Chapter.
2. The Council shall, in addition to compensation to be paid to Member States which suffer loss of revenue as a result of the application of this Chapter, recommend measures for promoting productive and export capacities of these countries so as to enable them to take full advantage of the benefits of trade liberalisation.
3. The method of assessment of the loss of revenue and compensation shall be as stipulated in the Protocol on the Assessment of Loss of Revenue.

Article 49: Exceptions and Safeguard Clauses

1. In the event of serious disturbances occurring in the economy of a Member State following the application of the provisions of this Chapter, the Member State concerned shall, after informing the Executive Secretary and the other Member States, take the necessary safeguard measures pending the approval of the Council.
2. These measures shall remain in force for a maximum period of one year. They may not be extended beyond that period except with the approval of the Council.
3. The Council shall examine the method of application of these measures while they remain in force.

Article 50: Trade Promotion

1. Member States agree to undertake, through their public and private sectors, trade promotion activities such as:
 - (a) promotion of the use of local materials, intermediate goods and inputs, as well as finished products originating within the Community;
 - (b) participation in the periodic national fairs organised within the region, sectoral trade fairs, regional trade fairs and other similar activities;
2. At regional level, the Community shall undertake trade promotion activities which may include:
 - (a) organisation, on a regular basis, of an ECOWAS Trade Fair;
 - (b) harmonisation of the programming of national trade fairs and similar events;
 - (c) establishment of an intra-Community trade information network;
 - (d) study of supply and demand patterns in Member States and dissemination of the findings thereon within the Community;
 - (e) promotion of the diversification of West African markets, and the marketing of Community products;
 - (f) promotion of better terms of trade for West African commodities and improvement of access to international markets for Community products; and
 - (g) participation, where appropriate, in international negotiations within the framework of GATT and UNCTAD and other trade-related negotiating fora.

Article 51: Money, Finance and Payments

1. In order to promote monetary and financial integration, and facilitate intra-Community trade in goods and services and the realisation of the Community's objective of establishing a monetary union, Member States undertake to:
 - (a) study monetary and financial developments in the region;
 - (b) harmonise their monetary, financial and payments policies;
 - (c) facilitate the liberalisation of intra-regional payments transactions and, as an interim measure, ensure limited convertibility of currencies;
 - (d) promote the role of commercial banks in intra-community trade financing;
 - (e) improve the multilateral system for clearing of payments transactions between Member States, and introduce a credit and guarantee fund mechanism;
 - (f) take necessary measures to promote the activities of the West Africa Monetary Agency in order to ensure convertibility of currencies and creation of a single currency zone;
 - (g) establish a Community Central Bank and a common currency zone.

Article 52: Committee of West African Central Banks

1. There is hereby established a Committee of West African Central Banks comprising the Governors of Central Banks of Member States. This Committee shall, in accordance with the provisions of this Treaty, prepare its own rules of procedure.

2. The Committee shall, from time to time, make recommendations to the Council on the operation of the clearing system of payments and other monetary issues within the Community.

Article 53: Movement of Capital and Capital Issues Committee

1. For the purpose of ensuring the free movement of capital between Member States in accordance with the objectives of this Treaty, there is hereby established a Capital Issues Committee which shall comprise one representative of each of the Member States and which shall, subject to the provisions of this Treaty, prepare its own rules of procedure.
2. Member States shall, in appointing their representatives referred to in paragraph 1 of this Article, designate persons with financial, commercial or banking experience and qualifications.
3. The Capital Issues Committee, in the performance of the duties assigned to it under paragraph 1 of this Article, shall:
 - (a) ensure the unimpeded flow of capital within the Community through:
 - i. the removal of controls on the transfer of capital among the Member States in accordance with a time-table determined by Council;
 - ii. the encouragement of the establishment of national and regional stock exchanges; and
 - iii. the interlocking of capital markets and stock exchanges;
 - (b) ensure that nationals of a Member State are given the opportunity of acquiring stocks, shares and other securities or otherwise of investing in enterprises in the territories of other Member States;
 - (c) establish a machinery for the wide dissemination in the Member States of stock exchange quotations of each Member State;
 - (d) establish appropriate machinery for the regulation of the capital issues market to ensure its proper functioning and the protection of the investors therein.

CHAPTER IX: ESTABLISHMENT AND COMPLETION OF AN ECONOMIC AND MONETARY UNION

Article 54: Establishment of an Economic Union

1. Member States undertake to achieve the status of an economic union within a maximum period of fifteen (15) years following the commencement of the regional trade liberalisation scheme, adopted by the Authority through its Decision A/DEC. 119/ 83 of 20 May, 1983 and launched on 1 January, 1990.
2. Member States shall give priority to the role of the private sector and joint regional multinational enterprises in the regional economic integration process.

Article 55: Completion of Economic and Monetary Union

1. Member States undertake to complete within five (5) years following the creation of a Custom Union, the establishment of an economic and monetary union through:
 - i. the adoption of a common policy in all fields of socio-economic activity particularly agriculture, industry, transport, communications, energy and scientific research;
 - ii. the total elimination of all obstacles to the free movement of people, goods, capital and services and the right of entry, residence and establishment;
 - iii. the harmonisation of monetary, financial and fiscal policies, the setting up of West African monetary union, the establishment of a single regional Central Bank and the creation of a single West African currency.
2. The Authority may at any time, on the recommendation of the Council, decide that any stage of the integration process shall be implemented more rapidly than otherwise provided for in this Treaty.

CHAPTER X: CO-OPERATION IN POLITICAL, JUDICIAL AND LEGAL AFFAIRS, REGIONAL SECURITY AND IMMIGRATION

Article 56: Political Affairs

1. In pursuit of the integration objectives of the Community, Member States undertake to co-operate on political matters, and in particular, to take appropriate measures to ensure effective application of the provisions of this Treaty.
2. The signatory states to the Protocol on Non-Aggression, the Protocol on Mutual Assistance on Defence, the Community Declaration of Political Principles and the African Charter on Human and Peoples' Rights, agree to co-operate for the purpose of realising the objectives of these instruments.

Article 57: Judicial and Legal Matters

1. Member states undertake to co-operate in judicial and legal matters with a view to harmonising their judicial and legal systems.
2. The modalities for the implementation of this arrangement shall be the subject matter of a Protocol.

Article 58: Regional Security

1. Member States undertake to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region.
2. In pursuit of these objectives, Member States undertake to cooperate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-State and inter-State conflicts, paying particular regard to the need to:

- (a) maintain periodic and regular consultations between national border administration authorities;
 - (b) establish local or national joint commissions to examine any problems encountered in relations between neighbouring States;
 - (c) encourage exchanges and co-operation between communities, townships and administrative regions;
 - (d) organise meetings between relevant ministries on various aspects of inter-State relations;
 - (e) employ where appropriate, good offices, conciliation, mediation and other methods of peaceful settlement of disputes;
 - (f) establish a regional peace and security observation system and peace-keeping forces where appropriate;
 - (g) provide, where necessary and at the request of Member States, assistance to Member States for the observation of democratic elections.
3. The detailed provisions governing political co-operation, regional peace and stability shall be defined in the relevant Protocols.

Article 59: Immigration

1. Citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognise these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto.
2. Member States undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph 1 of this Article.
3. Member States undertake to adopt, at national level, all measures necessary for the effective implementation of the provisions of this Article.

CHAPTER XI: CO-OPERATION IN HUMAN RESOURCES, INFORMATION, SOCIAL AND CULTURAL AFFAIRS

Article 60: Human Resources

1. Member states undertake to co-operate in the full development and utilisation of their human resources.
2. To this end, they shall take measures to:
 - (a) strengthen co-operation among themselves in the fields of education, training and employment; and to harmonise and co-ordinate their policies and programmes in these areas;
 - (b) consolidate their existing, training institutions, improve the efficacy of their educational systems, encourage exchanges between schools and universities, establish equivalences of academic, professional and technical qualifications, encourage literacy, promote the teaching and practice of the official languages of the Community, and establish regional centres of excellence in various disciplines;
 - (c) encourage the exchange of skilled manpower between Member States.

Article 61: Social Affairs

1. Member states undertake to co-operate with a view to mobilise the various sections of the population and ensuring their effective integration and involvement in the social development of the region.
2. For the purposes of paragraph 1 of this article, Member States undertake to:
 - (a) encourage the exchange of experiences and information on literacy, professional training and employment;
 - (b) harmonise their labour laws and social security legislations;
 - (c) promote women's and youth organisations and professional associations as a means of ensuring mass involvement in the activities of the Community;
 - (d) encourage and strengthen co-operation amongst themselves in health matters; and
 - (e) promote and enhance the practice of sports with a view to bringing together the youth of the region and ensuring their balanced development.

Article 62: Cultural Affairs

1. Member states undertake to pursue the objectives of the Community Cultural Framework Agreement.
2. To this end, Member States undertake to:
 - (a) encourage the promotion, by every means possible, of all forms of cultural exchange;
 - (b) promote, develop and, where necessary, improve structures and mechanisms for the production, propagation and utilisation of cultural industries; and
 - (c) promote the learning and dissemination of a West African language as a factor in Community integration.

Article 63: Women and Development

1. Member states undertake to formulate, harmonise, co-ordinate and establish appropriate policies and mechanisms for enhancement of the economic, social and cultural conditions of women.
2. To this end, Member States shall take all measures necessary to:
 - (a) identify and assess all constraints that inhibit women from maximising their contribution to regional development efforts; and
 - (b) provide a framework within which the constraints will be addressed and for the incorporation of women's concerns and needs into the normal operations of the society;
3. At the Community level, Member States shall:
 - (a) stimulate dialogue among themselves on the kind of projects and programmes aimed at integrating women into the development process;
 - (b) establish a mechanism for co-operation with bilateral, multilateral and non-governmental organisations; and

- (c) promote and develop mechanisms to encourage the exchange of experiences and information between Member States.

Article 64: Population and Development

1. Member states undertake to adopt, individually and collectively, national population policies and mechanisms and take all necessary measures in order to ensure a balance between demographic factors and socio-economic development.
2. To this end, Member States agree to:
 - (a) include population issues as central components in formulating and implementing national policies and programmes for accelerated and balanced socioeconomic development;
 - (b) formulate national population policies and establish national population institutions;
 - (c) undertake public sensitisation on population matters, particularly among the target groups; and
 - (d) collect, analyse and exchange information and data on population issues.

Article 65: Information—Radio and Television

Member states undertake to:

- (a) co-ordinate their efforts and pool their resources in order to promote the exchange of radio and television programmes at bilateral and regional levels;
- (b) encourage the establishment of programme exchange centres at regional level and strengthen existing programme exchange centres; and
- (c) use their broadcasting and television systems to promote the attainment of the objectives of the Community.

Article 66: The Press

1. In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to cooperate in the area of information.
2. To this end they undertake as follows:
 - (a) to maintain within their borders, and between one another, freedom of access for professionals of the communication industry and for information sources;
 - (b) to facilitate exchange of information between their press organs; to promote and foster effective dissemination of information within the Community;
 - (c) to ensure respect for the rights of journalists;
 - (d) to take measures to encourage investment capital, both public and private, in the communication industries in Member States;
 - (e) to modernise the media by introducing training facilities for new information techniques; and

- (f) to promote and encourage dissemination of information in indigenous languages, strengthening co-operation between national press agencies and developing linkages between them.

CHAPTER XII: CO-OPERATION IN OTHER AREAS

Article 67: Harmonisation of Policies in Other Areas

Subject to the provisions of this Treaty, Member States undertake to consult with one another, through appropriate Community institutions, for the purpose of harmonising and co-ordinating their respective policies in all other fields not specifically covered by this Treaty for the efficient functioning and development of the Community and for the implementation of the provisions of this Treaty.

Article 68: Land-locked and Island Member States

Member States, taking into consideration the economic social difficulties that may arise in certain Member States, particularly island and land-locked States, agree to grant them, where appropriate, special treatment in respect of the application of certain provisions of this Treaty and to accord them any other assistance they may need.

CHAPTER XIV: FINANCIAL PROVISIONS

Article 69: Budget of the Community

1. There shall be established a budget of the Community and, where appropriate, of any of the Institutions of the Community.
2. All incomes and expenditure of the Community and its institutions shall be approved by the Council or other appropriate bodies for each financial year and shall be charged to the budget of the Community or the institution concerned.
3. A draft budget shall be proposed for each financial year by the Executive Secretary or by the Head of the Institution concerned and approved by the Council or other appropriate body on the recommendation of the Administration and Finance Commission.
4. The Administration and Finance Commission shall consider the draft budget and all financial issues concerning the institutions of the Community and shall examine issues pertaining mainly to administration and personnel management in the institutions of the community.

Article 70: Regular Budgets of the Community

1. The regular budgets of the Community and its institutions shall be funded from a Community levy and such other sources as may be determined by the Council

2. Until the entry into force of the Community levy, the regular budgets of the Community and its institutions shall be funded from the annual contributions by Member States.

Article 71: Special Budgets of the Community

Special budgets shall be made available, where necessary, to meet the extra-budgetary expenditure of the Community. The Authority shall, on the recommendation of Council, determine the modalities for financing such special budgets of the Community.

Article 72: Community Levy

1. There is hereby instituted a Community levy for the purpose of generating resources for financing Community activities.
2. The Community levy shall be a percentage of the total value of import duty derivable from goods imported into the Community from third countries.
3. The actual level of the Community levy shall be determined by the Council.
4. The conditions for the application of the Community levy, the modalities for the transfer to the Community of the revenue generated and the utilisation of the Community levy shall be defined in the relevant Protocol.
5. Member States undertake to facilitate the application of the provisions of this Article.

Article 73: Contributions by Member States

1. The mode by which the contributions of Member States shall be determined and the currencies in which the contributions are paid shall be as determined by Council.
2. Member States undertake to promptly transfer their assessed contributions to the Community.

Article 74: Financial Regulations

The Financial Regulations and Manual of Accounting Procedures of the Community shall govern the application of the provisions of this Chapter.

Article 75: External Auditors

1. The External Auditors of the Community shall be appointed for a period of two years renewable for two other terms of two years each. They can be relieved of their posts by the Authority on the recommendation of the Council.
2. Subject to the provisions of the preceding paragraph, the Council shall determine the rules governing the selection procedure and establish the responsibilities of the External Auditors.

CHAPTER XV: DISPUTES

Article 76: Settlement of Disputes

1. Any dispute regarding the interpretation or the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols.
2. Failing this, either party or any other Member States or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.

CHAPTER XVI: SANCTIONS

Article 77: Sanctions Applicable for Non-fulfilment of Obligations

1. Where a Member State fails to fulfil its obligations to the Community, the Authority may decide to impose sanctions on that Member State.
2. These sanctions may include:
 - i. suspension of new Community loans or assistance,
 - ii. suspension of disbursement on-going Community projects or assistance programmes;
 - iii. exclusion from presenting candidates for statutory and professional posts;
 - iv. suspension of voting rights; and
 - v. suspension from participating in the activities of the Community.
3. Notwithstanding the provisions of paragraph 1 of this Article, the Authority may suspend the application of the provisions of the said Article if it is satisfied on the basis of a well supported and detailed report prepared by an independent body and submitted through the Executive Secretary, that the non-fulfilment of its obligations is due to causes and circumstances beyond the control of the said Member State.
4. The Authority shall decide on the modalities for the application of this Article.

CHAPTER XVII: RELATIONS BETWEEN THE COMMUNITY AND THE AFRICAN ECONOMIC COMMUNITY

Article 78: The Community and the African Economic Community

The integration of the region shall constitute an essential component of the integration of the African continent. Member States undertake to facilitate the co-ordination and harmonisation of the policies and programmes of the Community with those of the African Economic Community.

CHAPTER XVIII: RELATIONS BETWEEN THE COMMUNITY AND OTHER REGIONAL ECONOMIC COMMUNITIES

Article 79: The Community and Other Regional Economic Communities

1. In the context of realising its regional objectives, the Community may enter into co-operation agreements with other regional Communities.
2. Such co-operation agreements entered into in accordance with the provisions of paragraph 1 of this Article shall be subject to prior approval by the Council upon the proposal of the Executive Secretary.

CHAPTER XIX: RELATIONS BETWEEN THE EXECUTIVE SECRETARIAT AND THE SPECIALISED INSTITUTIONS OF THE COMMUNITY

Article 80: The Executive Secretariat and the Specialised Institutions

1. The Community shall determine the global integration policies and strategies to be adopted and define the integration objectives and programmes of all the institutions of the Community.
2. The Executive Secretariat shall be responsible for harmonising and co-ordinating all activities and programmes of the institutions of the Community within the context of regional integration.

Article 81: Relations between the Community and Regional Non- Governmental Organisations

1. The Community, with a view to mobilising the human and material resources of the economic integration of the region, shall co-operate with regional non-governmental organisations and voluntary development organisations in order to encourage the involvement of the peoples of the region in the process of economic integration and mobilise their technical, material and financial support.
2. To this end, the Community shall set up mechanism for consultation with such organisations.

Article 82: Relations between the Community and Regional Socio- Economic Organisations and Associations

1. The Community with a view to mobilising the various actors in socio-economic life for the integration of the region, shall co-operate with socio-economic organisations and associations, in particular, producers, transport operators, workers, employers, university teachers and administrators, journalists, youth, women, artisans and other professional organisations and associations with a view to ensuring their involvement in the integration process of the region.

2. To this end, the Community shall set up a mechanism for consultation with such socioeconomic organisations and associations.

CHAPTER XX: RELATIONS BETWEEN THE COMMUNITY, THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

Article 83: Co-operation Agreements

1. The Community may conclude co-operation agreements with third countries.
2. In pursuit of its objective, the community shall also co-operate with the Organisation of African Unity, the United Nations system, and any other international organisation.
3. Co-operation agreements to be concluded in accordance with the provisions of paragraphs 1 and 2 of this Article shall be subject to prior approval by the Council upon the proposal of the Executive Secretary.

CHAPTER XXI: RELATIONS BETWEEN MEMBER STATES, NON-MEMBER STATES, REGIONAL ORGANISATIONS AND INTERNATIONAL ORGANISATIONS

Article 84: Agreements Concluded by Member States

1. Member States may conclude agreements among themselves and with non-Member States, regional organisations or any other international organisation, provided that economic agreements are not incompatible with the provisions of this Treaty. They shall, at the request of the Executive Secretary, transmit copies of such economic agreements to the Executive Secretary who shall inform Council thereof.
2. In the event that agreements concluded before the entry into force of this Treaty between Member States or between Member States and non-Member States, regional organisations or any other international organisations are incompatible with the provisions of this Treaty, the Member State or Member States concerned shall take appropriate measures to eliminate such incompatibility. Member States shall, where necessary, assist each other to this end and adopt a common position.

Article 85: International Negotiations

1. Member States undertake to formulate and adopt common positions within the Community on issues relating to international negotiations with third parties in order to promote and safeguard the interests of the region.
2. To this end, the Community shall prepare studies and reports designed to help Member States to harmonise better their positions on the said issues.

CHAPTER XXII: GENERAL AND FINAL PROVISIONS

Article 86: Headquarters of the Community

The Headquarters of the Community shall be situated in the capital of the Federal Republic of Nigeria.

Article 87: Official and Working Languages

1. The official languages of the Community shall be all West African languages so designated by the Authority as well as English, French and Portuguese.
2. The working languages of the Community shall be English, French and Portuguese.

Article 88: Status, Privileges and Immunities

1. The Community shall enjoy international legal personality.
2. The Community shall have in the territory of each Member State:
 - (a) the legal powers required for the performance of the functions assigned to it under this Treaty;
 - (b) power to enter into contracts and acquire, hold and dispose of movable and immovable property.
3. In the exercise of its legal personality under this Article, the Community shall be represented by the Executive Secretary.
4. The privileges and immunities to be recognised and granted by the Member States to the officials of the Community, its institutions and their respective headquarters shall be as provided for in the General Convention on Privileges and Immunities of the Community and the Headquarters Agreements.

Article 89: Entry into Force and Ratification

This Treaty and the Protocols which shall form in an integral part thereof shall respectively enter into force, upon ratification by at least nine signatory States, in accordance with the constitutional procedures of each signatory State.

Article 90: Amendments and Revisions

1. Any Member State may submit proposal for the amendment or revision of this Treaty.
2. Any such proposals shall be submitted to the Executive Secretary who shall notify other Member States thereof not later than thirty (30) days after the receipt of such proposals. Amendments or revisions shall not be considered by the Authority unless Member States shall have been given at least three months notice thereof.
3. Amendments or revisions shall be adopted by the Authority in accordance with the provisions of Article 9 of this Treaty and shall be submitted for ratification by all

Member States in accordance with their respective constitutional procedures. They shall enter into force in accordance with Article 89 of this Treaty.

Article 91: Withdrawal

1. Any Member State wishing to withdraw from the Community shall give to the Executive Secretary one year's notice in writing who shall inform Member States thereof. At the expiration of this period, if such notice is not withdrawn, such a State shall cease to be a member of the Community.
2. During the period of one year referred to in the preceding paragraph, such a Member State shall continue to comply with the provisions of this Treaty and shall remain bound to discharge its obligations under this Treaty.

Article 92: Transitional and Savings Provisions

1. Upon the entry into force of this revised Treaty in according with the provisions of Article 89, the provisions of the United Nations, Vienna Convention on the Law of Treaties adopted on 23 May, 1969 shall apply to the determination of the rights and obligations of Member States under the 1975 ECOWAS Treaty and this revised Treaty.
2. The ECOWAS Treaty of 1975 shall be deemed terminated when the Executive Secretariat has received instruments of ratification of this revised Treaty from all Member States. The Executive Secretary shall notify the Member States in writing thereof.
3. Notwithstanding the provisions of paragraph 2 of this Article, all Community Conventions, Protocols, Decisions and Resolutions made since 1975 shall remain valid and in force, except where they are incompatible with the present Treaty.

Article 93: Depository Authority

The present Treaty and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Treaty to all Member States and notify them of the dates of deposit of instruments of ratification and shall register this Treaty with the Organisation of African Unity, the United Nations Organisation and such other organisations as the Council may determine.

IN FAITH WHEREOF, we, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS), have signed this Treaty [signatures not reproduced].

DONE AT COTONOU, this 24th day of July, 1993 in single original in the English, French and Portuguese languages, all texts being equally authentic.

CHAPTER THIRTY-SIX

Panama Canal Treaties

Washington, DC, 7 September 1977

INTRODUCTION

A canal to cut across the land separating the Pacific Ocean from the Atlantic on the territory of Panama was first conceived in the late 19th century. Initial heroic plans and efforts by French engineers in 1879 failed. The initiative was then seized by the US Government under President Theodore Roosevelt (1901–09). After investing tens of millions of dollars and losing over 30,000 lives, mainly to malaria, the Panama Canal was completed in 1934. At the start of the construction of the Canal in 1903–04 and to regulate its operation, a number of treaties and other legal instruments were entered into between Panama and the USA. These included the Isthmian Canal Convention of 1903 (which entered into force in May 1904), the Treaty of Friendship and Co-operation of 1936, the Treaty of Mutual Understanding and Co-operation and the related Memorandum of Understandings Reached of 1955, the Joint Declaration of 1964 and the Joint Statement of Principles of 1974. Notwithstanding article II of the 1904 Convention, which grants the construction, use, control and management of the Canal and its surrounding lands and fixtures to the USA *in perpetuity*, the Panama Canal Treaty of September 1977 relinquished US control over the Canal at the end of the 20th century (specifically, noon on 31 December 1999). This Treaty, therefore, nullified all previous legal instruments. The objective of the second 1977 Treaty was to guarantee the neutrality of the Canal.

The culmination of the treaty process was apparent on 1 January 2000, when the ‘ownership’ and control of the Canal was officially in Panamanian hands. In that respect, the Panama Canal Treaty should be of little relevance. However, apart from its historical importance, it (with the Neutrality Treaty) forms the legal basis of the current management and the international usage of the Panama Canal. The agreement paved the way for the increasing participation of the citizens and Government of Panama in the management of the Canal. A number of bodies comprising equal representation from the two countries were established under the terms of the Treaty to ease the transition to full Panamanian control and management. The state of Panama, as the territorial sovereign, granted the USA the rights to manage, operate and maintain the Panama Canal and its complementary works, including installations and equipment, and to ensure the orderly transit of vessels. In order to execute this responsibility, a board called the Panama Canal

Commission was established by the USA. The chief administrator of the Commission was a US citizen, but the deputy was a Panamanian. A supervisory board of nine was constituted of five US members and four Panamanians.

The first Treaty covers the transition period from 1977 to the end of 1999. It provided for the management and regulation of the Canal up to the date of handing it over to Panama. The second Treaty, the Neutrality Treaty, is more futuristic. It is dubbed the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. It declares in Article I thus: The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama/ This is an immutable, inviolable and intriguing provision. It is intriguing not only because of the theoretical unilateral commitment of Panama to the world, but also because of the commitment to make any future canal permanently neutral, even if such canal was only built partially in Panama.

The original treaty entered into force on 4 May 1904, but the final documents (signed in September 1977) abrogated all previous documents. US ratification was only possible after a close vote in the Senate and then agreement by the President to accept the modifications proposed in the upper house of the legislature. The modifications were never ratified in Panama. Instruments of ratification were exchanged by the two Governments in June 1978, however, and the Treaties came into force on 1 October 1979. The validity of the Panama Canal Treaty expired with US control of the Canal at noon on 31 December 1999, but the Neutrality Treaty remains in force.

PANAMA CANAL TREATIES (WITH UNITED STATES SENATE MODIFICATIONS, INCLUDED IN THE INSTRUMENTS OF RATIFICATION)*

PANAMA CANAL TREATY

THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA,

ACTING in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initialed by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and

ACKNOWLEDGING the Republic of Panama's sovereignty over its territory,

HAVE DECIDED to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly,

HAVE AGREED UPON THE FOLLOWING:

Article I Abrogation of Prior Treaties and Establishment of a New Relationship

1. Upon its entry into force, this Treaty terminates and supersedes:

- (a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;
 - (b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;
 - (c) All other treaties, conventions, agreements, and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal, which were in force prior to the entry into force of this Treaty; and
 - (d) Provisions concerning the Panama Canal, which appear in other treaties, conventions, agreements, and exchanges of notes between the United States of America and the Republic of Panama, which were in force prior to the entry into force of this Treaty.
2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.
 3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.
 4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

Article II Ratification, Entry Into Force, and Termination

1. The Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.
2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

Article III Canal Operation and Management

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations, and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

- (a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;
- (b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;
- (c) Make and enforce all rules pertaining the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;
- (d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;
- (e) Regulate relations with employees of the United States Government;
- (f) Provide supporting services to facilitate the performance of its responsibilities under this Article;
- (g) Issue and enforce regulations for the exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and
- (h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

- (a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.
- (b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the

* We have endeavoured to reproduce a complete and correct text of the above documents, unless otherwise indicated, but they should not be relied upon for legal purposes. Enquiries about the official documents and their status should be made to the Governments of Panama and of the USA or to the Organization of American States (<http://www.oas.org/>).

Board on the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

- (c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.
 - (d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.
4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.
 5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operation areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars (US\$10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.
 6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.
 7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to

increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.
9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by Agreement in Implementation of this Article, signed this date.
10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

Article IV Protection and Defense

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.
2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.
3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:
 - (a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;
 - (b) The planning and conduct of combined military exercises; and

- (c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.
4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.
 5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Article V Principle of Non-Intervention

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

Article VI Protection of the Environment

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.
2. A Joint Commission on the Environment shall be established with equal representation from the United States and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.
3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

Article VII Flags

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.
2. The flag of the United States of America may be displayed, together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.
3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

Article VIII Privileges and Immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.
2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.
3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

Article IX Applicable Laws and Law Enforcement

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.
2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the

same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.
4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.
5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches and fraternal organizations, the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.
6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.
7. The provisions of paragraphs 2–6 above shall apply to natural or juridical persons who have been engaged in business or non-profit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.
8. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.
9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.
10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their

property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

Article X Employment With the Panama Canal Commission

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.
2.
 - (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.
 - (b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.
3.
 - (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.
 - (b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.
 - (c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

- (d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.
4. The United States of America will establish qualification standards for skills, training, and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.
 5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.
 6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.
 7. Persons employed by the Panama Canal Commission or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumed responsibility are not less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued

employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.
9.
 - (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.
 - (b) Employee unions shall have the right to affiliate with international labor organizations.
10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:
 - (a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the treaty;
 - (b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Article XI Provisions for the Transition Period

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms. In order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.
2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of

the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

- i. for any offense committed during the transition period within such areas and installations, and
- ii. for any offense committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.
4. For the transition period, the United States of America shall retain police authority and maintain a police force in the afore-mentioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.
5. The courts of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.
6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.
7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and

substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

Article XII A Sea-Level Canal or a Third Lane of Locks

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.
2. The United States of America and the Republic of Panama agree on the following:
 - (a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and
 - (b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.
3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of America has delivered to the Republic of Panama copies of the plans for such construction.
4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.
5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

Article XIII Property Transfer and Economic Participation by the Republic of Panama

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal,

which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:
 - (a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;
 - (b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.
 - (c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Panama.
 - (d) Upon termination of this Treaty, all real property and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.
3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.
4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:
 - (a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar (US\$0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar (US\$0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter, successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

- (b) A fixed annuity of ten million United States dollars (US\$10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.
- (c) An annual amount of up to ten million United States dollars (US\$10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Article XIV Settlement of Disputes

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

DONE at Washington, this 7th day of September, 1977 in duplicate, in the English and Spanish languages, both texts being equally authentic.

ANNEX

Procedures for the Cessation or Transfer of Activities Carried Out by the Panama Canal Company and the Canal Zone Government and Illustrative List of the Functions That May Be Performed by the Panama Canal Commission

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in accordance with the provisions of paragraphs 2–7 of Article IX of this Treaty.
2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.
3. It is understood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:
 - a. Management of the Canal enterprise.

- b. Aids to navigation in Canal waters and in proximity thereto.
 - c. Control of vessel movement.
 - d. Operation and maintenance of the locks.
 - e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
 - f. Control of the water levels in Gatun, Alajuela (Madden), and Miraflores Lakes.
 - g. Non-commercial transportation services in Canal waters,
 - h. Meteorological and hydrographic services.
 - i. Admeasurement.
 - j. Non-commercial motor transport and maintenance.
 - k. Industrial security through the use of watchmen.
 - l. Procurement and warehousing.
 - m. Telecommunications.
 - n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used in operation of the Canal and the anchorages.
 - o. Non-commercial vessel repair.
 - p. Air conditioning services in Canal installations.
 - q. Industrial sanitation and health services.
 - r. Engineering design, construction and maintenance of Panama Canal Commission installations.
 - s. Dredging of the Canal channel, terminal ports and adjacent waters.
 - t. Control of the banks and stabilizing of the slopes of the Canal.
 - u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.
 - v. Maintenance of public areas of the Panama Canal Commission, such as parks and gardens.
 - w. Generation of electric power.
 - x. Purification and supply of water.
 - y. Marine salvage in Canal waters.
 - z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.
4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:
- (a) Upon the date of entry into force of this Treaty:
- i. Wholesale and retail sales, including those through commissaries, food stores, department stores, optical shops and pastry shops;
 - ii. The production of food and drink, including milk products and bakery products;
 - iii. The operation of public restaurants and cafeterias and the sale of articles through vending machines;

- iv. The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;
- v. The operation of laundry and dry cleaning plants other than those operated for official use;
- vi. The repair and service of privately owned automobiles or the sale of petroleum or lubricants thereto, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors, and furniture;
- vii. The operation of cold storage and freezer plants other than those operated for official use;
- viii. The operation of freight houses other than those operated for official use;
- ix. The operation of commercial services to and supply of privately owned and operated vessels, including the constitution of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;
- x. Printing services other than for official use;
- xi. Maritime transportation for the use of the general public;
- xii. Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;
- xiii. Educational services not for professional training, including schools and libraries;
- xiv. Postal services;
- xv. Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;
- xvi. Commercial pier and dock services, such as the handling of cargo and passengers; and
- xvii. Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.

(b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as:

- i. Police;
- ii. Courts; and
- iii. Prison system.

5.

- (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.
- (b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of

the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

**UNITED STATES SENATE MODIFICATIONS (INCORPORATED
INTO THE JUNE 1978 INSTRUMENTS OF RATIFICATION)**

(a) RESERVATIONS:

- (1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of the Panama Canal Treaty, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the resolutions of ratification thereto, shall be only for the purpose of assuring that the Canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.
- (2) The instruments of ratification of the Panama Canal Treaty to be exchanged by the United States of America and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII of the Treaty.
- (3) Notwithstanding any provision of the Treaty, no funds may be drawn from the Treasury of the United States of America for payments under paragraph 4 of Article XIII without statutory authorization.
- (4) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Treaty at the date of termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the duration of the Treaty, and nothing in such paragraph may be constructed as obligating the United States of America to pay, after the date of the termination of the Treaty, any such unpaid balance which shall have accrued before such date.
- (5) Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.
- (6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by the Congress of the United States of America, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government of the United States of America and not reimbursed before the date of entry into force of the Treaty. Such reimbursement for such interest costs shall be made at a rate determined by the Secretary of the Treasury

of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase “funds or other assets directly invested” shall have the same meaning as the phrase “net direct investment” has under section 62 of title 2 of the Canal Zone Code.

(b) UNDERSTANDINGS:

- (1) Before the first day of the three-year period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas referred to in paragraph 5 of Article III. If payments made under paragraph 5 of Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both Parties, of any costs of services disputed by the two Parties pursuant to the reexamination of such costs provided for in this understanding.
- (2) Nothing in paragraph 3, 4, or 5 of Article IV of the Treaty may be construed to limit either the provisions of the first paragraph of Article IV providing that each Party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of the Treaty.
- (3) Nothing in paragraph 4(c) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 4(c) of Article XIII.
- (4) Any agreement concluded pursuant to paragraph 11 of Article IX of the Treaty with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both Parties.
- (5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

- (6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA HAVE
AGREED UPON THE FOLLOWING:

Article I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

Article II

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

- (a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III(c);
- (b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;
- (c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and
- (d) Such other conditions and restrictions as are established by this Treaty.

Article III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:
 - (a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;
 - (b) Ancillary services necessary for transit through the Canal shall be provided;
 - (c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

- (d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessels owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility;
- (e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search for surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government non-commercial service.

2. For the purposes of this Treaty, the terms “Canal,” “Vessel of war,” “auxiliary vessel,” “internal operation,” “armament” and “inspection” shall have the meanings assigned them in Annex A to this Treaty.

Article IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

Article V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

Article VI

1. In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination,

armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. The United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal for its troops, vessels and materials of war. Thereafter, the Republic of Panama may provide the Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

Article VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all nations of the world the Protocol to this Treaty whereby all the signatories will adhere to the objective of this Treaty, agreeing to respect the regime of neutrality set forth herein.
2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

Article VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

DONE at Washington, this 7th day of September, 1977, in the English and Spanish languages, both texts being equally authentic.

ANNEX A

1. "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B [not reproduced here]), and any other interoceanic waterway in which the United States of America is a participant or in which the United States of America has participated in connection with the construction or financing, that may be operated wholly or partially within the territory of the Republic of Panama, the entrances thereto and the territorial seas adjacent thereto.
2. "Vessel of war" means a ship belonging to the naval forces of a State, and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew which is under regular naval discipline.
3. "Auxiliary vessel" means any ship, not a vessel of war, that is owned or operated by a State and used, for the time being, exclusively on government non-commercial service.
4. "Internal operation" encompasses all machinery and propulsion systems, as well as the management and control of the vessel, including its crew. It does not include the

measures necessary to transit vessels under the control of pilots while such vessels are in the Canal.

5. "Armament" means arms, ammunition, implements of war and other equipment of a vessel which possesses characteristics appropriate for use for warlike purposes.
6. "Inspection" includes on-board examination of vessel structure, cargo, armament and internal operation. It does not include those measures strictly necessary for admeasurement, nor those measures strictly necessary to assure safe, sanitary transit and navigation, including examination of deck and visual navigation equipment, nor in the case of live cargoes, such as cattle or other livestock, that may carry communicable diseases, those measures necessary to assure that health and sanitation requirements are satisfied.

UNITED STATES SENATE MODIFICATIONS (INCORPORATED INTO THE JUNE 1978 INSTRUMENTS OF RATIFICATION)

(a) AMENDMENTS:

- (1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

'Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama''

- (2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above:

'The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly'."

(b) CONDITIONS:

- (1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.
- (2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

“Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate.”

(c) RESERVATIONS:

- (1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States of America by the American Battle Monuments Commission, including the display of the flag of the United States of America, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.
- (2) The flag of the United States of America may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.
- (3) The President:
 - (a) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America; and

(b) shall have announced, immediately after the date of exchange of instruments of ratification, plans, to be carried out at the expense of the Government of the United States of America, for:

- i. removing, before the date of entry into force of the Treaty, the remains of citizens of the United States of America from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and
- ii. transporting to the United States of America for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(c) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B)(i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such Article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) UNDERSTANDING:

(1) Paragraph 1(c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

- (a) the costs of operating and maintaining the Panama Canal;
- (b) the competitive position of the use of the Canal in relation to other means of transportation;
- (c) the interests of both Parties in maintaining their domestic fleets;
- (d) the impact of such an adjustment on the various geographic areas of each of the two Parties; and
- (e) the interests of both Parties in maximizing their international commerce. The United States of America and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement 'to maintain the regime of neutrality established in this Treaty' in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

- (3) The determination of 'need or emergency' for the purpose of any vessel of war or auxiliary vessel of the United States of America or the Republic of Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.
- (4) Nothing in the Treaty, in Annex A or B thereto, in the Protocol relating to the Treaty, or in any other agreement relating to the Treaty, obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.
- (5) The President shall include all amendments, conditions, reservations, and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

CHAPTER THIRTY-SEVEN

Hamburg Rules (UN Convention on the Carriage of Goods by Sea)

Hamburg, 31 March 1978

INTRODUCTION

This UN Convention, usually known as the Hamburg Rules, is an effort at unifying the rules on carriage of goods by sea and to get more universalized representation as far as country parties are concerned. It, in many respects, broadens the Hague and the Hague-Visby Rules (1924 and 1968, respectively—see above). For example, regarding voyages, the Hamburg Rules cover not only contracts of carriage between different states, where the port of loading or the port of discharge is located in a contracting state, but also where one of the optional ports of discharge is the actual port of discharge and such port is located in a contracting state. The provisions relating to the coverage of bills of lading are broader than the two previous regimes. A bill of lading issued in a contracting state can state expressly that the Hamburg Rules are to govern the transaction or that the jurisdiction or forum of a contracting state is to be the appropriate law. The nationality of the carrier, the actual carrier, the shipper, the consignee or other interested person is irrelevant to the application of these Rules. The difference between a carrier and an actual carrier is also one of the unique features of the Hamburg Rules. In essence, where the carrier is not performing the carriage by itself, the carrier gets the actual carrier to do it. It is relevant where the company that secures the contract of carriage is different from the one which physically carries it out. Although the Convention does not apply to charter parties, this distinction is important in charter parties. Another interesting feature of the Hamburg Rules is the more elaborate provisions on the carriage of hazardous cargo.

The cargo to be carried can be anything, including (unlike the Hague Rules) live animals. The carrier may carry cargo on the deck only with the prior agreement of the shipper or if it is the custom of the trade or in compliance with statutory requirements. If the carriage of the goods on deck is with the agreement of the shipper, this must be stated in the bill of lading. Even though such a written term in the bill of lading would be a defence against contrary position of the shipper, it is not applicable to third parties who negotiated the bill of lading in good faith.

The Hamburg Rules make more elaborate provisions on the issue and contents of bills of lading in general. The bill of lading must state: the general nature of the goods; the

leading identification marks; the weight; if necessary, the dangerous character of the goods; and the apparent condition of the goods. In addition, the bill of lading should include: the name and principal place of business of the carrier; the name of the shipper; the name of the consignee, if given; the port of loading and the date on which the carrier took charge of the goods; the port of discharge and the expected date of arrival and discharge; the place where the bill of lading was issued; the number of copies; freight, if payable by the consignee; and a statement that the carriage is subject to the Hamburg Rules and, therefore, any derogation adverse to the shipper or consignee is invalid. Finally, the bill of lading must be signed by a person having authority from the carrier. The signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or 'made by any other mechanical or electronic means'. This provision on signature illustrates the progressive and more modern character of the Hamburg Rules. It will accommodate the advance made with electronic systems. The only difficulty is the fact that not many countries have rules on evidence or legislation on electronic transactions and documentation to accommodate this new trend.

While the carrier is in charge of the goods, he is liable for loss or damage to the goods and for delay in delivery, unless he proves that he or his servants took all reasonable measures to avoid the damaging event and its consequences. However, the liability of the carrier is limited to an amount equivalent to 835 units of account per package or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher. These values (based on IMF units of account) are higher than those prescribed by the earlier Hague and Hague-Visby Conventions. If it is established that the carrier did an act or omitted to do an act with intent to cause loss, damage or delay, or was reckless knowing such loss or damage may probably result, and that act or omission was responsible for the delay, loss or damage, then he would not be entitled to the limitations on the liability.

It is also important to note that the Hamburg Rules have significant provisions on dispute resolution. Under the Convention, the plaintiff in an action can opt to sue in a country where the defendant is habitually resident or has his principal place of business, or in the place where the contract was made, if the defendant has a branch or agency or place of business there, or in the port of loading or discharge or any other place designated for that purpose in the contract of carriage. There is one general condition, in addition to any of the foregoing. That is, the court where the action is instituted must be competent under the rules of the country where the court is located. If the ship is arrested in a state party to the Hamburg Convention, the courts in that country can be the proper forum, unless the defendant objects and opts for a court in a country as already noted. Instead of court process, the parties to a contract of carriage can opt for arbitration to resolve disputes arising from the contract. The rules regarding the location of the arbitration proceedings are largely the same as those of court proceedings.

The Convention came into force 1 November 1992. By 2004 there were 28 full parties to the Hamburg Rules (and Slovakia had indicated succession to the signature of Czechoslovakia, although not formally ratified the Convention, as had the Czech Republic). However, although countries such as the France, Germany and the USA had signed the Convention in the late 1970s, still no major maritime Power seemed likely to adopt the Rules.

UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS
BY SEA [HAMBURG RULES]*

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

PART I: GENERAL PROVISIONS

Article 1 Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.
4. "Consignee" means the person entitled to take delivery of the goods.
5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.
6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.
7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.
8. "Writing" includes, inter alia, telegram and telex.

Article 2 Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

- (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
 - (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
 - (c) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
 - (d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
 - (e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.
2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.
 3. The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.
 4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply.

Article 3 Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II: LIABILITY OF THE CARRIER

Article 4 Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.
2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods
 - (a) from the time he has taken over the goods from:
 - i. the shipper, or a person acting on his behalf; or

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Adopted by a diplomatic conference, the Convention is in the public domain. However, enquiries about the official

document and its status should be satisfied via, for example, the website of the International Maritime Committee, Comité Maritime International—CMI (<http://www.comitemaritime.org/>).

- ii. an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) until the time he has delivered the goods:

- i. by handing over the goods to the consignee; or
- ii. in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
- iii. by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

Article 5 Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.
2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.
3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.
- 4.

(a) The carrier is liable

- i. for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- ii. for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

- (b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.
- 5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.
- 6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.
- 7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable there to.

Article 6 Limits of liability

1.
 - (a) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.
 - (b) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.
 - (c) In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for total loss of the goods with respect to which such liability was incurred.
2. For the purpose of calculating which amount is the higher in accordance with paragraph 1(a) of this article, the following rules apply:
 - (a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

- (b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.
- 3. Unit of account means the unit of account mentioned in article 26.
- 4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7 Application to non-contractual claims

- 1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.
- 2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
- 3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8 Loss of right to limit responsibility

- 1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.
- 2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9 Deck cargo

- 1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.
- 2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.
4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.

Article 10 Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.
2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.
3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.
4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.
5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.
6. Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.

Article 11 Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The

burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III: LIABILITY OF THE SHIPPER

Article 12 General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13 Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.
2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:
 - (a) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and
 - (b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.
4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV: TRANSPORT DOCUMENTS

Article 14 Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.
3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15 Contents of bill of lading

1. The bill of lading must include, inter alia, the following particulars:
 - (a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
 - (b) the apparent condition of the goods;
 - (c) the name and principal place of business of the carrier;
 - (d) the name of the shipper;
 - (e) the consignee if named by the shipper;
 - (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
 - (g) the port of discharge under the contract of carriage by sea;
 - (h) the number of originals of the bill of lading, if more than one;
 - (i) the place of issuance of the bill of lading;
 - (j) the signature of the carrier or a person acting on his behalf;
 - (k) the freight to the extent payable by the consignee or other indication that freight is payable by him;
 - (l) the statement referred to in paragraph 3 of article 23;
 - (m) the statement, if applicable, that the goods shall or may be carried on deck;
 - (n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
 - (o) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.
2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.
3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16 Bills of lading: reservations and evidentiary effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a “shipped” bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.
2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.
3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:
 - (a) the bill of lading is prima facie evidence of the taking over or, where a “shipped” bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and
 - (b) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.
4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k) of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is prima facie evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17 Guarantees by the shipper

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.
2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.
4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18 Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

PART V: CLAIMS AND ACTIONS

Article 19 Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.
2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.
3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.
4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.
5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.
6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.
7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to

give such notice is prima facie evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20 Limitation of actions

1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.
2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.
3. The day on which the limitation period commences is not included in the period.
4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.
5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 21 Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:
 - (a) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
 - (b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or
 - (c) the port of loading or the port of discharge; or
 - (d) any additional place designated for that purpose in the contract of carriage by sea.
2.
 - (a) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove

the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.

- (b) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4.

- (a) Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;

- (b) for the purpose of this article the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;

- (c) for the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2(a) of this article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

Article 22 Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

- (a) a place in a State within whose territory is situated:

- i. the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or
- ii. the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- iii. the port of loading or the port of discharge; or

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.
5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.
6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI: SUPPLEMENTARY PROVISIONS

Article 23 Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or any similar clause, is null and void.
2. Notwithstanding the provisions of paragraph 1 of this article, a carrier may increase his responsibilities and obligations under this Convention.
3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.
4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

Article 24 General average

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.
2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 25 Other conventions

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.
2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention [March 31, 1978] relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.
3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:
 - (a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
 - (b) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.
4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.
5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26 Unit of account

1. The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.
2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval

or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.
4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

PART VII: FINAL CLAUSES

Article 27 Depositary

The Secretary General of the United Nations is hereby designated as the depositary of this Convention.

Article 28 Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 29 Reservations

No reservations may be made to this Convention

Article 30 Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession.
2. For each State which becomes a Contracting State to this Convention after the date of deposit of the 20th instrument of ratification, acceptance approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.
3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 31 Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.
2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.
3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.
4. Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

Article 32 Revision and amendment

1. At the request of not less than one-third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.
2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

Article 33 Revision of the limitation amounts and unit of account or monetary unit

1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.
2. A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.
3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.
4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.
5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

Article 34 Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

**COMMON UNDERSTANDING ADOPTED BY THE UNITED
NATIONS CONFERENCE ON THE CARRIAGE OF GOODS BY
SEA**

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.

CHAPTER THIRTY-EIGHT

UN Convention on Contracts for the International Sale of Goods

Vienna, 11 April 1980

INTRODUCTION

This is a treaty that aims to bring order to the contractual processes in international business. It is mainly intended to complement the rules on conflict of laws regarding contracts and applies exclusively to sale of goods where there is clear evidence that, at the time of the contract, the two parties have their places of business in two or more countries. If a party has more than one business location, the place of business for the purposes of the Convention will be that which has the closest relationship to the contract and its performance, based on their course of dealings. If a party has no place of business, his or her habitual residence would be the reference point. For a contract to be governed by this Convention, the countries where the businesses are located must be parties to the Convention. Failing that, conflict of laws rules must lead to the application of the laws of a state party. In invoking the terms of the Convention, neither the nationality of the parties nor the status of the parties or the character of the transaction are of any consequence.

Specific transactions are excluded from the application of the Convention. These are: goods known to have been bought for personal, family or household consumption; goods sold by auction or execution under legal authority; stocks, shares and securities; sale of ships, vessels and aircraft; and sale of electricity. In addition, contracts where the major part of the obligations of the seller is in the form of labour or related services and contracts where the buyer undertakes to or supplies a substantial part of the materials used for the manufacture are also excluded from the purview of the Convention. The Convention further limits itself to the formation of contract of sale and the rights and obligations of the seller and of the buyer. It avoids entanglement with the validity of any part of a contract or usage and the effect of the contract on the property in the goods. The parties are also free to exclude the application of the Convention or derogate from any of its provisions. All this is aimed at maintaining the essential freedom to contract, as well as at not overburdening the operation of the Convention. This is one reason behind the place given to usages and practices established between the parties or in their trade.

An important aspect of this Convention is its codification of the common law rules on contract formation and the employment of the 'postal rule'. There must be an offer and an acceptance. Both must be clear and precise, at the minimum addressed to specific person(s), and must definitely state what the goods are, with provisions on quantity and price. An offer is effective when it reaches the offeree and can be withdrawn before an acceptance is despatched by the offeree, unless the offer is time based or it was reasonable to treat it as irrevocable. However, even if an offer is designed to be irrevocable, it can still be nullified by a receipt of rejection from the offeree. Silence from the offeree does not necessarily mean acceptance, but conduct or statement indicating acceptance will bind the parties. Acceptance is effective when it is received by the offerer. The time lapse from the date of the offer and the receipt of acceptance must be reasonable in the absence of time restraint by the offer. If a specific time were fixed, the acceptance would not be valid if it is received after the time specified. An oral offer must be accepted immediately, unless otherwise specified. Encountering the postal rule in these circumstances is inevitable. Articles 12–13 and 20–24 codify the postal rule while, at the same time, accommodating electronic and more modern means of communications. Time stated in the offer begins to run from the moment the telegram is handed for despatch or date shown in the letter and, if by post, from the date marked on the envelope. Instantaneous offers run from the moment the offer reaches the offeree. This is line with the well known analogy of the British judge, Lord Denning, in the case of *Luxor (Eastbourne) Ltd v. Cooper*, [1941] AC 108. If the offerer does not hear the acceptance it must be repeated.

Under the Convention, a contract of sale need not be or evidenced in writing and need not be in any particular fixed form, unless the laws of the contracting state where the business of a party is located requires contracts to be in writing and that contracting state has made a declaration to that effect under article 96 of the Convention. The Convention takes a fairly broad view of writing, including telegrams and telex, but does not mention electronic mail or other more recent forms of communication, such as text messages, etc. These may be accommodated on the same terms as instantaneous messages. However, there is a puzzling provision in article 27, to the effect that 'if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication'. This refers mainly to communication from the offeree. The rationale may be that the circumstances must be such that the offerer should expect response by a particular mode and should make enquiries if the expected response has not come through. This appears to run counter to the Denning analogy referred to above. The remaining chapters of the Convention deal with the duties and obligations of the seller and the buyer and with the remedies available to either or both in cases of breach by either of them.

The Convention was signed by 22 countries in 1980–81, of which two have never proceeded to ratification and a further two have been succeeded by other states. The Convention came into force on 1 January 1988. By March 2005 it had been ratified by 65 countries, although not due to take effect until 2006 in Cyprus and Gabon.

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS*

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED AS FOLLOWS:

**PART I. SPHERE OF APPLICATION AND GENERAL
PROVISIONS**

CHAPTER 1. SPHERE OF APPLICATION

Article 1

1. This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
 - (a) when the States are Contracting States; or
 - (b) when the rules of private international law lead to the application of the law of a Contracting State.
2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.
3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

Article 3

1. Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
2. This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II: GENERAL PROVISIONS

Article 7

1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

1. For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
2. If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.
3. In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

Article 9

1. The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
2. The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other

indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention “writing” includes telegram and telex.

PART II: FORMATION OF THE CONTRACT

Article 14

1. A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offerer to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.
2. A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

1. An offer becomes effective when it reaches the offeree.
2. An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

1. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.
2. However, an offer cannot be revoked:
 - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
 - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offerer.

Article 18

1. A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
2. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
3. However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

1. A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counteroffer.
2. However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.
3. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

1. A period of time of acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.
2. Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

1. A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.
2. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention “reaches” the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

PART III: SALE OF GOODS

CHAPTER I: GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

1. A contract may be modified or terminated by the mere agreement of the parties.
2. A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

CHAPTER II: OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

SECTION I: DELIVERY OF THE GOODS AND HANDING OVER OF DOCUMENTS

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods-in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place-in placing the goods at the buyer's disposal at that place;

- (c) in other cases-in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

1. If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
2. If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
3. If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

SECTION II: CONFORMITY OF THE GOODS AND THIRD PARTY CLAIMS

Article 35

1. The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
2. Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
 - (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
 - (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
 - (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.
3. The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

1. The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
2. The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

1. The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.
2. If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.
3. If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

1. The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.
2. In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

1. The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:
 - (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or
 - (b) in any other case, under the law of the State where the buyer has his place of business.
2. The obligation of the seller under the preceding paragraph does not extend to cases where:
 - (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or
 - (b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

1. The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
2. The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

SECTION III: REMEDIES FOR BREACH OF CONTRACT BY THE SELLER

Article 45

1. If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:
 - (a) exercise the rights provided in articles 46 to 52;
 - (b) claim damages as provided in articles 74 to 77.
2. The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.
3. No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

1. The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.
2. If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.
3. If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

1. The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.
2. Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

1. Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.
2. If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.
3. A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.
4. A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

1. The buyer may declare the contract avoided:
 - (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.
2. However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:
 - (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
 - (b) in respect of any breach other than late delivery, within a reasonable time:
 - i. after he knew or ought to have known of the breach;
 - ii. after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

- iii. after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performances.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

1. If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.
2. The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

1. If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.
2. If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

CHAPTER III: OBLIGATIONS OF THE BUYER

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

SECTION I: PAYMENT OF THE PRICE

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

1. If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:
 - (a) at the seller's place of business; or
 - (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.
2. The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

1. If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.
2. If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.
3. The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

SECTION II: TAKING DELIVERY

Article 60

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

SECTION III: REMEDIES FOR BREACH OF CONTRACT BY THE BUYER

Article 61

1. If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:
 - (a) exercise the rights provided in articles 62 to 65;
 - (b) claim damages as provided in articles 74 to 77.
2. The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
3. No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

1. The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
2. Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

1. The seller may declare the contract avoided:
 - (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed;
2. However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:
 - (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
 - (b) in respect of any breach other than late performance by the buyer, within a reasonable time:
 - i. after the seller knew or ought to have known of the breach; or
 - ii. after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

1. If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
2. If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV: PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

1. If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.
2. Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

1. In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.
2. However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.
3. If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V: PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

SECTION I: ANTICIPATORY BREACH AND INSTALMENT CONTRACTS

Article 71

1. A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:
 - (a) a serious deficiency in his ability of perform or in his creditworthiness; or
 - (b) his conduct in preparing to perform or in performing the contract.
2. If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.
3. A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

1. If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.
2. If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.
3. The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

1. In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.
2. If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future installments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

3. A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

SECTION II: DAMAGES

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

1. If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.
2. For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

SECTION III: INTEREST

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

SECTION IV: EXEMPTION

Article 79

1. A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
2. If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
 - (a) he is exempt under the preceding paragraph; and
 - (b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.
3. The exemption provided by this article has effect for the period during which the impediment exists.
4. The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such nonreceipt.
5. Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

SECTION V: EFFECTS OF AVOIDANCE

Article 81

1. Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

2. A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

1. The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.
2. The preceding paragraph does not apply:
 - (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
 - (b) the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or
 - (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

1. If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.
2. The buyer must account to the seller for all benefits which he has derived from the goods or part of them:
 - (a) if he must make restitution of the goods or part of them; or
 - (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

SECTION VI: PRESERVATION OF THE GOODS

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition,

the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

1. If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.
2. If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

1. A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.
2. If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.
3. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV: FINAL PROVISIONS

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties, to such agreement.

Article 91

1. This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

1. A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.
2. A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.
2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.
3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

1. Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.
2. A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.
3. If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1) (b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

1. Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first

day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

4. Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.
5. A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

1. This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
3. A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.
4. A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.
5. A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.
6. For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention

or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

1. This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.
2. This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

Article 101

1. A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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

CHAPTER THIRTY-NINE

UN Convention on International Multimodal Transport of Goods

Geneva, 24 May 1980

INTRODUCTION

This is a Convention that bridges the gap between the law on international trade and advances in the methods of transporting goods. It had become increasingly convenient to move goods across borders without breaking the chain of responsibility vested in one operator and his agents or associates. Yet the existing law (such as the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road, the 1970 Berne Convention on Carriage of Goods by Rail and the International Chamber of Commerce—ICC Incoterms or international commercial terms) appeared to be orientated towards single-route, unimodal transport. Without necessarily contradicting or negating other relevant treaties and practices on the international transportation of goods, this Convention on International Multimodal Transport aims at unifying the law and practice on the multimodal transport of goods, particularly relating to liability.

International multimodal transport refers to the carriage of goods by two or more different modes from one country to another based on one contract. This Convention applies to a multimodal transport contract only if the place effecting the contract or the place of delivering is located in a state party. The documentation for multimodal transportation broadly follows ICC Incoterms practice, except that express provision is made for the documents to be negotiable or nonnegotiable. More interesting is the provision for digital signatures. Article 5(3) provides that the ‘signature on the multimodal transport document may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means’, which is progressive for a 1980 international treaty. It helps remove some of the doubts surrounding the acceptability and legality of electronic data and original document. The difficulty though is that the provision is subject to the laws of the country where the document is issued. In the absence of any law at all, the Convention provision applies, but where the law is not consistent with the provision, national law prevails.

The consignor is presumed to guarantee the particulars regarding the nature of the goods, their marks, weight, quantity and, if relevant, hazardous character. Any losses incurred by the transport operator resulting from inaccuracies or omissions by the

consignor must be indemnified by the consignor. Generally, the consignor is liable for loss sustained by the transport operator if the loss is attributable to the fault or neglect of the consignor or his servants or agents acting within the scope of their employment. The rationale for this may be because the goods largely remain in the state in which the consignor delivered them to the operator up to the point of possibly final delivery. The operator also has responsibility for the goods from the time he takes over the goods from the consignor or his agent until the time he hands the goods over to the consignee or his agent. The transport operator is liable for the loss resulting from loss or damage to the goods when the goods were in his charge. His liability extends to delays in delivering the goods. The defence opened to him is that he (and his servants or agents) took all reasonable steps necessary to prevent or avoid the loss, damage or delay. His liability is limited to the extent that the particular loss, damage or delay is attributable to his fault or neglect. This presumes that somebody else is partly responsible for the loss, damage or delay. The liability itself, where any, is limited to an amount not exceeding 920 units of account per package or 2.75 units of account per kilogram of gross weight of the goods lost or damaged, based on IMF special drawing rights (SDR). The liability for the delay is two and one-half times the freight payable for the goods delayed, but not more than the total freight payable under the contract of carriage. In circumstances where the parties have to go to court or arbitration to settle disputes, the choice of forum and law is to be based on the location of the business of the defendant or his habitual residence, or the place where the operator took charge of the goods, or the place of their delivery, or the place where the multimodal transport contract was entered into, on condition that the defendant has a place of business or branch or subsidiary there. The parties can agree expressly to a different choice provided they stated that in the original contract.

The Convention had not yet come into force by the end of 2004, with only 10 parties (30 are needed) and six signatories.

UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS*

THE STATES PARTIES TO THIS CONVENTION,

Recognising:

- (a) That international multimodal transport is one means of facilitating the orderly expansion of world trade;
- (b) The need to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of the trade concerned;
- (c) The desirability of ensuring the orderly development of international multimodal transport in the interest of all countries and the need to consider the special problems of transit countries;
- (d) The desirability of determining certain rules relating to the carriage of goods by international multimodal transport contracts, including equitable provisions concerning the liability of multimodal transport operators;
- (e) The need that this Convention should not affect the application of any international convention or national law relating to the regulation and control of transport operations;

- (f) The right of each State to regulate and control at the national level multimodal transport operators and operations;
- (g) The need to have regard to the special interest and problems of developing countries, for example, as regards introduction of new technologies, participation in multimodal services of their national carriers and operators, cost efficiency thereof and maximum use of local labour and insurance;
- (h) The need to ensure a balance of interests between suppliers and users of multimodal transport services;
- (i) The need to facilitate customs procedures with due consideration to the problems of transit countries;

Agreeing to the following basic principles:

- (a) That a fair balance of interests between developed and developing countries should be established and an equitable distribution of activities between these groups of countries should be attained in international multimodal transport;
- (b) That consultation should take place on terms and conditions of service, both before and after the introduction of any new technology in the multimodal transport of goods, between the multimodal transport operator, shippers, shippers' organisations and appropriate national authorities;
- (c) The freedom for shippers to choose between multimodal and segmented transport services;
- (d) That the liability of the multimodal transport operator under this Convention should be based on the principle of presumed fault or neglect;

HAVE DECIDED TO CONCLUDE A CONVENTION FOR THIS PURPOSE AND HAVE THERETO AGREED AS FOLLOWS:

PART I: GENERAL PROVISIONS

Article 1: Definitions

For the purposes of this Convention:

1. "International multimodal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport.
2. "Multimodal transport operator" means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

3. "Multimodal transport contract" means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport.
4. "Multimodal transport document" means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.
5. "Consignor" means any person by whom or in whose name or on whose behalf a multimodal transport contract has been concluded with the multimodal transport operator, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the multimodal transport operator in relation to the multimodal transport contract.
6. "Consignee" means the person entitled to take delivery of the goods.
7. "Goods" includes any container, pallet or similar article of transport or packaging, if supplied by the consignor.
8. "International convention" means an international agreement concluded among States in written form and governed by international law.
9. "Mandatory national law" means any statutory law concerning carriage of goods the provisions of which cannot be departed from by contractual stipulation to the detriment of the consignor.
10. "Writing" means, inter alia, telegram or telex.

Article 2: Scope of application

The provisions of this Convention shall apply to all contracts of multimodal transport between places in two States, if:

- (a) The place for the taking in charge of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Contracting State, or
- (b) The place for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Contracting State.

Article 3: Mandatory application

1. When a multimodal transport contract has been concluded which according to article 2 shall be governed by this Convention, the provisions of this Convention shall be mandatorily applicable to such contract.
2. Nothing in this Convention shall affect the right of the consignor to choose between multimodal transport and segmented transport.

Article 4: Regulation and control of multimodal transport

1. This Convention shall not affect, or be incompatible with, the application of any international convention or national law relating to the regulation and control of transport operations.

2. This Convention shall not affect the right of each State to regulate and control at the national level multimodal transport operations and multimodal transport operators, including the right to take measures relating to consultations, especially before the introduction of new technologies and services, between multimodal transport operators, shippers, shippers' organisations and appropriate national authorities on terms and conditions of service; licensing of multimodal transport operators; participation in transport; and all other steps in the national economic and commercial interest.
3. The multimodal transport operator shall comply with the applicable law of the country in which he operates and with the provisions of this Convention.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

PART II: DOCUMENTATION

Article 5: Issue of multimodal transport document

1. When the goods are taken in charge by the multimodal transport operator, he shall issue a multimodal transport document which, at the option of the consignor, shall be in either negotiable or non-negotiable form.
2. The multimodal transport document shall be signed by the multimodal transport operator or by a person having authority from him.
3. The signature on the multimodal transport document may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if no inconsistent with the law of the country where the multimodal transport document is issued.
4. If the consignor so agrees, a non-negotiable multimodal transport document may be issued by making use of any mechanical or other means preserving a record of the particulars stated in article 8 to be contained in the multimodal transport document. In such a case the multimodal transport operator, after having taken the goods in charge, shall deliver to the consignor a readable document containing all the particulars so recorded, and such document shall for the purposes of the provisions of this Convention be deemed to be a multimodal transport document.

Article 6: Negotiable multimodal transport document

1. Where a multimodal transport document is issued in negotiable form:
 - (a) It shall be made out to order or to bearer;
 - (b) If made out to order it shall be transferable by endorsement;
 - (c) If made out to bearer it shall be transferable without endorsement;
 - (d) If issued in a set of more than one original it shall indicate the number of originals in the set;

- (e) If any copies are issued each copy shall be marked “nonnegotiable copy”.
- 2. Delivery of the goods may be demanded from the multimodal transport operator or a person acting on his behalf only against surrender of the negotiable multimodal transport document duly endorsed where necessary.
- 3. The multimodal transport operator shall be discharged from his obligation to deliver the goods if, where a negotiable multimodal transport document has been issued in a set of more than one original, he or a person acting on his behalf has in good faith delivered the goods against surrender of one of such originals.

Article 7: Non-negotiable multimodal transport

- 1. Where a multimodal transport document is issued in non-negotiable form it shall indicate a named consignee.
- 2. The multimodal transport operator shall be discharged from his obligation to deliver the goods if he makes delivery thereof to the consignee named in such non-negotiable multimodal transport document or to such other person as he may be duly instructed, as a rule, in writing.

Article 8: Contents of the multimodal transport document

- 1. The multimodal transport document shall contain the following particulars:
 - (a) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;
 - (b) The apparent condition of the goods;
 - (c) The name and principal place of business of the multimodal transport operator;
 - (d) The name of the consignor;
 - (e) The consignee, if named by the consignor;
 - (f) The place and date of taking in charge of the goods by the multimodal transport operator;
 - (g) The place of delivery of the goods;
 - (h) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;
 - (i) A statement indicating whether the multimodal transport document is negotiable or non-negotiable;
 - (j) The place and date of issue of the multimodal transport document;
 - (k) The signature of the multimodal transport operator or of a person having authority from him;
 - (l) The freight for each mode of transport, if expressly agreed between the parties, or the freight including its currency, to the extent payable by the consignee or other indication that freight is payable by him;
 - (m) The intended journey route, modes of transport and places of transshipment, if known at the time of issuance of the multimodal transport document;
 - (n) The statement referred to in paragraph 3 of article 28;

- (o) Any other particulars which the parties may agree to insert in the multimodal transport document, if not inconsistent with the law of the country where the multimodal transport document is issued.
- 2. The absence from the multimodal transport document of one or more of the particulars referred to in paragraph 1 of this article shall not affect the legal character of the document as a multimodal transport document provided that it nevertheless meets the requirements set out in paragraph 4 of article 1.

Article 9: Reservations in the multimodal transport document

- 1. If the multimodal transport document contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the multimodal transport operator or a person acting on his behalf knows, or has reasonable grounds to suspect, do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the multimodal transport operator or a person acting on his behalf shall insert in the multimodal transport document a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.
- 2. If the multimodal transport operator or a person acting on his behalf fails to note on the multimodal transport document the apparent condition of the goods, he is deemed to have noted on the multimodal transport document that the goods were in apparent good condition.

Article 10: Evidentiary effect of the multimodal transport document

Except for particulars in respect of which and to the extent to which a reservation permitted under article 9 has been entered:

- (a) The multimodal transport document shall be prima facie evidence of the taking in charge by the multimodal transport operator of the goods as described therein; and
- (b) Proof to the contrary by the multimodal transport operator shall not be admissible if the multimodal transport document is issued in negotiable form and has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods therein.

Article 11: Liability for intentional misstatements or omissions

When the multimodal transport operator, with intent to defraud, gives in the multimodal transport document false information concerning the goods or omits any information required to be included under paragraph 1(a) or (b) of article 8 or under article 9, he shall be liable, without the benefit of the limitation of liability provided for in this Convention, for any loss, damage or expenses incurred by a third party, including a consignee, who acted in reliance on the description of the goods in the multimodal transport document issued.

Article 12: Guarantee by the consignor

1. The consignor shall be deemed to have guaranteed to the multimodal transport operator the accuracy, at the time the goods were taken in charge by the multimodal transport operator, of particulars relating to the general nature of the goods, their marks, number, weight and quantity and, if applicable, to the dangerous character of the goods, as furnished by him for insertion in the multimodal transport document.
2. The consignor shall indemnify the multimodal transport operator against loss resulting from inaccuracies in or inadequacies of the particulars referred to in paragraph 1 of this article. The consignor shall remain liable even if the multimodal transport document has been transferred to him. The right of the multimodal transport operator to such indemnity shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.

Article 13: Other documents

The issue of the multimodal transport document does not preclude the issue, if necessary, of other documents relating to transport or other services involved in international multimodal transport, in accordance with applicable international conventions or national law. However, the issue of such other documents shall not affect the legal character of the multimodal transport document.

PART III: LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR

Article 14: Period of responsibility

1. The responsibility of the multimodal transport operator for the goods under this Convention covers the period from the time he takes the goods in his charge to the time of their delivery.
2. For the purpose of this article, the multimodal transport operator is deemed to be in charge of the goods:
 - (a) From the time he has taken over the goods from:
 - i. The consignor or a person acting on his behalf; or
 - ii. An authority or other third party to whom, pursuant to law or regulations applicable at the place of taking in charge, the goods must be handed over for transport;
 - (b) Until the time he has delivered the goods:
 - i. By handing over the goods to the consignee; or
 - ii. In cases where the consignee does not receive the goods from the multimodal transport operator, by placing them at the disposal of the consignee in accordance with the multimodal transport contract or with the law or with the usage of the particular trade applicable at the place of delivery; or

- iii. By handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the place of delivery, the goods must be handed over.
3. In paragraphs 1 and 2 of this article, reference to the multimodal transport operator shall include his servants or agents or any other person of whose services he makes use for the performance of the multimodal transport contract, and reference to the consignor or consignee shall include their servants or agents.

Article 15: The liability of the multimodal transport operator for his servants, agents and other persons

Subject to article 21, the multimodal transport operator shall be liable for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the multimodal transport contract, when such person is acting in the performance of the contract, as if such acts and omissions were his own.

Article 16: Basis of liability

1. The multimodal transport operator shall be liable for loss resulting from loss or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in article 14, unless the multimodal transport operator proves that he, his servants or agents or any other person referred to in article 15 took all measures that could reasonably be required to avoid the occurrence and its consequences.
2. Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent multimodal transport operator, having regard to the circumstances of the case.
3. If the goods have not been delivered within 90 consecutive days following the date of delivery determined according to paragraph 2 of this article, the claimant may treat the goods as lost.

Article 17: Concurrent causes

Where fault or neglect on the part of the multimodal transport operator, his servants or agents or any other person referred to in article 15 combines with another cause to produce loss, damage or delay in delivery, the multimodal transport operator shall be liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the multimodal transport operator proves the part of the loss, damage or delay in delivery not attributable thereto.

Article 18: Limitation of liability

1. When the multimodal transport operator is liable for loss resulting from loss of or damage to the goods according to article 16, his liability shall be limited to an amount not exceeding 920 units of account per package of other shipping unit or 2.75 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.
2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 of this article, the following rules apply:
 - (a) Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the multimodal transport document as packed in such article of transport are deemed packages or shipping units. Except as aforesaid, the goods in such article of transport are deemed one shipping unit.
 - (b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the multimodal transport operator, is considered one separate shipping unit.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, if the international multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 units of account per kilogram of gross weight of the goods lost or damaged.
4. The liability of the multimodal transport operator for loss resulting from delay in delivery according to the provisions of article 16 shall be limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the multimodal transport contract.
5. The aggregate liability of the multimodal transport operator, under paragraphs 1 and 4 or paragraphs 3 and 4 of this article, shall not exceed the limit of liability for total loss of the goods as determined by paragraph 1 or 3 of this article.
6. By agreement between the multimodal transport operator and the consignor, limits of liability exceeding those provided for in paragraphs 1, 3 and 4 of this article may be fixed in the multimodal transport document.
7. "Unit of account" means the unit of account mentioned in article 31.

Article 19: Localised damage

When the loss of or damage to the goods occurred during one particular of the multimodal transport, in respect of which an applicable international convention or mandatory national law provides a higher limit of liability than the limit that would follow from application of paragraphs 1 to 3 of article 18, then the limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

Article 20: Non-contractual liability

1. The defences and limits of liability provided for in this Convention shall apply in any action against the multimodal transport operator in respect of loss resulting from loss of or damage to the goods, as well as from delay in delivery, whether the action be founded in contract, in tort or otherwise.
2. If an action in respect of loss resulting from loss of or damage to the goods or from delay in delivery is brought against the servant or agent of the multimodal transport operator, if such servant or agent proves that he acted within the scope of his employment, or against any other person of whose services he makes use for the performance of the multimodal transport contract, if such other person proves that he acted within the performance of the contract, the servant or agent of such other person shall be entitled to avail himself of the defences and limits of liability which the multimodal transport operator is entitled to invoke under this Convention.
3. Except as provided in article 21, the aggregate of the amounts recoverable from the multimodal transport operator and from a servant or agent or any other person of whose services he makes use for the performance of the multimodal transport contract shall not exceed the limits of liability provided for in this Convention.

Article 21: Loss of the right to limit liability

1. The multimodal transport operator is not entitled to the benefit of the limitation of liability provided for in this Convention if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the multimodal transport operator done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.
2. Notwithstanding paragraph 2 of article 20, a servant or agent of the multimodal transport operator or other person of whose services he makes use for the performance of the multimodal transport contract is not entitled to the benefit of the limitation of liability provided for in this Convention if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant, agent or other person, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

PART IV: LIABILITY OF THE CONSIGNOR

Article 22: General rule

The consignor shall be liable for loss sustained by the multimodal transport operator if such loss is caused by the fault or neglect of the consignor, or his servants or agents when such servants or agents are acting within the scope of their employment. Any servant or agent of the consignor shall be liable for such loss if the loss is caused by fault or neglect on his part.

Article 23: Special rules on dangerous goods

1. The consignor shall mark or label in a suitable manner dangerous goods as dangerous.
2. Where the consignor hands over dangerous goods to the multimodal transport operator or any person acting on his behalf, the consignor shall inform him of the dangerous character of the goods and, if necessary, the precautions to be taken. If the consignor fails to do so and the multimodal transport operator does not otherwise have knowledge of their dangerous character:
 - (a) The consignor shall be liable to the multimodal transport operator for all loss resulting from the shipment of such goods; and
 - (b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
3. The provisions of paragraph 2 of this article may not be invoked by any person if during the multimodal transport he has taken the goods in his charge with knowledge of their dangerous character.
4. If, in cases where the provisions of paragraph 2(b) of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the multimodal transport operator is liable in accordance with the provisions of article 16.

PART V: CLAIMS AND ACTIONS

Article 24: Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the multimodal transport operator not later than the working day after the day when the goods were handed over to the consignee, such handing over is prima facie evidence of the delivery by the multimodal transport operator of the goods as described in the multimodal transport document.
2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within six consecutive days after the day when the goods were handed over to the consignee.
3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties or their authorised representatives at the place of delivery, notice in writing need not be given of loss or damage ascertained during such survey or inspection.
4. In the case of any actual or apprehended loss or damage the multimodal transport operator and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods.
5. No compensation shall be payable for loss resulting from delay in delivery unless notice has been given in writing to the multimodal transport operator within 60 consecutive days after the day when the goods were delivered by handing over to the

consignee or when the consignee has been notified that the goods have been delivered in accordance with paragraph 2(b)(ii) or (iii) of article 14.

6. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the multimodal transport operator to the consignor not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2(b) of article 14, whichever is later, the failure to give such notice is prima facie evidence that the multimodal transport operator has sustained no loss or damage due to the fault or neglect of the consignor, his servants or agents.
7. If any of the notice periods provided for in paragraphs 2, 5 and 6 of this article terminates on a day which is not a working day at the place of delivery, such period shall be extended until the next working day.
8. For the purpose of this article, notice given to a person acting on the multimodal transport operator's behalf, including any person of whose services he makes use at the place of delivery, or to a been given to the multimodal transport operator, or to the conperson acting on the consignor's behalf, shall be deemed to have signor, respectively.

Article 25: Limitation of actions

1. Any action relating to international multimodal transport under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. However, if notification in writing, stating the nature and main particulars of the claim, has not been given within six months after the day when the goods were delivered or, where the goods have not been delivered, after the day on which they should have been delivered, the action shall be time-barred at the expiry of this period.
2. The limitation period commences on the day after the day on which the multimodal transport operator has delivered the goods or part thereof or, where the goods have not been delivered, on the day after the last day on which the goods should have been delivered.
3. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.
4. Provided that the provisions of another applicable international convention are not to the contrary, a recourse action for indemnity by a person held liable under this Convention may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted; however, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

Article 26: Jurisdiction

1. In judicial proceedings relating to international multimodal transport under this Convention, the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:
 - (a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or
 - (b) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
 - (c) The place of taking the goods in charge for international multimodal transport or the place of delivery; or
 - (d) Any other place designated for that purpose in the multimodal transport contract and evidenced in the multimodal transport document.
2. No judicial proceedings relating to international multimodal transport under this Convention may be instituted in a place not specified in paragraph 1 of this article. The provisions of this article do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.
3. Notwithstanding the preceding provisions of this article, an agreement made by the parties after a claim has arisen, which designates the place where the plaintiff may institute an action, shall be effective.
4.
 - (a) Where an action has been instituted in accordance with the provisions of this article or where judgement in such an action has been delivered, no new action shall be instituted between the same parties on the same grounds unless the judgement in the first action is not enforceable in the country in which the new proceedings are instituted;
 - (b) For the purposes of this article neither the institution of measures to obtain enforcement of a judgement nor the removal of an action to a different court within the same country shall be considered as the starting of a new action.

Article 27: Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to international multimodal transport under this Convention shall be referred to arbitration.
2. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:
 - (a) A place in a State within whose territory is situated:
 - i. The principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

- ii. The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
- iii. The place of taking the goods in charge for international multimodal transport or the place of delivery; or

(b) Any other place designated for that purpose in the arbitration clause or agreement.

- 3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.
- 4. The provisions of paragraphs 2 and 3 of this article shall be deemed to be part of every arbitration clause or agreement and any term of such clause or agreement which is inconsistent therewith shall be null and void.
- 5. Nothing in this article shall affect the validity of an agreement on arbitration made by the parties after the claim relating to the international multimodal transport has arisen.

PART VI: SUPPLEMENTARY PROVISIONS

Article 28: Contractual stipulations

- 1. Any stipulation in a multimodal transport contract or multimodal transport document shall be null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation shall not affect the validity of other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favour of the multimodal transport operator or any similar clause shall be null and void.
- 2. Notwithstanding the provisions of paragraph 1 of this article, the multimodal transport operator may, with the agreement of the consignor, increase his responsibilities and obligations under this Convention.
- 3. The multimodal transport document shall contain a statement that the international multimodal transport is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the consignor or the consignee.
- 4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the multimodal transport operator must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The multimodal transport operator must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

Article 29: General average

1. Nothing in this Convention shall prevent the application of provisions in the multimodal transport contract or national law regarding the adjustment of general average, if and to the extent applicable.
2. With the exception of article 25, the provisions of this Convention relating to the liability of the multimodal transport operator for loss of or damage to the goods shall also determine whether the consignee may refuse contribution in general average and the liability of the multimodal transport operator to indemnify the consignee in respect of any such contribution made or any salvage paid.

Article 30: Other Conventions

1. This Convention does not modify the rights or duties provided for in the Brussels International Convention for the unification of certain rules relating to the limitation of the liability of owners of sea-going vessels of 25 August 1924; in the Brussels International Convention relating to the limitation of the liability of owners of sea-going ships of 10 October 1957; in the London Convention on limitation of liability for maritime claims of 19 November 1976; and in the Geneva Convention relating to the limitation of the liability of owners of inland navigation vessels (CLN) of 1 March 1973, including amendments to these Conventions, or national law relating to the limitation of liability of owners of sea-going ships and inland navigation vessels.
2. The provisions of articles 26 and 27 of this Convention do not prevent the application of the mandatory provisions of any other international convention relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States parties to such other convention. However, this paragraph does not affect the application of paragraph 3 of article 27 of this Convention.
3. No liability shall arise under the provisions of this Convention for damage caused by nuclear incident if the operator of a nuclear installation is liable for such damage:
 - (a) Under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or amendments thereto; or
 - (b) By virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.
4. Carriage of goods such as carriage of goods in accordance with the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road in article 2, or the Berne Convention of 7 February 1970 concerning the Carriage of Goods by Rail, article 2, shall not for States Parties to Conventions governing such carriage be considered as international multimodal transport within the meaning of article 1, paragraph 1, of this Convention, in so far as such States are bound to apply the provisions of such Conventions to such carriage of goods.

Article 31: Unit of account of monetary unit and conversion

1. The unit of account referred to in article 18 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in article 18 shall be converted into the national currency of a State according to the value of such currency on the date of the judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect on the date in question, for its operations and transactions. The value of a national currency in terms of the Special Drawing right of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.
2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows: with regard to the limits provided for in paragraph 1 of article 18, to 13,750 monetary units per package or other shipping unit or 41.25 monetary units per kilogram of gross weight of the goods, and with regard to the limit provided for in paragraph 3 of article 18, to 124 monetary units.
3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amount referred to in paragraph 2 of this article into national currency shall be made according to the law of the State concerned.
4. The calculation mentioned in the last sentence of paragraph 1 of this article and the conversion referred to in paragraph 3 of this article shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 18 as is expressed there in units of account.
5. Contracting States shall communicate to the depositary the manner of calculation pursuant to the last sentence of paragraph 1 of this article, or the result of the conversion pursuant to paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

PART VII: CUSTOMS MATTERS

Article 32: Customs transit

1. Contracting States shall authorise the use of the procedure of customs transit for international multimodal transport.
2. Subject to provisions of national law or regulations and intergovernmental agreements, the customs transit of goods in international multimodal transport shall be in

accordance with the rules and principles contained in articles I to VI of the annex to this Convention.

3. When introducing laws or regulations in respect of customs transit procedures relating to multimodal transport of goods, Contracting States should take into consideration articles I to VI of the annex to this Convention.

PART VIII: FINAL CLAUSES

Article 33: Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 34: Signature, ratification, acceptance, approval and accession

1. All States are entitled to become Parties to this Convention by:
 - (a) Signature not subject to ratification, acceptance or approval; or
 - (b) Signature subject to and followed by ratification, acceptance or approval; or
 - (c) Accession.
2. This Convention shall be open for signature as from 1 September the United Nations in New York. 1980 until and including 31 August 1981 at the Headquarters of
3. After 31 August 1981, this Convention shall be open for accession by all States which are not signatory States.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the depositary.
5. Organisations for regional economic integration, constituted by sovereign States members of UNCTAD, and which have competence to negotiate, conclude and apply international agreements in specific fields covered by this Convention, shall be similarly entitled to become Parties to this Convention in accordance with the provisions of paragraphs 1 to 4 of this article, thereby assuming in relation to other Parties to this Convention the rights and duties under this Convention in the specific fields referred to above.

Article 35: Reservations

No reservation may be made to this Convention.

Article 36: Entry into force

1. This Convention shall enter into force 12 months after the Governments of 30 States have either signed it not subject to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the depositary.

2. For each State which ratifies, accepts, approves or accedes to this Convention after the requirements for entry into force given in paragraph 1 of this article have been met, the Convention shall enter into force 12 months after the deposit by such State of the appropriate instrument.

Article 37: Date of application

Each Contracting State shall apply the provisions of this Convention to multimodal transport contracts concluded on or after the date of entry into force of this Convention in respect of that State.

Article 38: Rights and obligations under existing conventions

If, according to articles 26 or 27, judicial or arbitral proceedings are brought in a Contracting State in a case relating to international multimodal transport subject to this Convention which takes place between two States of which only one is a Contracting State, and if both these States are at the time of entry into force of this Convention equally bound by another international convention, the court or arbitral tribunal may, in accordance with the obligations under such convention, give effect to the provisions thereof.

Article 39: Revision and amendments

1. At the request of not less than one third of the Contracting States, the Secretary-General of the United Nations shall, after the entry into force of this Convention, convene a conference of the Contracting States for revising or amending it. The Secretary-General of the United Nations shall circulate to all Contracting States the texts of any proposals for amendments at least three months before the opening date of the conference.
2. Any decision by the revision conference, including amendments, shall be taken by a two thirds majority of the States present and voting. Amendments adopted by the conference shall be communicated by the depositary to all the contracting States for acceptance and to all the States signatories of the Convention for information.
3. Subject to paragraph 4 below, any amendment adopted by the conference shall enter into force only for those Contracting States which have accepted it, on the first day of the month following one year after its acceptance by two thirds of the Contracting States. For any State accepting an amendment after it has been accepted by two thirds of the Contracting States, the amendment shall enter into force on the first day of the month following one year after its acceptance by that State.
4. Any amendment adopted by the conference altering the amounts specified in article 18 and paragraph 2 of article 31 or substituting either or both the units defined in paragraphs 1 and 3 of article 31 by other units shall enter into force on the first day of the month following one year after its acceptance by two thirds of the Contracting States. Contracting States which have accepted the altered amounts or the substituted units shall apply them in their relationship with all Contracting States.

5. Acceptance of amendments shall be effected by the deposit of a formal instrument to that effect with the depositary.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of any amendment adopted by the conference shall be deemed to apply to the Convention as amended.

Article 40: Denunciation

1. Each Contracting State may denounce this Convention at any time after the expiration of a period of two years from the date on which this Convention has entered into force by means of a notification in writing addressed to the depositary.
2. Such denunciation shall take effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have affixed their signatures hereunder on the dates indicated [signatures are not reproduced here].

DONE at Geneva, this twenty-fourth day of May, one thousand nine hundred and eighty, in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

ANNEX

PROVISIONS ON CUSTOMS MATTERS RELATING TO INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS

Article I

For the purpose of this Convention:

“Customs transit procedure” means the customs procedure under which goods are transported under customs control from one customs office to another. “Customs office of destination” means any customs office at which a customs transit operation is terminated.

“Import/export duties and taxes” means customs duties and all other duties, taxes, fees or other charges which are collected on or in connection with the import/export of goods, but not including fees and charges which are limited in amount to the approximate cost of services rendered.

“Customs transit document” means a form containing the record of data entries and information required for the customs transit operation.

Article II

1. Subject to the provisions of the law, regulations and international conventions in force in their territories, Contracting States shall grant freedom of transit to goods in international multimodal transport.
2. Provided that the conditions laid down in the customs transit procedure used for the transit operation are fulfilled to the satisfaction of the customs authorities, goods in international multimodal transport:
 - (a) Shall not, as a general rule, be subject to customs examination during the journey except to the extent deemed necessary to ensure compliance with rules and regulations which the customs are responsible for enforcing. Flowing from this, the customs authorities shall normally restrict themselves to the control of customs seals and other security measures at points of entry and exit;
 - (b) Without prejudice to the application of law and regulations concerning public or national security, public morality or public health, shall not be subject to any customs formalities or requirements additional to those of the customs transit regime used for the transit operation.

Article III

In order to facilitate the transit of the goods, each Contracting State shall:

- (a) If it is the country of shipment, as far as practicable, take all measures to ensure the completeness and accuracy of the information required for the subsequent transit operations;
- (b) If it is the country of destination:
 - i. Take all necessary measures to ensure that goods in customs transit shall be cleared, as a rule, at the customs office of destination of the goods;
 - ii. Endeavour to carry out the clearance of goods at a place as near as is possible to the place of final destination of the goods, provided that national law and regulations do not require otherwise.

Article IV

1. Provided that the conditions laid down in the customs transit procedure are fulfilled to the satisfaction of the customs authorities, the goods in international multimodal transport shall not be subject to the payment of import/export duties and taxes or deposit in lieu thereof in transit countries.
2. The provisions of the preceding paragraph shall not preclude:
 - (a) The levy of fees and charges by virtue of national regulations on grounds of public security or public health;
 - (b) The levy of fees and charges, which are limited in amount to the approximate cost of services rendered, provided they are imposed under conditions of equality.

Article V

1. Where a financial guarantee for the customs transit operation is required, it shall be furnished to the satisfaction of the customs authorities of the transit country concerned in conformity with its national law and regulations and international conventions.
2. With a view to facilitating customs transit, the system of customs guarantee shall be simple, efficient, moderately priced and shall cover import/export duties and taxes chargeable and, in countries where they are covered by guarantees, any penalties due.

Article VI

1. Without prejudice to any other documents which may be required by virtue of an international convention or national law and regulations, customs authorities of transit countries shall accept the multimodal transport document as a descriptive part of the customs transit document.
2. With a view to facilitating customs transit, customs transit documents shall be aligned, as far as possible, with the layout reproduced below [not reproduced here].

CHAPTER FORTY

Agreement Establishing the Common Fund for Commodities

Geneva, 27 June 1980

INTRODUCTION

This Agreement answers, in part, the criticism that the various commodity agreements do not provide financial support to leverage price volatility and inequity. The issue of inequity in commodity prices and, therefore, in income for poor countries was articulated in the concept of the so-called New International Economic Order, prominent in the 1980s, but since defunct. This Agreement aims to promote economic co-operation, particularly between developing and developed countries. Membership of the Agreement and of the Fund it establishes is open to all members of the UN or any of its specialized agencies, of the International Atomic Energy Agency and of competent inter-governmental organizations serving regional integration. The funding of the Common Fund for Commodities comes from the subscriptions of members, cash deposits from associated international commodity organizations (ICOs), guaranteed capital or cash in lieu of capital guarantees, voluntary contributions, loans, stock warrants from associated ICOs and proceeds from it's the Fund's own expenditures, assistance or loans.

The Common Fund for Commodities was established under this Agreement in order to contribute to the financing of international buffer stocks, as well as to internationally supervised national buffer stocks. It is also to fund activities such as research, development and the promotion of recognized commodities. The Fund has a Governing Council, made up of the representatives of members. It is the highest decision-making body, with all the powers of the Fund vested in it. With the exception of matters such as the subscription of members, membership itself and loan determinations, the Council can delegate its functions to the Executive Board. The Governing Council elects 28 Executive Directors to serve on the Board. The Executive Board is responsible for the operations of the Fund and reports to the Council. The Managing Director, elected by the Council, appoints staff and manages the Secretariat. All the organs of the Fund, but in particular the Council, are to be advised on technical and economic details by a Consultative Committee.

A crucial emphasis of the Fund Agreement is on the relations between the Fund and the ICOs. Funding is only available to ICOs set up to implement an international

commodity arrangement or agreement (ICA). Any such organization must first conclude an association agreement with the Fund, under which funding would be disbursed. Such agreement must be on joint buffer-stock financing by producers and consumers. There must be due deference to the autonomy of each party to any such financing arrangement, but one agreement must be fulfilled and outstanding debt paid before any new agreement is entered into or the existing one renewed. The Fund is prohibited from direct involvement with the commodity markets or exchanges, but it can dispose of stocks that have been forfeited by an ICO in default of financial obligations to the Fund. The Fund is required to co-operate with associated ICOs to protect the interests of developing, importing countries where they are adversely affected by policies such as the UN's Integrated Programme for Commodities.

This is a much more robust Agreement than many of the commodity agreements. This may, in part, be due to the timing of the Agreement and the focus on financing. It complements some of the weaknesses of the commodity agreements. However, the Fund management retains a large degree of discretion and control over the quantity, the subject and the manner of disbursement, and there is a greater contribution from developed countries (therefore, some higher leverage), so the Common Fund for Commodities may not rigorously serve the overall interests of the developing countries. This is particularly so for the producer countries, as in areas such as value addition through processing. The long-term solution to commodity volatility and low returns remains diversification of the productive base and value enhancement through processing.

The treaty came into force on 19 June 1989. By 2004 there were 109 parties to the Agreement, including three institutional members (the European Community, the African Union and the Common Market for Eastern and Southern Africa—COMES A).

AGREEMENT ESTABLISHING THE COMMON FUND FOR COMMODITIES*

THE PARTIES,

DETERMINED to promote economic co-operation and understanding among all States, particularly between developed and developing countries, based on the principles of equity and sovereign equality and thereby to contribute to the establishment of a New International Economic Order,

RECOGNIZING the need for improved forms of international cooperation in the field of commodities as an essential condition for the establishment of a New International Economic Order, aimed at promoting economic and social development, particularly of developing countries,

DESIROUS of promoting global action to improve market structures in international trade in commodities of interest to developing countries,

RECALLING resolution 93(IV) on the Integrated Programme for Commodities adopted at the fourth session of the United Nations Conference on Trade and Development (hereinafter referred to as UNCTAD),

HAVE AGREED to establish hereby the Common Fund for Commodities, which shall operate in accordance with the following pro

CHAPTER I: DEFINITIONS

Article 1 Definitions

For the purposes of this Agreement:

1. “Fund” means the Common Fund for Commodities established by this Agreement.
2. “International Commodity Agreement or Arrangement” (hereinafter referred to as ICA) means any intergovernmental agreement or arrangement to promote international co-operation in a commodity, the parties to which include producers and consumers covering the bulk of world trade in the commodity concerned.
3. “International Commodity Organization” (hereinafter referred to as ICO) means the organization established by an ICA to implement the provisions of the ICA.
4. “Associated ICO” means an ICO which is associated with the Fund pursuant to article 7.
5. “Association Agreement” means the agreement entered into between an ICO and the Fund pursuant to article 7.
6. “Maximum Financial Requirements” (hereinafter referred to as MFR) means the maximum amount of funds that may be drawn and borrowed by an Associated ICO from the Fund, to be determined in accordance with article 17, paragraph 8.
7. “International Commodity Body” (hereinafter referred to as ICB) means a body designated in accordance with article 7, paragraph 9.
8. “Unit of Account” means the unit of account of the Fund as defined in accordance with article 8, paragraph 1.
9. “Usable Currencies” means:
 - (a) the deutsche mark, the French franc, the Japanese yen, the pound sterling, the United States dollar and any other currency which has been designated from time to time by a competent international monetary organization as being in fact widely used to make payments for international transactions and widely traded in the principal exchange markets, and
 - (b) any other freely available and effectively usable currency which the Executive Board may designate by a Qualified Majority after the approval of the country whose currency the Fund proposes to designate as such. The Governing Council shall designate a competent international monetary organization under (a) above and shall adopt by a Qualified Majority rules and regulations regarding the designation of currencies under (b) above, in accordance with prevailing international monetary practice. Currencies may be removed from the list of Usable Currencies by the Executive Board by a Qualified Majority.
10. “Directly Contributed Capital” means capital specified in article 9, paragraph 1(a) and paragraph 4.
11. “Paid-in Shares” means the shares of Directly Contributed Capital specified in article 9, paragraph 2(a), and article 10, paragraph 2.
12. “Payable Shares” means the shares of Directly Contributed Capital specified in article 9, paragraph 2(b), and article 10, paragraph 2(b).

13. "Guarantee Capital" means capital provided to the Fund, pursuant to article 14, paragraph 4, by Members of the Fund participating in an Associated ICO.
14. "Guarantees" means guarantees provided to the Fund, pursuant to article 14, paragraph 5, by participants in an Associated ICO which are not Members of the Fund.
15. "Stock Warrants" means stock warrants, warehouse receipts or other documents of title evidencing ownership of commodity stocks.
16. "Total voting power" means the sum of the votes held by all the Members of the Fund.
17. "Simple Majority" means more than half of all votes cast.
18. "Qualified Majority" means at least two thirds of all votes cast.
19. "Highly Qualified Majority" means at least three fourths of all votes cast.
20. "Votes cast" means affirmative and negative votes.

CHAPTER II: OBJECTIVES AND FUNCTIONS

Article 2 Objectives

The objectives of the Fund shall be:

- (a) To serve as a key instrument in attaining the agreed objectives of the Integrated Programme for Commodities as embodied in resolution 93(IV) of UNCTAD;
- (b) To facilitate the conclusion and functioning of ICAs, particularly concerning commodities of special interest to developing countries.

Article 3 Functions

In fulfilment of its objectives, the Fund shall exercise the following functions:

- (a) To contribute, through its First Account as hereinafter provided, to the financing of international buffer stocks and internationally co-ordinated national stocks, all within the framework of ICAs;
- (b) To finance, through its Second Account, measures in the field of commodities other than stocking, as hereinafter provided;
- (c) To promote co-ordination and consultation through its Second Account with regard to measures in the field of commodities other than stocking, and their financing, with a view to providing a commodity focus.

CHAPTER III: MEMBERSHIP

Article 4 Eligibility

Membership in the Fund shall be open to:

- (a) All States Members of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency; and

- (b) Any intergovernmental organization of regional economic integration which exercises competence in fields of activity of the Fund. Such intergovernmental organizations shall not be required to undertake any financial obligations to the Fund; nor shall they hold any votes.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of the Fund (<http://www.common-fund.org/>).

Article 5 Members

The Members of the Fund (hereinafter referred to as Members) shall be:

- (a) Those States which have ratified, accepted or approved this Agreement in accordance with article 54;
- (b) Those States which have acceded to this Agreement in accordance with article 56;
- (c) Those intergovernmental organizations referred to in article 4(b) which have ratified, accepted or approved this Agreement in accordance with article 54;
- (d) Those intergovernmental organizations referred to in article 4(b) which have acceded to this Agreement in accordance with article 56.

Article 6 Limitation of liability

No Member shall be liable, by reason only of its membership, for acts or obligations of the Fund.

CHAPTER IV: RELATIONSHIP OF ICOS AND ICBS WITH THE FUND

Article 7 Relationship of ICOs and ICBs with the Fund

1. The facilities of the Fund's First Account shall be used only by ICOs established to implement the provisions of ICAs providing for either international buffer stocks or internationally co-ordinated national stocks, and which have concluded an Association Agreement. The Association Agreement shall comply with the terms of this Agreement and of any rules and regulations consistent therewith to be adopted by the Governing Council.
2. An ICO established to implement the provisions of an ICA which provides for international buffer stocks may become associated with the Fund for the purposes of the First Account, provided that the ICA is negotiated or renegotiated on, and conforms to, the principle of joint buffer stock financing by producers and consumers participating therein. For the purposes of this Agreement, levy-financed ICAs shall be eligible for association with the Fund.
3. A proposed Association Agreement shall be presented by the Managing Director to the Executive Board and, with the recommendation of the Board, to the Governing Council for approval by a Qualified Majority.

4. In carrying out the provisions of the Association Agreement between the Fund and an Associated ICO each institution shall respect the autonomy of the other. The Association Agreement shall specify the mutual rights and obligations of the Fund and the Associated ICO, in terms consistent with the relevant provisions of this Agreement.
5. An Associated ICO shall be entitled to borrow from the Fund through its First Account without prejudice to its eligibility to obtain financing from the Second Account, provided that the Associated ICO and its participants have performed and are duly performing their obligations to the Fund.
6. An Association Agreement shall provide for a settlement of accounts between the Associated ICO and the Fund before any renewal of the Association Agreement.
7. An Associated ICO may, if the Association Agreement so provides and with the consent of the preceding Associated ICO covering the same commodity, succeed to the rights and obligations of the preceding Associated ICO.
8. The Fund shall not intervene directly in commodity markets. However, the Fund may dispose of commodity stocks only pursuant to article 17, paragraphs 15 to 17.
9. For the purpose of the Second Account, the Executive Board shall from time to time designate appropriate commodity bodies, including ICOs, whether or not they are Associated ICOs, as ICBs, provided that they meet the criteria set out in schedule C.

CHAPTER V: CAPITAL AND OTHER RESOURCES

Article 8 Unit of Account and currencies

1. The Unit of Account of the Fund shall be as defined in schedule F.
2. The Fund shall hold, and conduct its financial transactions in, Usable Currencies. Except as provided in article 16, paragraph 5(b), no Member shall maintain or impose restrictions on the holding, use or exchange by the Fund of Usable Currencies deriving from:
 - (a) Payment of subscriptions of Shares of Directly Contributed Capital;
 - (b) Payment of Guarantee Capital, cash in lieu of Guarantee Capital, Guarantees or cash deposits resulting from the association of ICOs with the Fund;
 - (c) Payment of voluntary contributions;
 - (d) Borrowing;
 - (e) Disposal of forfeited stocks, pursuant to article 17, paragraphs 15 to 17;
 - (f) Payment on account of principal, income, interest or other charges in respect of loans or investments made out of any of the funds referred to in this paragraph.
3. The Executive Board shall determine the method of valuation of Usable Currencies, in terms of the Unit of Account, in accordance with prevailing international monetary practice.

Article 9 Capital resources

1. The capital of the Fund shall consist of:

- (a) Directly Contributed Capital to be divided into 47,000 Shares to be issued by the Fund, having a par value of 7,566.47145 Units of Account each and a total value of 355,624,158 Units of Account; and
 - (b) Guarantee Capital provided directly to the Fund in accordance with article 14, paragraph 4.
2. The Shares to be issued by the Fund shall be divided into:
 - (a) 37,000 Paid-in Shares; and
 - (b) 10,000 Payable Shares.
3. Shares of Directly Contributed Capital shall be available for subscription only by Members in accordance with the provisions of article 10.
4. The Shares of Directly Contributed Capital:
 - (a) Shall, if necessary, be increased by the Governing Council upon the accession of any State under article 56;
 - (b) May be increased by the Governing Council in accordance with article 12;
 - (c) Shall be increased by the amount needed pursuant to article 17, paragraph 14.
5. If the Governing Council makes available for subscription the unsubscribed Shares of Directly Contributed Capital pursuant to article 12, paragraph 3, or increases the Shares of Directly Contributed Capital pursuant to paragraph 4(b) or 4(c) of this article, each Member shall have the right, but shall not be required, to subscribe such Shares.

Article 10 Subscription of shares

1. Each Member referred to in article 5(a) shall subscribe, as set forth in schedule A:
 - (a) 100 Paid-in Shares; and
 - (b) Any additional Paid-in and Payable Shares.
2. Each Member referred to in article 5(b) shall subscribe:
 - (a) 100 Paid-in Shares; and
 - (b) Any additional Paid-in and Payable Shares to be determined by the Governing Council by a Qualified Majority in a manner consistent with the allocation of Shares in schedule A and in accordance with the terms and conditions agreed pursuant to article 56.
3. Each Member may allocate to the Second Account a part of its subscription under paragraph 1(a) of this article with a view to an aggregate allocation to the Second Account, on a voluntary basis, of not less than 52,965,300 Units of Account.
4. Shares of Directly Contributed Capital shall not be pledged or encumbered by Members in any manner whatsoever and shall be transferable only to the Fund.

Article 11 Payment of shares

1. Payments of Shares of Directly Contributed Capital subscribed by each Member shall be made:

- (a) In any Usable Currency at the rate of conversion between that Usable Currency and the Unit of Account as at the date of payment; or
- (b) In a Usable Currency selected by that Member at the time of deposit of its instrument of ratification, acceptance or approval, and at the rate of conversion between that Usable Currency and the Unit of Account as at the date of this Agreement. The Governing Council shall adopt rules and regulations covering the payment of subscriptions in Usable Currencies in the case of designation of additional Usable Currencies or removal of Usable Currencies from the list of Usable Currencies in accordance with article 1, definition 9.

At the time of deposit of its instrument of ratification, acceptance or approval, each Member shall select one of the procedures above, which shall apply to all such payments.

2. When undertaking any review in accordance with article 12, paragraph 2, the Governing Council shall review the operation of the method of payment referred to in paragraph 1 of this article, in the light of exchange-rate fluctuations, and, taking into account developments in the practice of international lending institutions, shall decide by a Highly Qualified Majority on changes, if any, in the method of payment of subscriptions of any additional Shares of Directly Contributed Capital subsequently issued in accordance with article 12, paragraph 3.

3. Each Member referred to in article 5(a) shall:

- (a) Pay 30 per cent of its total subscription of Paid-in Shares within 60 days after the entry into force of this Agreement, or within 30 days after the date of deposit of its instrument of ratification, acceptance or approval, whichever is later;
- (b) One year after the payment provided for in subparagraph (a) above, pay 20 per cent of its total subscription of Paid-in Shares and deposit with the Fund irrevocable, non-negotiable, non-interest-bearing promissory notes in an amount of 10 per cent of its total subscription of Paid-in Shares. Such notes shall be encashed as and when decided by the Executive Board;
- (c) Two years after the payment provided for in subparagraph (a) above, deposit with the Fund irrevocable, non-negotiable, non-interest-bearing promissory notes in an amount of 40 per cent of its total subscription of Paid-in Shares.

Such notes shall be encashed as and when decided by the Executive Board by a Qualified Majority, having due regard to the operational needs of the Fund, except that the promissory notes in respect of Shares allocated to the Second Account shall be encashed as and when decided by the Executive Board.

4. The amount subscribed by each Member for Payable Shares shall be subject to call by the Fund only as provided in article 17, paragraph 12.

5. Calls on Shares of Directly Contributed Capital shall be made pro rata from all Members with respect to whichever class or classes of Shares are being called, except as provided for in paragraph 3(c) of this article.

6. Special arrangements for payment of subscriptions of Shares of Directly Contributed Capital by the least developed countries shall be as set forth in schedule B.
7. Subscriptions of Shares of Directly Contributed Capital may, when relevant, be paid by the appropriate agencies of Members concerned.

Article 12 Adequacy of subscriptions of Shares of Directly Contributed Capital

1. In the event that 18 months after the entry into force of this Agreement subscriptions of Shares of Directly Contributed Capital fall short of the amount specified in article 9, paragraph 1(a), the adequacy of the subscriptions shall be reviewed by the Governing Council as soon as possible thereafter.
2. The Governing Council shall further review, at such intervals as it may deem appropriate, the adequacy of the Directly Contributed Capital available to the First Account. The first such review shall take place not later than the end of the third year after the entry into force of this Agreement.
3. As a result of any review under paragraph 1 or 2 of this article, the Governing Council may decide to make available for subscription unsubscribed Shares or to issue additional Shares of Directly Contributed Capital on a basis of assessment to be decided by the Governing Council.
4. Decisions by the Governing Council under this article shall be taken by a Highly Qualified Majority.

Article 13 Voluntary contributions

1. The Fund may accept voluntary contributions from Members and other sources. Such contributions shall be paid in Usable Currencies.
2. The target for the initial voluntary contributions for use in the Second Account shall be 211,861,200 Units of Account, in addition to the allocation made in accordance with article 10, paragraph 3.
3.
 - (a) The Governing Council shall review the adequacy of the resources of the Second Account not later than the end of the third year after the entry into force of this Agreement. In the light of the activities of the Second Account, the Governing Council may also undertake such a review at such other times as it decides.
 - (b) In the light of any such reviews, the Governing Council may decide to replenish the resources of the Second Account and make the necessary arrangements. Any such replenishments shall be voluntary for Members and in accordance with this Agreement.
4. Voluntary contributions shall be made without restrictions as to their use by the Fund, except as to their designation by the contributor for use in the First or Second Account.

Article 14 Resources deriving from the association of ICOs with the Fund

A. Cash deposits

1. Upon the association of an ICO with the Fund, the Associated ICO shall, except as specified in paragraph 2 of this article, deposit with the Fund in cash in Usable Currencies, and for the account of that Associated ICO, one third of its MFR. Such deposit shall be made in full or in instalments as the Associated ICO and the Fund may agree, taking into account all relevant factors, including the Fund's liquidity position, the need for maximizing the financial benefit to be derived from the availability of cash deposits of Associated ICOs and the capacity of the Associated ICO concerned to raise the cash required for meeting its deposit obligation.
2. An Associated ICO which is holding stocks at the time of its association with the Fund may meet a part or all of its deposit obligation under paragraph 1 of this article by pledging to, or assigning in trust for, the Fund Stock Warrants of equivalent value.
3. An Associated ICO may deposit with the Fund, on mutually acceptable terms and conditions, any cash surplus, in addition to deposits made under paragraph 1 of this article.

B. Guarantee Capital and Guarantees

4. Upon the association of an ICO with the Fund, Members participating in that Associated ICO shall provide directly to the Fund Guarantee Capital on a basis determined by the Associated ICO and satisfactory to the Fund. The aggregate value of the Guarantee Capital, and any Guarantees or cash provided under paragraph 5 of this article shall equal two thirds of the MFR of that Associated ICO, except as provided for in paragraph 7 of this article. Guarantee Capital may, when relevant, be provided by the appropriate agencies of the Members concerned, on a basis satisfactory to the Fund.
5. If participants in an Associated ICO are not Members, that Associated ICO shall deposit cash with the Fund, in addition to the cash referred to in paragraph 1 of this article, in the amount of the Guarantee Capital which such participants would have provided had they been Members; except that the Governing Council may by a Highly Qualified Majority permit that Associated ICO to arrange either for the provision of additional Guarantee Capital of the same amount by Members participating in that Associated ICO, or for the provision of Guarantees of the same amount by participants in that Associated ICO which are not Members. Such Guarantees shall carry financial obligations comparable to those of Guarantee Capital and shall be in a form satisfactory to the Fund.
6. Guarantee Capital and Guarantees shall be subject to call by the Fund only in accordance with article 17, paragraphs 11 to 13. Payment of such Guarantee Capital and Guarantees shall be made in Usable Currencies.
7. If an Associated ICO is meeting its deposit obligation in instalments pursuant to paragraph 1 of this article, such Associated ICO and its participants shall, upon the payment of each instalment, provide, as appropriate, Guarantee Capital, cash or

Guarantees, in accordance with paragraph 5 of this article, which in the aggregate shall equal twice the amount of that instalment.

C. Stock Warrants

8. An Associated ICO shall pledge to, or assign in trust for, the Fund all Stock Warrants of commodities purchased with the proceeds of withdrawals of cash deposits made under paragraph 1 of this article, or with the proceeds of loans obtained from the Fund, as security for the payment by the Associated ICO of its obligations to the Fund. The Fund shall dispose of stocks only in accordance with article 17, paragraphs 15 to 17. Upon the sale of the commodities evidenced by such Stock Warrants, the Associated ICO shall apply the proceeds of such sales first to repay the balance due on any loan to the Associated ICO from the Fund and then to meet its cash deposit obligation in accordance with paragraph 1 of this article.
9. All Stock Warrants pledged to, or assigned in trust for, the Fund shall be valued, for the purposes of paragraph 2 of this article, on a basis specified in rules and regulations adopted by the Governing Council.

Article 15 Borrowings

The Fund may borrow in accordance with article 16, paragraph 5(a), provided that the total outstanding amount of borrowings by the Fund for its First Account operations shall not at any time exceed an amount representing the aggregate of:

- (a) The uncalled portion of Payable Shares;
- (b) The uncalled Guarantee Capital and Guarantees of participants in Associated ICOs under article 14, paragraphs 4 to 7; and
- (c) The Special Reserve established pursuant to article 16, paragraph 4.

CHAPTER VI: OPERATIONS

Article 16 General provisions

A. Use of resources

1. The resources and facilities of the Fund shall be used exclusively to achieve its objectives and fulfil its functions.

B. Two accounts

2. The Fund shall establish, and maintain its resources in, two separate Accounts: a First Account, with resources as provided for in article 17, paragraph 1, to contribute to the financing of commodity stocking; and a Second Account, with resources as provided for in article 18, paragraph 1, to finance measures in the field of commodities other than stocking, without jeopardizing the integral unity of the Fund. Such separation of Accounts shall be reflected in the financial statements of the Fund.

3. The resources of each Account shall be held, used, committed, invested or otherwise disposed of entirely separately from the resources of the other Account. The resources of one Account shall not be charged with losses, or used to discharge liabilities, arising out of the operations or other activities of the other Account.

C. The Special Reserve

4. The Governing Council shall establish, out of the earnings of the First Account, net of administrative expenses, a Special Reserve, not exceeding 10 per cent of Directly Contributed Capital allocated to the First Account, for meeting liabilities arising from First Account borrowings, as provided for in article 17, paragraph 12. Notwithstanding the provisions of paragraphs 2 and 3 of this article, the Governing Council shall decide by a Highly Qualified Majority how to dispose of any net earnings not allocated to the Special Reserve.

D. General powers

5. In addition to any powers set forth elsewhere in this Agreement, the Fund may exercise the following powers in connexion with its operations, subject to and consistent with general operating principles and the terms of this Agreement:
 - (a) To borrow from Members, international financial institutions and, for First Account operations, in capital markets, in accordance with the law of the country in which the borrowing is made, provided that the Fund shall have obtained the approval of such country and of any country in the currency of which the borrowing is denominated;
 - (b) To invest funds at any time not needed for its operations in such financial instruments as the Fund may determine, in accordance with the law of the country in whose territory the investment is made;
 - (c) To exercise such other powers necessary to further its objectives and functions and to implement the provisions of this Agreement.

E. General operating principles

6. The Fund shall operate according to the provisions of this Agreement and any rules and regulations which the Governing Council may adopt pursuant to article 20, paragraph 6.
7. The Fund shall make arrangements to ensure that the proceeds of any loan or grant made or participated in by the Fund is used only for the purposes for which the loan or grant was made.
8. Every security issued by the Fund shall bear on its face a conspicuous statement to the effect that it is not the obligation of any Member unless expressly stated otherwise on the security.
9. The Fund shall seek to maintain reasonable diversification in its investments.
10. The Governing Council shall adopt suitable rules and regulations for the procurement of goods and services from the resources of the Fund. Such rules and regulations shall conform, as a general rule, to the principles of international competitive bidding among suppliers in the territories of Members, and shall give

appropriate preference to experts, technicians and suppliers from developing countries Members of the Fund.

11. The Fund shall establish close working relationships with international and regional financial institutions and may, as is practicable, establish such relationships with national entities of Members, whether public or private, which are concerned with investment of development funds in commodity development measures. The Fund may participate in co-financing with such institutions.
12. In its operations and within its sphere of competence, the Fund shall co-operate with ICBs and Associated ICOs in the protection of the interests of developing importing countries, if such countries are adversely affected by measures under the Integrated Programme for Commodities.
13. The Fund shall operate in a prudent manner, shall take actions it deems necessary to conserve and safeguard its resources and shall not engage in currency speculation.

Article 17 The First Account

A. Resources

1. The resources of the First Account shall consist of:
 - (a) Subscriptions by Members of Shares of Directly Contributed Capital, except such part of their subscriptions as may be allocated to the Second Account in accordance with article 10, paragraph 3;
 - (b) Cash deposits from Associated ICOs pursuant to article 14, paragraphs 1 to 3;
 - (c) Guarantee Capital, cash in lieu of Guarantee Capital and Guarantees provided by participants in Associated ICOs pursuant to article 14, paragraphs 4 to 7;
 - (d) Voluntary contributions allocated to the First Account;
 - (e) Proceeds of borrowings pursuant to article 15;
 - (f) Net earnings which may accrue from operations of the First Account;
 - (g) The Special Reserve referred to in article 16, paragraph 4;
 - (h) Stock Warrants from Associated ICOs pursuant to article 14, paragraphs 8 and 9.

B. Principles of First Account operations

2. The Executive Board shall approve the terms of borrowing arrangements for First Account operations.
3. Directly Contributed Capital allocated to the First Account shall be employed:
 - (a) To enhance the creditworthiness of the Fund in respect of its First Account operations;
 - (b) As working capital, to meet the short-term liquidity needs of the First Account; and
 - (c) To provide revenues to cover the administrative expenses of the Fund.

4. The Fund shall charge interest on loans made to Associated ICOs at rates as low as are consistent with its ability to obtain finance and with the need to cover its costs of borrowing for funds lent to such Associated ICOs.
5. The Fund shall pay interest on all cash deposits and other cash balances of Associated ICOs at appropriate rates consistent with the return on its financial investments, and taking into account the rate charged on loans to Associated ICOs and the cost of borrowing for First Account operations.
6. The Governing Council shall adopt rules and regulations laying down the operating principles within which it shall determine interest rates charged and paid in accordance with paragraphs 4 and 5 of this article. In so doing the Governing Council shall be guided by the need to maintain the financial viability of the Fund and shall bear in mind the principle of non-discriminatory treatment as between Associated ICOs.

C. The MFR

7. An Association Agreement shall specify the MFR of the Associated ICO and the steps to be taken in the event of modification of its MFR.
8. The MFR of an Associated ICO shall include the acquisition cost of stocks, determined by multiplying the authorized size of its stocks as specified in the Association Agreement by an appropriate purchase price as determined by that Associated ICO. In addition, an Associated ICO may include in its MFR specified carrying costs, exclusive of interest charges on loans, in an amount not exceeding 20 per cent of the acquisition cost.

D. Obligations to the Fund of Associated ICOs and of their participants

9. An Association Agreement shall provide, *inter alia*:
 - (a) For the manner in which the Associated ICO and its participants shall undertake the obligations to the Fund specified in article 14 in respect of deposits, Guarantee Capital, cash in lieu of Guarantee Capital, and Guarantees, and Stock Warrants;
 - (b) That the Associated ICO shall not borrow from any third party for its buffer stocking operations, unless the Associated ICO and the Fund have reached mutual agreement on a basis approved by the Executive Board;
 - (c) That the Associated ICO shall at all times be responsible, and liable to the Fund, for the maintenance and preservation of stocks for which Stock Warrants have been pledged to, or assigned in trust for, the Fund, and shall maintain adequate insurance on, and appropriate security and other arrangements with respect to, the holding and handling of such stocks;
 - (d) That the Associated ICO shall enter into appropriate credit agreements with the Fund specifying the terms and conditions of any loan from the Fund to that Associated ICO, including the arrangements for repayment of principal and payment of interest;
 - (e) That the Associated ICO shall, as appropriate, keep the Fund informed of conditions and developments in the commodity markets with which the Associated ICO is concerned.

E. Obligations of the Fund to Associated ICOs

10. An Association Agreement shall also provide, inter alia:

- (a) That, subject to the provisions of paragraph 11(a) of this article, the Fund shall provide for withdrawal by the Associated ICO on demand, in whole or in part, of the amounts deposited pursuant to article 14, paragraphs 1 and 2;
- (b) That the Fund shall make loans to the Associated ICO in an aggregate principal amount not exceeding the sum of the uncalled Guarantee Capital, cash in lieu of Guarantee Capital, and Guarantees provided by participants in the Associated ICO by virtue of their participation in that Associated ICO pursuant to article 14, paragraphs 4 to 7;
- (c) That withdrawals and borrowings by each Associated ICO pursuant to subparagraphs (a) and (b) above shall be used only to meet stocking costs included in the MFR in accordance with paragraph 8 of this article. Not more than any amount included in the MFR of each Associated ICO to meet specified carrying costs in accordance with paragraph 8 of this article shall be used to meet such costs;
- (d) That, except as provided for in paragraph 11(c) of this article, the Fund shall promptly make Stock Warrants available to the Associated ICO for use in its buffer stock sales;
- (e) That the Fund shall respect the confidentiality of information provided by the Associated ICO.

F. Default of Associated ICOs

11. In the event of imminent default by an Associated ICO on any of its borrowings from the Fund, the Fund shall consult with that Associated ICO on measures to avoid such a default. To meet any default by an Associated ICO, the Fund shall have recourse to the following resources, in the following order, up to the amount of the default:

- (a) Any cash of the defaulting Associated ICO held in the Fund;
- (b) Proceeds of pro rata calls of Guarantee Capital and Guarantees provided by participants in the defaulting Associated ICO by virtue of their participation in that Associated ICO;
- (c) Subject to paragraph 15 of this article, any Stock Warrants pledged to, or assigned in trust for, the Fund by the defaulting Associated ICO.

G. Liabilities arising from First Account borrowings

12. In the event that the Fund cannot otherwise meet its liabilities in respect of its First Account borrowings, it shall meet such liabilities out of the following resources in the following order; provided that, if an Associated ICO shall have failed to meet its obligations towards the Fund, the Fund shall have already, to the fullest extent possible, made use of the resources referred to in paragraph 11 of this article;

- (a) The Special Reserve;
- (b) Proceeds of subscriptions of Paid-in Shares allocated to the First Account;

- (c) Proceeds of subscriptions of Payable Shares;
- (d) Proceeds of pro rata calls of Guarantee Capital and Guarantees provided by participants in a defaulting Associated ICO by virtue of their participation in other Associated ICOs.

Payments made by participants in Associated ICOs in accordance with (d) above shall be reimbursed by the Fund as soon as possible from resources provided in accordance with paragraphs 11, 15, 16 and 17 of this article; any such resources remaining after such reimbursement shall be used to reconstitute, in reverse order, the resources referred to in (a), (b) and (c) above.

- 13. The proceeds of pro rata calls of all Guarantee Capital and Guarantees shall be used by the Fund, following recourse to the resources listed in paragraph 12(a), (b) and (c) of this article, to meet any of its liabilities other than liabilities arising from the default of an Associated ICO.
- 14. To enable the Fund to meet any liabilities which may be outstanding after recourse to the resources mentioned in paragraphs 12 and 13 of this article, the Shares of Directly Contributed Capital shall be increased by the amount needed to meet such liabilities and the Governing Council shall be convened in an emergency session to decide upon the modalities for such increase.

H. Disposal by the Fund of forfeited stocks

- 15. The Fund shall be free to dispose of commodity stocks forfeited to it by a defaulting Associated ICO pursuant to paragraph 11 of this article, provided that the Fund shall seek to avoid distress sales of such stocks by postponing the sales to the extent consistent with the need to avoid default on the Fund's own obligations.
- 16. The Executive Board shall at appropriate intervals review disposals of stocks to which the Fund has recourse in accordance with paragraph 11(c) of this article, in consultation with the Associated ICO concerned, and shall decide by a Qualified Majority whether to postpone such disposals.
- 17. The proceeds of such disposals of stocks shall be used first to meet any liabilities of the Fund incurred in its First Account borrowings in respect of the Associated ICO concerned, and then to reconstitute, in the reverse order, the resources listed under paragraph 12 of this article.

Article 18 The Second Account

A. Resources

- 1. The resources of the Second Account shall consist of:
 - (a) The part of the Directly Contributed Capital allocated to the Second Account in accordance with article 10, paragraph 3;
 - (b) Voluntary contributions made to the Second Account;
 - (c) Such net income as may accrue from time to time in the Second Account;
 - (d) Borrowings;
 - (e) Any other resources placed at the disposal of, received or acquired by, the Fund for its Second Account operations pursuant to this Agreement.

B. Financial limits for the Second Account

2. The aggregate amount of loans and grants made, and of participations therein, by the Fund through its Second Account operations shall not exceed the aggregate amount of the resources of the Second Account.

C. Principles of Second Account operations

3. The Fund may make or participate in loans and, except for that portion of the Directly Contributed Capital allocated to the Second Account, grants for the financing of measures in the field of commodities other than stocking from the resources of the Second Account, subject to the provisions of this Agreement and in particular to the following terms and conditions:
 - (a) The measures shall be commodity development measures, aimed at improving the structural conditions in markets and at enhancing the long-term competitiveness and prospects of particular commodities. Such measures shall include research and development, productivity improvements, marketing and measures designed to assist, as a rule by means of joint financing or through technical assistance, vertical diversification, whether undertaken alone, as in the case of perishable commodities and other commodities whose problems cannot be adequately solved by stocking, or in addition to and in support of stocking activities.
 - (b) The measures shall be jointly sponsored and followed up by producers and consumers within the framework of an ICB.
 - (c) The operations of the Fund in the Second Account may take the form of loans and grants to an ICB or an agency thereof, or to a Member or Members designated by such ICB on terms and conditions which the Executive Board decides are appropriate, having regard to the economic situation of the ICB or the Member or Members concerned and the nature and requirements of the proposed operation. Such loans may be covered by governmental or other suitable guarantees from the ICB or the Member or Members designated by such ICB.
 - (d) The ICB sponsoring a project to be financed by the Fund through its Second Account shall submit to the Fund a detailed written proposal specifying the purpose, duration, location and cost of the project and the agency responsible for its execution.
 - (e) Before any loan or grant is made, the Managing Director shall present to the Executive Board a detailed appraisal of the proposal along with his recommendations and the advice of the Consultative Committee, as appropriate, in accordance with article 25, paragraph 2. Decisions with regard to the selection and approval of proposals shall be made by the Executive Board by a Qualified Majority in accordance with this Agreement and any rules and regulations for the operations of the Fund adopted pursuant thereto.
 - (f) For the appraisal of project proposals presented to it for financing, the Fund shall, as a general rule, use the services of international or regional institutions and may, where appropriate, use the services of other competent agencies and consultants specialized in the field. The Fund may also entrust to such

institutions the administration of loans or grants and the supervision of the implementation of projects financed by it. Such institutions, agencies and consultants shall be selected according to rules and regulations adopted by the Governing Council.

- (g) In making or participating in any loan, the Fund shall pay due regard to the prospects that the borrower and any guarantor shall be in a position to meet their obligations to the Fund in respect of such transactions.
- (h) The Fund shall enter into an agreement with the ICB, an agency thereof, the Member or Members concerned, specifying the amounts, terms and conditions of the loan or grant and providing, inter alia, for any governmental or other appropriate guarantees in accordance with this Agreement and with any rules and regulations established by the Fund.
- (i) Funds to be provided under any financing operation shall be made available to the recipient only to meet expenses in connexion with the project as they are actually incurred.
- (j) The Fund shall not refinance projects initially financed from other sources.
- (k) Loans shall be repayable in the currency or currencies loaned.
- (l) The Fund shall as far as possible avoid duplication of its Second Account activities with existing international and regional financial institutions, but may participate in co-financing with such institutions.
- (m) In determining its priorities for the use of the resources of the Second Account, the Fund shall give due emphasis to commodities of interest to the least developed countries.
- (n) In considering projects for the Second Account due emphasis shall be given to the commodities of interest to developing countries, particularly those of small producers-exporters.
- (o) The Fund shall pay due regard to the desirability of not using a disproportionate amount of its Second Account resources for the benefit of any particular commodity.

D. Borrowing for the Second Account

4. The Fund's borrowing for the Second Account, under article 16, paragraph 5(a), shall be in accordance with rules and regulations to be adopted by the Governing Council and shall be subject to the following:
 - (a) Such borrowing shall be on concessional terms to be specified in rules and regulations to be adopted by the Fund and its proceeds shall not be re-lent on terms which are more concessional than those on which they are acquired.
 - (b) For the purposes of accounting, the proceeds of the borrowing shall be placed in a loan account whose resources shall be held, used, committed, invested or otherwise disposed of, entirely separately from other resources of the Fund, including the other resources of the Second Account.
 - (c) The other resources of the Fund, including other resources of the Second Account, shall not be charged with losses, or used to discharge liabilities, arising out of operations or other activities of such a loan account.

- (d) The borrowings for the Second Account shall be approved by the Executive Board.

CHAPTER VII: ORGANIZATION AND MANAGEMENT

Article 19 Structure of the Fund

The Fund shall have a Governing Council, an Executive Board, a Managing Director and such staff as may be necessary to carry out its functions.

Article 20 Governing Council

1. All the powers of the Fund shall be vested in the Governing Council.
2. Each Member shall appoint one Governor and one alternate to serve on the Governing Council at the pleasure of the appointing Member. The alternate may participate in meetings but may vote only in the absence of his principal.
3. The Governing Council may delegate to the Executive Board authority to exercise any powers of the Governing Council, except the power:
 - (a) To determine the fundamental policy of the Fund;
 - (b) To agree on terms and conditions for accession to this Agreement in accordance with article 56;
 - (c) To suspend a Member;
 - (d) To increase or decrease the Shares of Directly Contributed Capital;
 - (e) To adopt amendments to this Agreement;
 - (f) To terminate the operations of the Fund and to distribute the Fund's assets in accordance with chapter IX;
 - (g) To appoint the Managing Director;
 - (h) To decide appeals by Members on decisions made by the Executive Board concerning the interpretation or application of this Agreement;
 - (i) To approve the audited annual statement of accounts of the Fund;
 - (j) To take decisions pursuant to article 16, paragraph 4, relating to net earnings after provision for the Special Reserve;
 - (k) To approve proposed Association Agreements;
 - (l) To approve proposed agreements with other international organizations in accordance with article 29, paragraphs 1 and 2;
 - (m) To decide on replenishments of the Second Account in accordance with article 13.
4. The Governing Council shall hold an annual meeting and such special meetings as it may decide, or as are called for by 15 Governors holding at least one fourth of the total voting power, or as requested by the Executive Board.
5. A quorum for any meeting of the Governing Council shall be constituted by a majority of the Governors holding not less than two thirds of the total voting power.
6. The Governing Council shall by a Highly Qualified Majority establish such rules and regulations consistent with this Agreement as it deems necessary for the conduct of the business of the Fund.

7. Governors and alternates shall serve as such without compensation from the Fund, unless the Governing Council decides by a Qualified Majority to pay them reasonable per diem and travel expenses incurred in attending meetings.
8. At each annual meeting, the Governing Council shall elect a Chairman from among the Governors. The Chairman shall hold office until the election of his successor. He may be re-elected for one successive term.

Article 21 Voting in the Governing Council

1. Votes in the Governing Council shall be distributed among Member States in accordance with schedule D.
2. Decisions in the Governing Council shall, whenever possible, be taken without vote.
3. Except as otherwise provided in this Agreement, all matters before the Governing Council shall be decided by a Simple Majority.
4. The Governing Council may by rules and regulations establish a procedure whereby the Executive Board may obtain a vote of the Council on a specific question without calling a meeting of the Council.

Article 22 Executive Board

1. The Executive Board shall be responsible for the conduct of the operations of the Fund and shall report to the Governing Council thereon. For this purpose the Executive Board shall exercise the powers accorded to it elsewhere in this Agreement of delegated to it by the Governing Council. In the exercise of any delegated powers, the Executive Board shall take decisions by the same levels of majority that would apply were such powers retained by the Governing Council.
2. The Governing Council shall elect 28 Executive Directors and one alternate to each Executive Director in the manner specified in schedule E.
3. Each Executive Director and alternate shall be elected for a term of two years and may be re-elected. They shall continue in office until their successors are elected. An alternate may participate in meetings but may vote only in the absence of his principal.
4. The Executive Board shall function at the headquarters of the Fund and shall meet as often as the business of the Fund may require.
5.
 - (a) The Executive Directors and their alternates shall serve without remuneration from the Fund. The Fund may, however, pay them reasonable per diem and travel expenses incurred in attending meetings.
 - (b) Notwithstanding subparagraph (a) above, the Executive Directors and their alternates shall be remunerated by the Fund if the Governing Council decides by a Qualified Majority that they shall serve on a full-time basis.
6. A quorum for any meeting of the Executive Board shall be constituted by a majority of Executive Directors holding not less than two thirds of the total voting power.
7. The Executive Board may invite the executive heads of Associated ICOs and of ICBs to participate, without vote, in the deliberations of the Executive Board.

8. The Executive Board shall invite the Secretary-General of UNCTAD to attend the meetings of the Executive Board as an observer.
9. The Executive Board may invite the representatives of other interested international bodies to attend its meetings as observers.

Article 23 Voting in the Executive Board

1. Each Executive Director shall be entitled to cast the number of votes attributable to the Members he represents. These votes need not be cast as a unit.
2. Decisions in the Executive Board shall, whenever possible, be taken without vote.
3. Except as otherwise provided in this Agreement, all matters before the Executive Board shall be decided by a Simple Majority.

Article 24 Managing Director and staff

1. The Governing Council shall by a Qualified Majority appoint the Managing Director. If the appointee is, at the time of his appointment, a Governor or an Executive Director, or an alternate, he shall resign from such position prior to taking up his duties as Managing Director.
2. The Managing Director shall conduct, under the direction of the Governing Council and the Executive Board, the ordinary business of the Fund.
3. The Managing Director shall be the chief executive officer of the Fund and the Chairman of the Executive Board, and shall participate in its meetings without the right to vote.
4. The term of office of the Managing Director shall be four years and he may be reappointed for one successive term. However, he shall cease to hold office at any time the Governing Council so decides by a Qualified Majority.
5. The Managing Director shall be responsible for the organization, appointment and dismissal of the staff pursuant to staff rules and regulations to be adopted by the Fund. In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to recruiting personnel on as wide a geographical basis as possible.
6. The Managing Director and staff, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each Member shall respect the international character of this duty and shall refrain from all attempts to influence the Managing Director or any of the staff in the discharge of their functions.

Article 25 Consultative Committee

1.

- (a) The Governing Council shall, taking into account the need to make the Second Account operational as soon as possible, establish as early as possible a Consultative Committee, in accordance with rules and regulations to be adopted by the Governing Council, to facilitate the operations of the Second Account.

- (b) In the composition of the Consultative Committee, due regard shall be paid to the need for a broad and equitable geographical distribution, individual expertise in commodity development issues, and the desirability of a broad representation of interests, including of voluntary contributors.

2. The functions of the Consultative Committee shall be:

- (a) To advise the Executive Board on technical and economic aspects of the programmes of measures proposed by ICBs to the Fund for financing and co-financing through the Second Account and on the priorities to be attached to such proposals;
- (b) To advise, at the request of the Executive Board, on specific aspects connected with the appraisal of particular projects being considered for financing through the Second Account;
- (c) To advise the Executive Board on guidelines and criteria for determining the relative priorities among measures within the scope of the Second Account, for appraisal procedures, for making grants and loan assistance, and for co-financing with other international financial institutions and other entities;
- (d) To comment on reports from the Managing Director on the supervision, implementation and evaluation of projects being financed through the Second Account.

Article 26 Budgetary and audit provisions

- 1. The administrative expenses of the Fund shall be covered by revenues of the First Account.
- 2. The Managing Director shall prepare an annual administrative budget, which shall be considered by the Executive Board and be transmitted, together with its recommendations, to the Governing Council for approval.
- 3. The Managing Director shall arrange for an annual independent and external audit of the accounts of the Fund. The audited statement of accounts, after consideration by the Executive Board, shall be transmitted, together with its recommendations, to the Governing Council for approval.

Article 27 Location of headquarters

The headquarters of the Fund shall be located in the place decided upon by the Governing Council by a Qualified Majority, if possible at its first annual meeting. The Fund may, by a decision of the Governing Council, establish other offices, as necessary, in the territory of any Member.

Article 28 Publication of reports

The Fund shall issue and transmit to Members an annual report containing an audited statement of accounts. After adoption by the Governing Council, such report and statement shall also be transmitted for information to the General Assembly of the United

Nations, to the Trade and Development Board of UNCTAD, to Associated ICOs and to other interested international organizations.

Article 29 Relations with the United Nations and other organizations

1. The Fund may enter into negotiations with the United Nations with a view to concluding an agreement to bring the Fund into relationship with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. Any agreement concluded in accordance with Article 63 of the Charter shall require the approval of the Governing Council, upon the recommendation of the Executive Board.
2. The Fund may co-operate closely with UNCTAD and the organizations of the United Nations system, other intergovernmental organizations, international financial institutions, non-governmental organizations and governmental agencies concerned with related fields of activities and, if deemed necessary, enter into agreements with such bodies.
3. The Fund may establish working arrangements with the bodies referred to in paragraph 2 of this article, as may be decided by the Executive Board.

CHAPTER VIII: WITHDRAWAL AND SUSPENSION OF MEMBERSHIP AND WITHDRAWAL OF ASSOCIATED ICOS

Article 30 Withdrawal of Members

A Member may at any time, except as provided for in article 35, paragraph 2(b), and subject to the provisions of article 32, withdraw from the Fund by transmitting a notice in writing to the Fund. Such withdrawal shall become effective on the date specified in the notice, which shall be not less than twelve months after receipt of the notice by the Fund.

Article 31 Suspension of membership

1. If a Member fails to fulfil any of its financial obligations to the Fund, the Governing Council may, except as provided for in article 35, paragraph 2(b), by a Qualified Majority, suspend its membership. The Member so suspended shall automatically cease to be a Member one year from the date of its suspension, unless the Governing Council decides to extend the suspension for a further period of one year.
2. When the Governing Council is satisfied that the suspended Member has fulfilled its financial obligations to the Fund, the Council shall restore the Member to good standing.
3. While under suspension, a Member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal and to arbitration during the termination of the Fund's operations, but shall remain subject to compliance with all its obligations under this Agreement.

Article 32 Settlement of accounts

1. When a Member ceases to be a Member, it shall remain liable thereafter to meet all calls made by the Fund before, and payments outstanding as of, the date on which it ceased to be a Member in respect of its obligations to the Fund. It shall also remain liable to meet its obligations in respect of its Guarantee Capital, until arrangements satisfactory to the Fund have been made which comply with article 14, paragraphs 4 to 7. Each Association Agreement shall provide that if a participant in the respective Associated ICO ceases to be a Member, the Associated ICO shall ensure that such arrangements are completed not later than the date on which the Member ceases to be a Member.
2. When a Member ceases to be a Member, the Fund shall arrange for the repurchase of its Shares consistent with article 16, paragraphs 2 and 3, as a part of the settlement of accounts with that Member, and shall cancel its Guarantee Capital provided that the obligations and requirements specified in paragraph 1 of this article have been met. The repurchase price of the Shares shall be the value shown by the books of the Fund as at the date the Member ceases to be a Member; provided that any amount thus due to the Member may be applied by the Fund to any liability outstanding to the Fund from that Member pursuant to paragraph 1 of this article.

Article 33 Withdrawal of Associated ICOs

1. An Associated ICO may, subject to the terms and conditions of the Association Agreement, withdraw from association with the Fund, provided that such Associated ICO shall repay all outstanding loans received from the Fund before the date on which such withdrawal becomes effective. The Associated ICO and its participants shall remain liable thereafter only to meet calls made by the Fund before that date in respect of their obligations to the Fund.
2. When an Associated ICO ceases to be associated with the Fund, the Fund shall, after the fulfilment of the obligations specified in paragraph 1 of this article:
 - (a) Arrange for the refund of any cash deposit and for the return of any Stock Warrants it holds for the account of that Associated ICO;
 - (b) Arrange for the refund of any cash deposited in lieu of Guarantee Capital, and cancel relevant Guarantee Capital and Guarantees.

CHAPTER IX: SUSPENSION AND TERMINATION OF OPERATIONS AND SETTLEMENT OF OBLIGATIONS

Article 34 Temporary suspension of operations

In an emergency, the Executive Board may temporarily suspend such of the Fund's operations as it considers necessary pending an opportunity for further consideration and action by the Governing Council.

Article 35 Termination of operations

1. The Governing Council may terminate the Fund's operations by a decision taken by a vote of two thirds of the total number of Governors holding not less than three fourths of the total voting power. Upon such termination, the Fund shall forthwith cease all activities, except those necessary for the orderly realization and conservation of its assets and the settlement of its outstanding obligations.
2. Until final settlement of its obligations and final distribution of its assets, the Fund shall remain in existence, and all rights and obligations of the Fund and of its Members under this Agreement shall continue unimpaired, except that:
 - (a) The Fund shall not be obliged to provide for withdrawal on demand of Associated ICO deposits in accordance with article 17, paragraph 10(a), or to make new loans to Associated ICOs in accordance with article 17, paragraph 10(b); and
 - (b) No Member may withdraw or be suspended after the decision to terminate has been taken.

Article 36 Settlement of obligations: general provisions

1. The Executive Board shall make such arrangements as are necessary to ensure the orderly realization of the Fund's assets. Before making any payments to creditors holding direct claims, the Executive Board shall, by a Qualified Majority, make such reserves or arrangements as are necessary, in its sole judgement, to ensure a distribution to holders of contingent claims pro rata with creditors holding direct claims.
2. No distribution of assets shall be made in accordance with this chapter until:
 - (a) All liabilities of the Account in question have been discharged or provided for; and
 - (b) The Governing Council has decided to make a distribution by a Qualified Majority.
3. Following a decision of the Governing Council under paragraph 2(b) of this article, the Executive Board shall make successive distributions of any remaining assets of the Account in question until all such assets have been distributed. Such distribution to any Member or any participant in an Associated ICO which is not a Member shall be subject to the prior settlement of all outstanding claims of the Fund against that Member or participant and shall be effected at such times and in such currencies or other assets as the Governing Council shall deem fair and equitable.

Article 37 Settlement of obligations: First Account

1. Any loans outstanding to Associated ICOs in respect of First Account operations at the time of a decision to terminate the Fund's operations shall be repaid by the Associated ICOs concerned within 12 months of the decision to terminate. On repayment of such loans, Stock Warrants pledged to, or assigned in trust for, the Fund in respect of those loans shall be returned to the Associated ICOs.

2. Stock Warrants pledged to, or assigned in trust for, the Fund in respect of commodities acquired with cash deposits of Associated ICOs shall be returned to such Associated ICOs in a manner consistent with the treatment of cash deposits and surpluses specified in paragraph 3(b) of this article, to the extent that such Associated ICOs have fully discharged their obligations to the Fund.
3. The following liabilities incurred by the Fund in respect of First Account operations shall be discharged *pari passu* through the use of the assets of the First Account, in accordance with article 17, paragraphs 12 to 14:
 - (a) Liabilities to creditors of the Fund; and
 - (b) Liabilities to Associated ICOs in respect of cash deposits and surpluses held in the Fund in accordance with article 14, paragraphs 1, 2, 3 and 8, to the extent that such Associated ICOs have fully discharged their obligations to the Fund.
4. Distribution of any remaining assets of the First Account shall be made on the following basis and in the following order:
 - (a) Amounts up to the value of any Guarantee Capital called from and paid by Members in accordance with article 17, paragraphs 12(d) and 13, shall be distributed to such Members *pro rata* to their shares in the total value of such Guarantee Capital called and paid;
 - (b) Amounts up to the value of any Guarantees called from and paid by participants in Associated ICOs which are not Members in accordance with article 17, paragraphs 12(d) and 13, shall be distributed to such participants *pro rata* to their shares in the total value of such Guarantees called and paid.
5. Distribution of any assets of the First Account remaining after the distributions provided for in paragraph 4 of this article shall be made to Members *pro rata* to their subscriptions of Shares of Directly Contributed Capital allocated to the First Account.

Article 38 Settlement of obligations: Second Account

1. Liabilities incurred by the Fund in respect of Second Account operations shall be discharged through the use of the resources of the Second Account, pursuant to article 18, paragraph 4.
2. Distribution of any remaining assets of the Second Account shall be made first to Members up to the value of their subscriptions of Shares of Directly Contributed Capital allocated to that Account pursuant to article 10, paragraph 3, and then to contributors to that Account *pro rata* to their share in the total amount contributed pursuant to article 13.

Article 39 Settlement of obligations: other assets of the Fund

1. Any other asset shall be realized at a time or times to be decided by the Governing Council, in the light of recommendations made by the Executive Board and in accordance with procedures determined by the Executive Board by a Qualified Majority.

2. Proceeds realized by the sale of such assets shall be used to discharge pro rata the liabilities referred to in article 37, paragraph 3, and article 38, paragraph 1. Any remaining assets shall be distributed first on the basis and in the order specified in article 37, paragraph 4, and then to Members pro rata to their subscriptions of Shares of Directly Contributed Capital.

CHAPTER X: STATUS, PRIVILEGES AND IMMUNITIES

Article 40 Purposes

To enable the Fund to fulfil the functions with which it is entrusted, the status, privileges and immunities set forth in this chapter shall be accorded to the Fund in the territory of each Member.

Article 41 Legal status of the Fund

The Fund shall possess full juridical personality, and, in particular, the capacity to conclude international agreements with States and international organizations, to enter into contracts, to acquire and dispose of immovable and movable property, and to institute legal proceedings.

Article 42 Immunity from juridical proceedings

1. The Fund shall enjoy immunity from every form of legal process, except for actions which may be brought against the Fund:
 - (a) By lenders of funds borrowed by the Fund with respect to such funds;
 - (b) By buyers or holders of securities issued by the Fund with respect to such securities; and
 - (c) By assignees and successors in interest thereof with respect to the aforementioned transactions.

Such actions may be brought only before courts of competent jurisdiction in places in which the Fund has agreed in writing with the other party to be subject. However, if no provision is made as to the forum, or if an agreement as to the jurisdiction of such courts is not effective for reasons other than the fault of the party bringing legal action against the Fund, then such action may be brought before a competent court in the place in which the Fund has its headquarters or has appointed an agent for the purpose of accepting service or notice of process.

2. No action shall be brought against the Fund by Members, Associated ICOs, ICBs, or their participants, or persons acting for or deriving claims from them, except in cases as in paragraph 1 of this article. Nevertheless, Associated ICOs, ICBs, or their participants shall have recourse to such special procedures to settle controversies between themselves and the Fund as may be prescribed in agreements with the Fund, and, in the case of Members, in this Agreement and in any rules and regulations adopted by the Fund.

3. Notwithstanding the provisions of paragraph 1 of this article, property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, any form of taking, foreclosure, seizure, all forms of attachment, injunction, or other judicial process impeding disbursement of funds or covering or impeding disposition of any commodity stocks or Stock Warrants, and any other interlocutory measures before the delivery of a final judgement against the Fund by a court having jurisdiction in accordance with paragraph 1 of this article. The Fund may agree with its creditors to limit the property or assets of the Fund which may be subject to execution in satisfaction of a final judgement.

Article 43 Immunity of assets from other actions

The property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking whether by executive or legislative action.

Article 44 Immunity of archives

The archives of the Fund, wherever located, shall be inviolable.

Article 45 Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Article 46 Privilege for communications

As far as may be compatible with any international convention on telecommunications in force and concluded under the auspices of the International Telecommunication Union to which a Member is a party, the official communications of the Fund shall be accorded by each Member the same treatment that is accorded to the official communications of other Members.

Article 47 Immunities and privileges of specified individuals

All Governors, Executive Directors, their alternates, the Managing Director, members of the Consultative Committee, experts performing missions for the Fund, and the staff, other than persons in domestic service of the Fund:

- (a) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives such immunity;
- (b) When they are not nationals of the Member concerned, shall be accorded, as well as their families forming part of their household, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by such Member to the

representatives, officials and employees of comparable rank of other international financial institutions of which it is a member;

- (c) Shall be granted the same treatment in respect of travelling facilities as is accorded by each Member to representatives, officials and employees of comparable rank of other international financial institutions of which it is a member.

Article 48 Immunities from taxation

1. Within the scope of its official activities, the Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be exempt from all direct taxation and from all customs duties on goods imported or exported for its official use, provided that this shall not prevent any Member from imposing its normal taxes and customs duties on commodities which originate from the territory of such Member and which are forfeited to the Fund through any circumstance. The Fund shall not claim exemption from taxes which are no more than charges for services rendered.
2. When purchases of goods or services of substantial value necessary for the official activities of the Fund are made by or on behalf of the Fund, and when the price of such purchases includes taxes or duties, appropriate measures shall, to the extent possible and subject to the law of the Member concerned, be taken by such Member to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the Member which granted the exemption, except under conditions agreed with that Member.
3. No tax shall be levied by Members on or in respect of salaries and emoluments paid or any other form of payment made by the Fund to Governors, Executive Directors, their alternates, members of the Consultative Committee, the Managing Director and staff, as well as experts performing missions for the Fund, who are not their citizens, nationals or subjects.
4. No taxation of any kind shall be levied on any obligation or security issued or guaranteed by the Fund, including any dividend or interest thereon, by whomsoever held:
 - (a) which discriminates against such obligation or security solely because it is issued or guaranteed by the Fund; or
 - (b) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Article 49 Waiver of immunities, exemptions and privileges

1. The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Fund. The Fund may waive, to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this chapter in cases where its action would not prejudice the interests of the Fund.

2. The Managing Director shall have the power, as may be delegated to him by the Governing Council, and the duty to waive the immunity of any of the staff, and experts performing missions for the Fund, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

Article 50 Application of this chapter

Each Member shall take such action as is necessary for the purpose of making effective in its territory the principles and obligations set forth in this chapter.

CHAPTER XI: AMENDMENTS

Article 51 Amendments

1.
 - (a) Any proposal to amend this Agreement emanating from a Member shall be notified to all Members by the Managing Director and referred to the Executive Board, which shall submit its recommendations thereon to the Governing Council.
 - (b) Any proposal to amend this Agreement emanating from the Executive Board shall be notified to all Members by the Managing Director and referred to the Governing Council.
2. Amendments shall be adopted by the Governing Council by a Highly Qualified Majority. Amendments shall enter into force six months after their adoption unless otherwise specified by the Governing Council.
3. Notwithstanding paragraph 2 of this article, any amendment modifying:
 - (a) The right of any Member to withdraw from the Fund;
 - (b) Any voting majority requirement provided for in this Agreement;
 - (c) The limitation on liability provided in article 6;
 - (d) The right to subscribe or not to subscribe Shares of Directly Contributed Capital pursuant to article 9, paragraph 5;
 - (e) The procedure for amending this Agreement;

shall not come into force until accepted by all Members. Acceptance shall be deemed to have been given unless any Member notifies its objection to the Managing Director in writing within six months after the adoption of the amendment. Such period of time may be extended by the Governing Council at the time of the adoption of the amendment, at the request of any Member.
4. The Managing Director shall immediately notify all Members and the Depositary of any amendments that are adopted and of the date of the entry into force of any such amendments.

CHAPTER XII: INTERPRETATION AND ARBITRATION

Article 52 Interpretation

1. Any question of interpretation or application of the provisions of this Agreement arising between any Member and the Fund or between Members shall be submitted to the Executive Board for decision. Such Member or Members shall be entitled to participate in the deliberations of the Executive Board during the consideration of such question in accordance with rules and regulations to be adopted by the Governing Council.
2. In any case where the Executive Board has given a decision under paragraph 1 of this article, any Member may require, within three months from the date of notification of the decision, that the question be referred to the Governing Council, which shall take a decision at its next meeting by a Highly Qualified Majority. The decision of the Governing Council shall be final.
3. Where the Governing Council has been unable to reach a decision under paragraph 2 of this article, the question shall be submitted to arbitration in accordance with the procedures laid down in article 53, paragraph 2, if any Member so requests within three months after the final day of consideration of the question by the Governing Council.

Article 53 Arbitration

1. Any dispute between the Fund and any Member which has withdrawn, or between the Fund and any Member during the termination of the Fund's operations, shall be submitted to arbitration.
2. The arbitral tribunal shall consist of three arbitrators. Each party to the dispute shall appoint one arbitrator. The two arbitrators so appointed shall appoint the third arbitrator, who shall be the Chairman. If within 45 days of receipt of the request for arbitration either party has not appointed an arbitrator, or if within 30 days of the appointment of the two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by rules and regulations adopted by the Governing Council, to appoint an arbitrator. If the President of the International Court of Justice has been requested under this paragraph to appoint an arbitrator and if the President is a national of a State party to the dispute or is unable to discharge his duties, the authority to appoint the arbitrator shall devolve on the Vice-President of the Court, or, if he is similarly precluded, on the oldest among the members of the Court not so precluded who have been longest on the bench. The procedure of arbitration shall be fixed by the arbitrators but the Chairman shall have full power to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding upon the parties.
3. UNLESS A DIFFERENT PROCEDURE FOR ARBITRATION IS PROVIDED FOR IN AN ASSOCIATION AGREEMENT, ANY DISPUTE BETWEEN THE FUND AND THE ASSOCIATED ICO SHALL BE SUBJECT TO ARBITRATION IN

ACCORDANCE WITH THE PROCEDURES PROVIDED FOR IN PARAGRAPH 2 OF THIS ARTICLE.

CHAPTER XIII: FINAL PROVISIONS

Article 54 Signature and ratification, acceptance or approval

1. This Agreement shall be open for signature by all States listed in schedule A, and by intergovernmental organizations specified in article 4(b), at United Nations Headquarters in New York from 1 October 1980 until one year after the date of its entry into force.
2. Any signatory State or signatory intergovernmental organization may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until 18 months after the date of its entry into force.

Article 55 Depositary

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

Article 56 Accession

After the entry into force of this Agreement, any State or intergovernmental organization specified in article 4 may accede to this Agreement upon such terms and conditions as are agreed between the Governing Council and that State or intergovernmental organization. Accession shall be effected by the deposit of an instrument of accession with the Depositary.

Article 57 Entry into force

1. This Agreement shall enter into force upon receipt by the Depositary of instruments of ratification, acceptance or approval from at least 90 States, provided that their total subscriptions of Shares of Directly Contributed Capital comprise not less than two thirds of the total subscriptions of Shares of Directly Contributed Capital allocated to all the States specified in schedule A and that not less than 50 per cent of the target for pledges of voluntary contributions to the Second Account specified in article 13, paragraph 2, has been met, and further provided that the foregoing requirements have been fulfilled by 31 March 1982 or by such later date as the States that have deposited such instruments by the end of that period may decide by a two-thirds majority vote of those States. If the foregoing requirements have not been fulfilled by that later date, the States that have deposited such instruments by that later date may decide by a two-thirds majority vote of those States on a subsequent date. The States concerned shall notify the Depositary of any decisions taken under this paragraph.
2. For any State or intergovernmental organization that deposits an instrument of ratification, acceptance or approval after the entry into force of this Agreement, and

for any State or intergovernmental organization that deposits an instrument of accession, this Agreement shall enter into force on the date of such deposit.

Article 58 Reservations

Reservations may not be made with respect to any of the provisions of this Agreement, except with respect to article 53.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have affixed their signatures under this Agreement on the dates indicated.

DONE at Geneva on the twenty-seventh day of June, one thousand nine hundred and eighty, in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

[Neither signatures nor the six Schedules are reproduced here. The latter consist of: A, Subscriptions of Shares of Directly Contributed Capital; B, Special Arrangements for the Least Developed Countries; C, Eligibility Criteria for ICBS; D, Allocation of Votes (and an Annex thereof); E, Election of Executive Directors; and, F, Unit of Account.]

CHAPTER FORTY-ONE

Charter of the Gulf Co-operation Council

Abu Dhabi, 25 May 1981

INTRODUCTION

In their continuing efforts to promote unity and cooperation and to assist each other on issues that affect their economic, security and cultural interests, six countries in the Persian (Arabian) Gulf region came together to form the Gulf Co-operation Council (GCC—more formally, the Co-operation Council of the Arab States of the Gulf) in 1981. This move was also in furtherance of the Charter of the League of Arab States, which urges closer relations and bonds between Arab states.

The objectives of the GCC include: unity through co ordination of the members' policies and activities in all fields; deepening relations and links in existing areas of co-operation; formulating regulations in the economic, financial and commercial sphere, and in customs, communications, education and culture; and stimulating scientific and technological progress in industry, mining, agriculture, water and animal resources. Apart from the mention of the establishment of joint ventures, there is little explicit encouragement of co-operation by the private sectors. Moreover, with the residuary implications of saying the objectives of the preamble are 'basic', it is curious that there is no explicit provisions on fossil-fuel resources. Apart from religion and culture, this is the thing that binds the countries in the region. Hydrocarbons are not only the biggest source of income for the GCC states, but also what they are known for world-wide. Perhaps that is a deliberate effort to shift the emphasis from oil and gas, which are finite resources, and they are trying to promote alternative economic interests.

The GCC is organized with a Supreme Council as the highest authority. That is made up of the rulers of the member states. It meets annually, and its presidency is held on a rotational basis. The Supreme Council reviews matters of interest to the members, lays down policy for the GCC, reviews recommendations, reports, etc., from the Ministerial Council and the Secretary-General, approves the bases for dealing with other states and international organizations, and approves the budget of the Secretariat. The Supreme Council also oversees the work of the dispute settlement arrangements. Each member has one vote, but, on substantive matters, there must be unanimous position. Next in the line of authority is the Ministerial Council, which is made up of the foreign ministers of the member states. It meets quarterly and deliberates on how to encourage, develop and co-ordinate activities between the member states. It proposes policies, prepares, studies and

makes recommendations on cooperative projects. The Secretariat services the Supreme and the Ministerial Councils. It is headed by a Secretary-General, appointed by the Supreme Council, who is assisted by two deputies and the general staff. All such staff must be citizens of the member states, but work independently, as international civil servants.

Interestingly, the Ministerial Council also encourages the movement of workers within the GCC. However, this excludes migrant workers from non-member states. It means that, without explicitly saying so, the GCC has many of the attributes of a customs union, aiming for the freedom of movement of capital, establishment and labour. If that is the case, then the provisions of the Charter should have been more comprehensive.

The Charter came into force upon signature in May 1981.

CHARTER OF THE CO-OPERATION COUNCIL OF THE ARAB STATES OF THE GULF [TRANSLATION]*

THE UNITED ARAB EMIRATES

THE STATE OF BAHRAIN

THE KINGDOM OF SAUDI ARABIA

THE SULTANATE OF OMAN

THE STATE OF QATAR, and

THE STATE OF KUWAIT

BEING FULLY AWARE of the ties of special relations, common characteristics and similar systems founded on the creed of Islam which bind them; and

DESIRING to effect coordination, cooperation and integration between them in all fields; and,

HAVING THE CONVICTION that coordination, cooperation, and integration between them serve the sublime objectives of the Arab Nation; and,

IN PURSUIT of the goal of strengthening cooperation and reinforcement of the links between them; and

IN AN ENDEAVOUR to complement efforts already begun in all essential areas that concern their peoples and realize their hopes for a better future on the path to unity of their States; and

IN CONFORMITY with the Charter of the League of Arab States which calls for the realization of closer relations and stronger bonds; and

IN ORDER to channel their efforts to reinforce and serve Arab and Islamic causes,
HAVE AGREED AS FOLLOWS:

Article 1 The Establishment of the Council

A Council shall be established hereby to be named The Cooperation Council for the Arab States of the Gulf, hereinafter referred to as the [Gulf] Cooperation Council (GCC).

Article 2

The Cooperation Council shall have its headquarters in Riyadh, Saudi Arabia.

Article 3 Cooperation Council Meetings

The Council shall hold its meetings in the state where it has its headquarters, and may convene in any member state.

Article 4 Objectives

The basic objectives of the Cooperation Council are:

1. To effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them.
2. To deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields.
3. To formulate similar regulations in various fields including the following:
 - (a) Economic and financial affairs
 - (b) Commerce, customs and communications
 - (c) Education and culture
4. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and encourage cooperation by the private sector for the good of their peoples.

Article 5 Council Membership

The Cooperation Council shall be formed of the six states that participated in the Foreign Ministers' meeting held in Riyadh on 4 February 1981.

Article 6 Organization of the Cooperation Council

The Cooperation Council shall have the following main organizations:

1. The Supreme Council to which shall be attached the Commission for Settlement of Disputes.
2. The Ministerial Council.
3. The Secretariat General.

Each of these organizations may establish sub-agencies as may be necessary.

Article 7 Supreme Council

The Cooperation Council shall be formed of the six states that participated in the Foreign Ministers' meeting held in Riyadh on 4 February 1981.

1. The Supreme Council is the highest authority of the Cooperation Council and shall be formed of heads of member states. Its presidency shall be rotatory based on the alphabetical order of the names of the member states.

2. The Supreme Council shall hold one regular session every year. Extraordinary sessions may be convened at the request of any member seconded by another member.
3. The Supreme Council shall hold its sessions in the territories of member states.
4. A Supreme Council's meeting shall be considered valid if attended by two-thirds of the member states.

Article 8 The Functions of the Supreme Council

The Supreme Council shall endeavour to realize the objectives of the Cooperation Council, particularly as concerns the following:

1. Review matters of interest to the member states.
2. Lay down the higher policy for the Cooperation Council and the basic lines it should follow.
3. Review the recommendations, reports, studies and joint ventures submitted by the Ministerial Council for approval.
4. Review reports and studies, which the Secretary-General is charged to prepare.
5. Approve the bases for dealing with other states and international organizations.
6. Approve the rules of procedure of the Commission for the Settlement of Disputes and nominate its members.
7. Appoint the Secretary-General.
8. Amend the Charter of the Cooperation Council.
9. Approve the Council's internal rules of procedure.
10. Approve the budget of the Secretariat General.

Article 9 Voting in the Supreme Council

The Cooperation Council shall be formed of the six states that participated in the Foreign Ministers' meeting held in Riyadh on 4 February 1981.

1. Each member of the Supreme Council shall have one vote.
2. Resolutions of the Supreme Council in substantive matters shall be carried by unanimous approval of the member states participating in the voting, while resolutions on procedural matters shall be carried by majority vote.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat General of the Co-operation Council of the Arab States of the Gulf (<http://www.gcc-sg.org/>).

Article 10 Commission for the Settlement of Disputes

1. The Cooperation Council shall have a commission called "The Commission for the Settlement of Disputes" which shall be attached to the Supreme Council.
2. The Supreme Council shall establish the composition of the Commission for every case on an ad hoc basis in accordance with the nature of the dispute.

3. If a dispute arises over interpretation or implementation of the Charter and such dispute is not resolved within the Ministerial Council or the Supreme Council, the Supreme Council may refer such dispute to the Commission for the Settlement of Disputes.
4. The Commission shall submit its recommendations or opinion, as applicable, to the Supreme Council for such action as the Supreme Council deems appropriate.

Article 11 Ministerial Council

1. The Ministerial Council shall be formed of the Foreign Ministers of the member states or other delegated ministers. The Council Presidency shall be for the member state, which presided the last ordinary session of the Supreme Council, or if necessary, for the state which is next to preside over the Supreme Council.
2. The Ministerial Council shall convene every three months and may hold extraordinary sessions at the invitation of any member seconded by another member.
3. The Ministerial Council shall determine the venue of its next session.
4. A Council's meeting shall be deemed valid if attended by twothirds of the member states.

Article 12 Functions of the Ministerial Council

1. Propose policies, prepare recommendations, studies and projects aimed at developing cooperation and coordination between member states in various fields and adopt the resolutions or recommendations required in this regard.
2. Endeavour to encourage, develop and coordinate activities existing between member states in all fields. Resolutions adopted in such matters shall be referred to the Ministerial Council for further submission, with recommendations to the Supreme Council for appropriate action.
3. Submit recommendations to the Ministers concerned to formulate policies whereby the Cooperation Council's resolutions may be put into effect.
4. Encourage means of cooperation and coordination between the various private sector activities, develop existing cooperation between the member states' Chamber of Commerce and Industry, and encourage the movement within the GCC of workers who are citizens of the member states.
5. Refer any of the various aspects of cooperation to one or more technical or specialised committee for study and presentation of appropriate recommendations.
6. Review proposals related to amendments to this Charter and submit appropriate recommendations to the Supreme Council.
7. Approve Rules of Procedure of both the Ministerial Council and the Secretariat General.
8. Appoint the Assistant Secretaries-General, as nominated by the Secretary-General, for a period of three year, renewable.
9. Approve periodic reports as well as internal rules and regulations relating to administrative and financial affairs proposed by the Secretary-General, and submit recommendations to the Supreme Council for approval of the budget of the Secretariat General.

10. Make arrangements for meetings of the Supreme Council and prepare its agenda.
11. Review matters referred to it by the Supreme Council.

Article 13 Voting in the Ministerial Council

1. Every member of the Ministerial Council shall have one vote.
2. Resolutions of the Ministerial Council in substantive matters shall be carried by unanimous vote of the member state present and participating in the vote, and in procedural matters by majority vote.

Article 14 The Secretariat General

1. The Secretariat General shall be composed of a Secretary-General who shall be assisted by assistants and a number of staff as required.
2. The Supreme Council shall appoint the Secretary-General, who shall be a citizen of one of the Cooperation Council states, for a period of three years, which may be renewed once only.
3. The Secretary-General shall nominate the Assistant Secretaries General.
4. The Secretary-General shall appoint the Secretariat General staff from among the citizens of member states, and may not make exceptions without the approval of the Ministerial Council.
5. The Secretary-General shall be directly responsible for the work of the Secretariat General and the smooth flow of work in its various organizations. He shall represent the Cooperation Council with other parties within the limits of the authority vested in him.

Article 15 Functions of the Secretariat General

The Secretariat General shall:

1. Prepare studies related to cooperation and coordination, and to integrated plans and programmes for member states' action.
2. Prepare periodic reports on the work of the Cooperation Council.
3. Follow up the implementation by the member states of the resolutions and recommendations of the Supreme Council and Ministerial Council.
4. Prepare reports and studies requested by the Supreme Council or Ministerial Council.
5. Prepare the draft of administrative and financial regulations commensurate with the growth of the Cooperation Council and its expanding responsibilities.
6. Prepare the budgets and closing accounts of the Cooperation Council.
7. Make preparations for meetings and prepare agendas and draft resolutions for the Ministerial Council.
8. Recommend to the Chairman of the Ministerial Council the convening of an extraordinary session of the Council when necessary.
9. Any other tasks entrusted to it by the Supreme Council or Ministerial Council.

Article 16

The Secretary-General and the Assistant Secretaries-General and all the Secretariat General staff shall carry out their duties in complete independence and for the joint benefit of the member states.

They shall refrain from any action or behaviour that is incompatible with their duties and from divulging confidential matters relating to their appointments either during or after their tenure of office.

Article 17 Privileges and Immunities

1. The Cooperation Council and its organizations shall enjoy on the territories of all member states such legal competence, privileges and immunities as are required to realize their objectives and carry out their functions.
2. Representatives of the members on the Council, and the Council's employees, shall enjoy such privileges and immunities as are specified in agreements to be concluded for this purpose between the member states. A special agreement shall organize the relation between the Council and the state in which it has its headquarters.
3. Until such time as the two agreements mentioned in item 2 above are prepared and put into effect, the representatives of the member states in the Cooperation Council and its staff shall enjoy the diplomatic privileges and immunities established for similar organizations.

Article 18 Budget of the Secretariat General

The Secretariat General shall have a budget to which the member states shall contribute in equal amounts.

Article 19 The Implementation of the Charter

1. This Charter shall go into effect as of the date it is signed by the Head of States of the six member states named in this Charter's preamble.
2. The original copy of this Charter shall be deposited with the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia which shall act as custodian and shall deliver a true copy thereof to every member state, pending the establishment of the Secretariat General, at which time the latter shall become depository.

Article 20 Amendments to the Charter

1. Any member state may request an amendment of this Charter.
2. Request for Charter amendments shall be submitted to the Secretary-General who shall refer them to the member states at least four months prior to submission to the Ministerial Council.
3. An amendment shall become effective if unanimously approved by the Supreme Council.

Article 21 Closing Provisions

No reservations may be voiced in respect of the provisions of this Charter.

Article 22

The Secretariat General shall arrange to deposit and register copies of this Charter with the League of Arab States and the United Nations, by resolution of the Ministerial Council.

THIS CHARTER is signed on one copy in the Arabic language at Abu Dhabi City, United Arab Emirates, on 21 Rajab 1401 corresponding to 25 May 1981.

CHAPTER FORTY-TWO

Vienna Convention on Succession of States in Respect of States Property, Archives and Debts

Vienna, 8 April 1983

INTRODUCTION

This treaty deals with a matter that is of considerable importance to international peace, stability and security. Customary law has governed this area, but it has become necessary to codify it. This codification has been late in coming, considering the number of states that became independent and underwent some form of reconfigurations. More than one-half of the countries of Africa became independent from the 1960s onwards. Some of the countries that became independent, seceded or succeeded others and for whom this Convention may be binding include: Bosnia and Herzegovina, Croatia, Eritrea, Germany, Namibia, Slovenia, South Africa, Timor-Leste (East Timor) and the constituent republics of the former USSR. Considering the number of countries that have succeeded others or become independent since the Convention in 1983, the prediction that ‘other factors may lead to cases of succession of States in the future’ proved right.

Newly independent states are expected to succeed the previous state. Immovable property that is situated in the predecessor state or in a third state and previously owned by the predecessor state pass to the new state. States that contributed to the acquisition and maintenance of property outside or within the territory would pass on to a successor state to the extent of the contribution of the predecessor state. The same goes with movable property. The formula of ownership and contributions by the previous territories or state(s) is also used in asserting control by a new independent state formed from a merger or uniting of two or more states. When a state or territory secedes or separates from another state and forms a successor state, as was the case with Eritrea or the former Soviet and Yugoslav republics, immovable property located in the particular part of the territory would pass to the succeeding state. Movable state property of the predecessor state that was connected with the activity of the predecessor state in regard to the territory to which the succession of states relates shall pass to the successor state. Other movable property must be shared equitably. For purposes of fairness, the parties would have to deal with issues of compensation separately, but this creates a conflict with article 11, which provides that it is not a requirement for successor states to compensate predecessor

states. All these provisions on title or authority over movable and immovable property by succeeding and predecessor states are subject to agreement by the states involved. In other words, the provisions of this Convention operate only in the absence of an agreement on the particular issue by the states involved.

The provisions on succession to movable and immovable assets might appear to encourage succession (or secession) in areas where particularly important resources are located and where the people of that area would like to have exclusive control or access. This reflects the case of Biafra in Nigeria, Aceh in Indonesia and, to a lesser extent, Quebec in Canada. The apparent imbalance is somewhat addressed by Part IV of the Convention. The passing of financial obligation incurred by a predecessor state to a successor state ends the obligations of the predecessor state. The date of the passing of such financial obligations, unless otherwise agreed or determined by an adjudicating body, is the date of the succession of the states involved. This is important for the determination of interests and related charges. If two or more states unite to form one state, the debts of the predecessor states shall pass to the new state. By contrast, newly independent states are not to succeed to the debts incurred by the predecessor state unless an agreement, based on the activity of the predecessor state on the territory, in relation to property, rights and interests that pass to the successor state provides otherwise. If states separate or a part of a state secedes, the debt of the predecessor state must be shared equitably, having regard to the property, rights and interests that pass to the successor state in relation to the debt. In view of the potential disputes that may arise in regard to this Convention and to the sharing of assets and liabilities, the Convention provides for dispute-resolution procedures, beginning with negotiations and conciliation and ending, where necessary, with adjudication.

With only six state parties having acceded by the end of 2004 and a further six having signed, the Convention was not yet in force.

VIENNA CONVENTION (FINAL ACT OF THE UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF STATES PROPERTY, ARCHIVES AND DEBTS)*

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSIDERING the profound transformation of the international community brought about by the decolonization process,

CONSIDERING also that other factors may lead to cases of succession of States in the future,

CONVINCED, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations,

NOTING that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

EMPHASIZING the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international co-operation,

BELIEVING that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

HAVING IN MIND the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

RECALLING that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

BEARING IN MIND the provisions of the Vienna Conventions on the Law of Treaties of 1969 and on Succession of States in Respect of Treaties of 1978,

AFFIRMING that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

HAVE AGREED as follows:

PART I: GENERAL PROVISIONS

Article 1 Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of State property, archives and debts.

Article 2 Use of terms

1. For the purposes of the present Convention:

- (a) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;
- (b) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;
- (c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;
- (d) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;
- (e) “newly independent State” means a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible;
- (f) “third State” means any State other than the predecessor State or the successor State.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3 Cases of succession of States covered by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4 Temporal application of the present Convention

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.
2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.
3. A successor State may at the time of signing or of expressing its consent to be bound by the present convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.
4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 5 Succession in respect of other matters

Nothing in the present Convention shall be considered as prejudging in any respect of any question to the effects of a succession of States in respect of matters other than those provided for in the present Convention.

Article 6 Rights and obligations of natural or juridical persons

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

PART II: STATE PROPERTY

SECTION 1: INTRODUCTION

Article 7 Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State property of the predecessor State.

Article 8 State property

For the purposes of the articles in the present Part, “State property of the predecessor State” means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

Article 9 Effects of the passing of State property

The passing of State property of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State property which passes to the successor State, subject to the provisions of the articles in the present Part.

Article 10 Date of the passing of State property

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State property of the predecessor State is that of the succession of States.

Article 11 Passing of State property without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation.

Article 12 Absence of effect of a succession of States on the property of a third State

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and

which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 13 Preservation and safety of State property

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which passes to the successor State in accordance with those provisions.

SECTION 2: PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 14 Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.
2. In the absence of such an agreement:
 - (a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;
 - (b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of State relates shall pass to the successor State.

Article 15 Newly independent State

1. When the successor State is a newly independent State:
 - (a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;
 - (b) immovable property, having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;
 - (c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;
 - (d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;
 - (e) movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

- (f) movable State property of the predecessor State, other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.
- 2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.
- 3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.
- 4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property of the predecessor State otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

Article 16 Uniting of States

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

Article 17 Separation of part or parts of the territory of a State

- 1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:
 - (a) immovable State property of the predecessor State situated in the territory to which the succession of States related shall pass to the successor State;
 - (b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;
 - (c) movable State property of the predecessor State, other than that mentioned in subparagraph (b), shall pass to the successor State in an equitable proportion.
- 2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.
- 3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

Article 18 Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:
 - (a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;
 - (b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;
 - (c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;
 - (d) movable State property of the predecessor State, other than that mentioned in subparagraph (c), shall pass to the successor States in equitable proportions.
2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

PART III: STATE ARCHIVES

SECTION 1: INTRODUCTION

Article 19 Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

Article 20 State archives

For the purpose of the articles in the present Part, “State archives of the predecessor State” means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

Article 21 Effects of the passing of State archives

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 22 Date of the passing of State archives

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

Article 23 Passing of State archives without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

Article 24 Absence of effect of a succession of States on the archives of a third State

A succession of States shall not as such affect archives which, at the date of succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 25 Preservation of the integral character of groups of State archives

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

Article 26 Preservation and safety of State archives

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

SECTION 2: PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 27 Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.
2. In the absence of such an agreement:
 - (a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of

the State to which the territory concerned is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.
4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.
5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

Article 28 Newly independent State

1. When the successor State is a newly independent State:

- (a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;
- (b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;
- (c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.
3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.
4. The predecessor State shall co-operate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.
6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.
7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

Article 29 Uniting of States

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

Article 30 Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:
 - (a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;
 - (b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.
2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.
3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.
4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.
5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

Article 31 Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

- (a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;
 - (b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.
2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.
 3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.
 4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.
 5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

PART IV: STATE DEBTS

SECTION 1: INTRODUCTION

Article 32 Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

Article 33 State debt

For the purposes of the articles in the present Part, “State debt” means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

Article 34 Effects of the passing of State debts

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of the State debts which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 35 Date of the passing of State debts

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State debts of the predecessor State is that of the succession of States.

Article 36 Absence of effect of a succession of States on creditors

A succession of States does not as such affect the rights and obligations of creditors.

SECTION 2: PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 37 Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.
2. In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

Article 38 Newly independent State

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.
2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibrium of the newly independent State.

Article 39 Uniting of States

When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State.

Article 40 Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable

proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

Article 41 Dissolution of a State

When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt.

PART V: SETTLEMENT OF DISPUTES

Article 42 Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 43 Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 42 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 44 Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 42 and 43, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 45 Settlement by common consent

Notwithstanding articles 42, 43 and 44, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 46 Other provisions in force for the settlement of disputes

Nothing in articles 42 to 45 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

PART VI: FINAL PROVISIONS

Article 47 Signature

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

Article 48 Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 49 Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 50 Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 51 Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this eighth day of April, one thousand nine hundred and eighty-three.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to

nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 43, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancies shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.
4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.
5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.
6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

CHAPTER FORTY-THREE

European Agreement on Main International Railway Lines

Geneva, 31 May 1985

INTRODUCTION

One economic agreement that defied the political, ideological and, in some cases, geographical divisions in Europe and parts of the Asian continent at the height of the Cold War was the European Agreement on Main International Railway Lines, which is usually referred to by the acronym AGC (*Accord européen sur les Grandes lignes internationales de Chemin de fer*). It provided the framework for the harmonization of the technical aspects of railway lines and rail operation across Europe and beyond. There are lines connecting, or envisaged to connect, a huge diversity of cities in a range of countries. Many lines connect the north-western and central European countries, on a variety of trajectories, but, more interestingly, also covered is a rail line from Ankara (Turkey), to Nusaybin (Nüseybin or Nisibis) on the border and, tentatively, through to Kamichli (Al Qamishli), in north-eastern Syria, and Tel Kotchek (Tall Kujik), just in Iraq. This is, perhaps, a good portent for the future and an example for other regions of the world. Although almost two decades later, it is maybe little surprise that the Arab Mashreq railway agreement (see below) followed.

Considering its geographical reach, it is curious that the railway network proposed under the AGC is dubbed the ‘International E-railway network’. It is to be coordinated to develop railway lines that are of crucial importance to the economies of the countries involved. The lines are categorized as main and supplementary. The main lines are those that are already in existence and carry heavy international traffic or the traffic is anticipated to become heavy in the near future. The supplementary lines are those that, apart from complementing the main lines, are also expected to carry high international traffic in the long term. All new constructions and improvements are to conform to the terms of the Agreement. The standards prescribed by the Agreement are largely based on International Union of Railways (UIC) standards. For example, the authorized mass per metre of length over buffers of vehicles that international lines can accommodate is set at level that conforms to UIC class C4. Likewise, the minimum platform length in principal stations should be 400 m, which can take a train of 13 coaches and an engine of about 27.5 m in length. This, again, is the same as the UIC standard. However, new investments

and work on the lines are to be done in the context of national economic and legislative frameworks and priorities. This is important, seeing that the Agreement makes no provision for financial assistance to poorer states parties. In the case of the former East Germany (German Democratic Republic), when its territories acceded to what was originally the West's Federal Republic, its infrastructure, including railway investment costs, was simply absorbed. For the central European countries that have since joined the European Union (EU), their costs would be helped by EU financial and technical support.

The Agreement, produced under the aegis of the Inland Transport Committee of the Economic Commission for Europe, came into effect on 27 April 1989. There have been a number of amendments, one (not yet in effect) as recently as early 2005, but all to Annex I (the detailed listing of Railway Lines of Major International Importance), which is not included below. Annex II, on the Technical Characteristics of Main International Railways, is also not reproduced. By early 2005 there were 11 signatories and 24 parties.

EUROPEAN AGREEMENT ON MAIN INTERNATIONAL RAILWAY LINES (AGC)*

THE CONTRACTING PARTIES,

CONSCIOUS of the need to facilitate and develop international railway traffic in Europe,

CONSIDERING that, in order to strengthen relations between European countries, it is essential to lay down a co-ordinated plan for the development and construction of railway lines adjusted to the requirements of future international traffic,

HAVE AGREED as follows:

Article 1

The Contracting Parties adopt the proposed railway network hereinafter referred to as the "International E-railway network" and described in annex I to this Agreement, as a co-ordinated plan for the development and construction of railway lines of major international importance which they intend to undertake within the framework of national programmes in accordance with their respective legislations.

Article 2

The international E-railway network consists of a system of main lines and supplementary lines. The main lines are the "major railway axes" already carrying very heavy international traffic or traffic expected to become very heavy in the near future; the supplementary lines are those which, while already completing the network of main lines, will carry very heavy international rail traffic only in the more distant future.

Article 3

The international E-railway network of main lines referred to in article 2 conforms to the characteristics set out in annex II to this Agreement or will be brought into conformity

with the provisions of this annex in future improvement work to E-railway be carried out in conformity with national programmes.

Article 4

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 5

1. This Agreement shall be open at Geneva for signature by States and which are either members of the United Nations Economic Commission for Europe or have been admitted to the Commission in a consultative capacity in conformity with paragraph 8 of the terms of reference of the Commission, from 1 September 1985 to 1 September 1986.
2. Those States may become Parties to this Agreement by
 - (a) Signature, followed by ratification, acceptance or approval; or
 - (b) Accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument in good and due form with the Secretary-General of the United Nations.

Article 6

1. This Agreement shall enter into force 90 days after the date on which the Governments of eight States have deposited an instrument of ratification, acceptance, approval or accession, provided that one or more lines of the international E-railway network link, in a continuous manner, the territories of at least four of the States which have deposited such an instrument. If this condition is not fulfilled, the Agreement shall enter into force 90 days after the date of the deposit of the instrument of ratification, acceptance, approval or accession, whereby the said condition will be satisfied.
2. For each State which deposits an instrument of ratification, acceptance, approval or accession after the commencement of the period of 90 days specified in paragraph 1 of this article, the Agreement shall enter into force 90 days after the date of deposit of the said instrument.

Article 7

Nothing in this Agreement shall be construed as preventing a Contracting Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security. Such measures, which must be temporary, shall be notified immediately to the depositary and their nature specified.

Article 8

1. Any dispute between two or more Contracting Parties which relates to the interpretation or application of this Agreement and which the Parties in dispute are unable to settle by negotiation or other means shall be referred to arbitration if any of the Contracting Parties in dispute so requests and shall, to that end, be submitted to one or more arbitrators selected by mutual agreement between the Parties in dispute. If the Parties in dispute fail to agree on the choice of an arbitrator or arbitrators within three months after the request for arbitration, any of those Parties may request the Secretary-General of the United Nations to appoint a single arbitrator to whom the dispute shall be submitted for decision.
2. The award of the arbitrator or arbitrators appointed in accordance with paragraph 1 of this article shall be binding upon the Contracting Parties in dispute.

Article 9

Any State may, at the time of signing this Agreement or of depositing its instrument of ratification, acceptance, approval or accession, declare that it does not consider itself bound by article 8 of this Agreement.

Article 10

1. The main text of this Agreement may be amended by either of the procedures specified in this article.
2.
 - (a) Upon the request of a Contracting Party, any amendment proposed by it to the main text of this Agreement shall be considered by the Working Party on Rail Transport of the Economic Commission for Europe.
 - (b) If it is adopted by a two-thirds majority of the members present and voting and if this majority includes a two-thirds majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General to all Contracting Parties for acceptance.
 - (c) If the amendment is accepted by two thirds of the Contracting Parties, the Secretary-General shall so notify all the Contracting Parties and the amendment shall enter into force 12 months after the date of such notification. The amendment shall enter into force with respect to all the Contracting Parties except those which, before its entry into force, make a declaration that they do not accept the amendment.
3. At the request of at least one third of the Contracting Parties, a conference, to which the States referred to in article 5 shall be invited, shall be convened by the Secretary-General. The procedure specified in paragraph 2, subparagraphs (a) and (b), of this article shall be applied in respect of any amendment submitted to the consideration of such a conference.

Article 11

1. Annex I to this Agreement may be amended in accordance with the procedure specified in this article.
2. At the request of a Contracting Party, any amendment proposed by it to annex I to this Agreement shall be considered by the Working Party on Rail Transport of the Economic Commission for Europe.
3. If it is adopted by the majority of the members present and voting and if this majority includes the majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General to the competent administrations of the Contracting Parties directly concerned. The following shall be considered Contracting Parties directly concerned:

(a) In the case of inclusion of a new main line or modification of an existing main line, any Contracting Party whose territory is crossed by that line;

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

(b) In the case of inclusion of a new supplementary line or modification of an existing supplementary line, any Contracting Party contiguous to the requesting country, whose territory is crossed by the principal international line or lines with which the supplementary line, whether new or to be modified, is connected. Two Contracting Parties having in their respective territories the terminal points of a proposed ferry service on the principal line or lines specified above shall also be considered contiguous for the purposes of this paragraph.

4. Any proposed amendment communicated in accordance with paragraph 3 of this article shall be accepted if, within a period of six months following the date of its communication, none of the competent administrations of the Contracting Parties directly concerned notifies the Secretary-General of its objection to the amendment. If the administration of a Contracting Party states that its national law obliges it to subordinate its agreement to the grant of a specific authorization or to the approval of a legislative body, the competent administration shall not be considered as having consented to the amendment to annex I to this Agreement, and the proposed amendment shall not be accepted until such time as the said competent administration notifies the Secretary-General that it has obtained the required authorization or approval. If such notification is not made within a period of 18 months following the date on which the proposed amendment was communicated to the said competent administration or if, within the period of six months specified above, the competent administration of a Contracting Party directly concerned expresses an objection to the proposed amendment, that amendment shall be deemed not accepted.
5. Any amendment accepted shall be communicated by the Secretary-General to all the Contracting Parties and shall enter into force for all the Contracting Parties three months after the date of its notification.

Article 12

1. Annex II to this agreement may be amended by the procedure specified in this article.
2. At the request of a Contracting Party, any amendment proposed by it to annex II to this Agreement shall be considered by the Working Party on Rail Transport of the Economic Commission for Europe.
3. If it is adopted by the majority of the members present and voting, and if this majority includes the majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General to the competent administrations of all the Contracting Parties for acceptance.
4. The amendment shall be accepted if, within a period of six months following the date of notification, less than one third of the competent administrations of the Contracting Parties notify the Secretary-General of their objection to the amendment.
5. Any amendment accepted shall be communicated by the Secretary-General to all the Contracting Parties and shall come into force three months after the date of its notification.

Article 13

Each State shall, at the time of signing, ratifying, accepting, approving or acceding to this Agreement, inform the Secretary-General of the name and address of its administration to which proposed amendments to the annexes to this Agreement are to be communicated in conformity with articles 11 and 12 above.

Article 14

Any Contracting Party may denounce this Agreement by written notification addressed to the Secretary-General.

The denunciation shall take effect one year after the date of receipt by the Secretary-General of such notification.

Article 15

The application of this Agreement shall be suspended if the number of Contracting Parties is less than eight for any period of 12 consecutive months.

IN WITNESS WHEREOF, the plenipotentiaries, being duly authorized thereto, have signed this Agreement [signatures not reproduced].

DONE at Geneva, this thirty-first day of May one thousand nine hundred and eighty-five, in a single copy in the English, French and Russian languages, the three texts being equally authentic.

[Annex I, on Railway Lines of Major International Importance, and Annex II, on Technical Characteristics, are not reproduced here.]

CHAPTER FORTY-FOUR

The Hague Convention on the Law Applicable to Trusts and on their Recognition

The Hague, 1 July 1985

INTRODUCTION

This Convention is one of the main outcomes of The Hague Conference on Private International Law. The instrument is largely about the legal recognition of trusts and the law that must govern their administration. Trusts that have been entered into voluntarily and reduced into writing are the only types of trusts that are covered by the Convention. Other characteristics of a trust covered by the Convention must include: separation of the trust fund from the trustee's estate; title to the trust being in the name of the trustee or his or her representative; and the trustee having the power and the duty to manage the trust assets, and being accountable therein.

The determination of the law applicable to a particular trust is getting more complicated in the contemporary, globalized world. The Convention makes it clear that the law that is chosen, expressly or implicitly, by the settlor will be the proper law of the trust. The difficulty is where the settlor did not specify the relevant law or where the law preferred by the settlor does not provide for the particular trust. In such a case, the law that is deemed closest to the trust shall govern it. The determination of the closest law is to be based on the venue of the administration of the trust, as specified by the settlor, on the location of the trust assets, on the place of residence or business of the trustee and on the objects of the trust and the places where they are to be honoured. It is entirely possible that any severable aspects of the trust could be governed by different laws. This does not necessarily resolve the difficulty of determining the hierarchy or priority, where two sets of laws are deemed closest to the trust, or the more problematic points of determining the relevant law. Article 10 seeks to resolve this difficulty, by providing that the 'law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law'. A more flexible method is found in articles 15 and 16, which retains the application of normal conflict of laws rules, where necessary.

The second main part of the Convention deals with recognition of trusts. Recognition of a trust under the terms of the Convention means, inter alia, that: the trustee can register the trust assets; he can sue and be sued in his capacity as trustee; the separation of the trust property from the trustee's personal property and insulation of the trust property from the personal creditors of the trustee, in case of insolvency or bankruptcy; and, where the trustee mingles his personal property with that of the trust, property action may be taken to recover the trust property. However, the problem of applicable law is complicated by the provision that no state is obliged to recognize a trust when significant aspects are more closely connected with states that do not have room for that particular

kind of trust. The Convention does not also prevent the application of law that is more favourable to the recognition of trusts. Moreover, where the application of the Convention would be manifestly inconsistent with public policy, it is to be ignored. This Hague Convention promises much, but may not be a radical departure from existing conflict of law rules.

The Convention came into force on 1 January 1992. By March 2005 there were nine parties to the Convention, including the People's Republic of China (for Hong Kong, in succession to British adherence) and Liechtenstein (where it is due to come into effect on 1 April 2006).

CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

CONSIDERING that the trust, as developed in courts of equity in common law jurisdictions and adopted with some modifications in other jurisdictions, is a unique legal institution,

DESIRING to establish common provisions on the law applicable to trusts and to deal with the most important issues concerning the recognition of trusts,

HAVE RESOLVED to conclude a Convention to this effect, and have agreed upon the following provisions:

CHAPTER I: SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term “trust” refers to the legal relationships created—inter vivos or on death—by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics:

- (a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II: APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to:

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

In particular that law shall govern:

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;

- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III: RECOGNITION

Article 11

A trust created in accordance with the law specified by the preceding Chapter shall be recognized as a trust. Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity.

In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular:

- (a) that personal creditors of the trustee shall have no recourse against the trust assets;
- (b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

* We have endeavoured to reproduce a complete and correct text of the above Convention, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Permanent Bureau of the Hague Conference on Private International Law (<http://www.hcch.net/>).

Article 13

No State shall be bound to recognize a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved.

Article 14

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV: GENERAL CLAUSES

Article 15

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters:

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Article 16

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

If another State has a sufficiently close connection with a case then, in exceptional circumstances, effect may also be given to rules of that State which have the same character as mentioned in the preceding paragraph.

Any Contracting State may, by way of reservation, declare that it will not apply the second paragraph of this Article.

Article 17

In the Convention the word “law” means the rules of law in force in a State other than its rules of conflict of laws.

Article 18

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy (ordre public).

Article 19

Nothing in the Convention shall prejudice the powers of States in fiscal matters.

Article 20

Any Contracting State may, at any time, declare that the provisions of the Convention will be extended to trusts declared by judicial decisions.

This declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and will come into effect on the day when this notification is received.

Article 31 is applicable to the withdrawal of this declaration in the same way as it applies to a denunciation of the Convention.

Article 21

Any Contracting State may reserve the right to apply the provisions of Chapter III only to trusts the validity of which is governed by the law of a Contracting State.

Article 22

The Convention applies to trusts regardless of the date on which they were created.

However, a Contracting State may reserve the right not to apply the Convention to trusts created before the date on which, in relation to that State, the Convention enters into force.

Article 23

For the purpose of identifying the law applicable under the Convention, where a State comprises several territorial units each of which has its own rules of law in respect of trusts, any reference to the law of that State is to be construed as referring to the law in force in the territorial unit in question.

Article 24

A State within which different territorial units have their own rules of law in respect of trusts is not bound to apply the Convention to conflicts solely between the laws of such units.

Article 25

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

CHAPTER V: FINAL CLAUSES

Article 26

Any State may, at the time of signature, ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 29, make the reservations provided for in Articles 16, 21 and 22.

No other reservation shall be permitted.

Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

Article 27

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fifteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 28

Any other State may accede to the Convention after it has entered into force in accordance with Article 30, paragraph 1.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in Article 32. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 29

If a State has two or more territorial units in which different systems of law are applicable, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all of its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 30

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 27.

Thereafter the Convention shall enter into force:

- (a) for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- (b) for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 28;
- (c) for a territorial unit to which the Convention has been extended in conformity with Article 29, on the first day of the third calendar month after the notification referred to in that Article.

Article 31

Any Contracting State may denounce this Convention by a formal notification in writing addressed to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the depositary or on such later date as is specified in the notification.

Article 32

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference and the States which have acceded in accordance with Article 28, of the following:

- (a) the signatures and ratifications, acceptances or approvals referred to in Article 27;
- (b) the date on which the Convention enters into force in accordance with Article 30;
- (c) the accessions and the objections raised to accessions referred to in Article 28;
- (d) the extensions referred to in Article 29;
- (e) the declarations referred to in Article 20;
- (f) the reservations or withdrawals referred to in Article 26;
- (g) the denunciations referred to in Article 31.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention [signatures are not reproduced here].

DONE at The Hague, on the 1st day of July 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

CHAPTER FORTY-FIVE

Convention Establishing the Multilateral Investment Guarantee Agency

Seoul, 11 October 1985

INTRODUCTION

In pursuance of the objective of the World Bank to promote investment and reconstruct countries caught in economic stagnation, a number of institutions were set up to assure investors of the safety of their investments. One such institution is the Multilateral Investment Guarantee Agency (MIGA). Its primary goal is to encourage investment flows to developing countries. This is to be done by the issuance of insurance, reinsurance and guarantees against non-commercial risks on investments in developing countries flowing from developed member states. It is also to have generous terms and support for horizontal investments flowing from one developing country to another. However, it is not permitted to guarantee or insure investments to developed countries.

The structure of the MIGA, as with the International Bank for Reconstruction and Development (IBRD, i.e. the World Bank), is three tiered. There is, first, the Council, made up of governors representing all member states. It is the supreme body with exclusive powers over membership, capital, the designation of a member, amendment of the establishment Convention and the possible liquidation of MIGA and the consequences thereof. Excepting the foregoing, it can delegate its functions to the Board. The Board is second in authority and is composed of at least 12 directors. The terms of appointment of the directors is determined by the Council. The Board is responsible for the general operations of MIGA. Next is the President of MIGA and his staff. The President, guided by the Board, is responsible for appointment, discipline and organization of staff and the daily conduct of the Agency's business. The President is appointed by the Board, but his conditions of service are determined by the Council. The President and staff of the Agency are to be independent, owing no duty to any other person or organization, although the Agency is to co-operate with the UN and other inter-governmental organizations. Given the sensitive nature of their work, staff are to maintain strict confidentiality regarding any matter or information in the Agency's domain.

The risks that MIGA may provide cover for are: currency transfer (but not devaluation); expropriation and similar steps (but not general non-discriminatory

measures in the nature of governmental administration); breach of contract by the host state where is no effective and prompt judicial mechanism available; and war and civil unrest. The Board may, with a special majority, consider and grant a joint application by the host state and the investor for an extension of the non-commercial risks outlined. Such an extension cannot cover depreciation of currency, a governmental action for which the investor had agreed or was responsible, or any action or omission that preceded the contract of guarantee. The main primary form of investment eligible for coverage is equity interests, including reinvestments of the yield from previous investment. Other forms of direct investment may be insured with the approval of the board. The investment insured must be sound, contribute to the development of the host nation and comply with the host nation's law. There must be a good investment climate in the host country. However, under article 34 the Agency should 'not be influenced...by the political character of the member or members concerned'. This may be in keeping with the non-political interference of the World Bank and its affiliates, but it is difficult not to consider the politics of the investment when the insurance is itself for non-commercial risks. Besides, the Agency is required to 'take into account all the circumstances surrounding an investment'.

The Convention came into force on 12 April 1988. By 2004 there were 164 members of MIGA, with six further countries going through the process of signing and ratifying the Convention.

UNITED NATIONS CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY*

PREAMBLE

THE CONTRACTING STATES

CONSIDERING the need to strengthen international cooperation for economic development and to foster the contribution to such development of foreign investment in general and private foreign investment in particular;

RECOGNIZING that the flow of foreign investment to developing countries would be facilitated and further encouraged by alleviating concerns related to non-commercial risks;

DESIRING to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their development needs, policies and objectives, on the basis of fair and stable standards for the treatment of foreign investment;

CONVINCED that the Multilateral Investment Guarantee Agency can play an important role in the encouragement of foreign investment complementing national and regional investment guarantee programs and private insurers of non-commercial risk; and

REALIZING that such Agency should, to the extent possible, meet its obligations without resort to its callable capital and that such an objective would be served by continued improvement in investment conditions,

HAVE AGREED as follows:

CHAPTER I: ESTABLISHMENT, STATUS, PURPOSES AND DEFINITIONS

Article 1 Establishment and status of the Agency

- (a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the Agency).
- (b) The Agency shall possess full juridical personality and, in particular, the capacity to:
 - (i) contract;
 - (ii) acquire and dispose of movable and immovable property; and
 - (iii) institute legal proceedings.

Article 2 Objective and purposes

The objective of the Agency shall be to encourage the flow of investments for productive purposes among member countries, and in particular to developing member countries, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter referred to as the Bank), the International Finance Corporation and other international development finance institutions.

To serve its objective, the Agency shall:

- (a) issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries;
- (b) carry out appropriate complementary activities to promote the flow of investments to and among developing member countries; and
- (c) exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.

The Agency shall be guided in all its decisions by the provisions of this Article.

Article 3 Definitions

For the purposes of this Convention:

- (a) "Member" means a State with respect to which this Convention has entered into force in accordance with Article 61.
- (b) "Host country" or "host government" means a member, its government, or any public authority of a member in whose territories, as defined in Article 66, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.
- (c) A "developing member country" means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the Council of Governors referred to in Article 30 (hereinafter called the Council).
- (d) A "special majority" means an affirmative vote of not less than two-thirds of the total voting power representing nor less than fifty-five percent of the subscribed shares of the capital stock of the Agency.

- (e) A “freely usable currency” means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 30 (hereinafter called the Board) may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

CHAPTER II: MEMBERSHIP AND CAPITAL

Article 4 Membership

- (a) Membership in the Agency shall be open to all members of the Bank and to Switzerland.
- (b) Original members shall be the States which are listed in Schedule A hereto and become parties to this Convention on or before 30 October 1987.

Article 5 Capital

- (a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR 1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR 10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period 1 January 1981 to 30 June 1985, such value being 1.082 United States dollars per SDR.
- (b) The capital stock shall increase on the admission of a new member to the extent that the then authorized shares are insufficient to provide the shares to be subscribed by such member pursuant to Article 6.
- (c) The Council, by special majority, may at any time increase the capital stock of the Agency.

Article 6 Subscription of shares

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in no event at an issue price of less than par. No member shall subscribe to less than fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

Article 7 Division and calls of subscribed capital

The initial subscription of each member shall be paid as follows:

- (i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten percent of the price of each share shall be paid in cash as stipulated in Section

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Bank for Reconstruction and Development—the World Bank (<http://www.worldbank.org/>).

(a) of Article 8 and an additional ten percent in the form of nonnegotiable, non-interest-bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.

- (ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

Article 8 Payment of subscription of shares

- (a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five percent of the paid-in cash portion of their subscriptions payable under Article 7(i).
- (b) Calls on any portion of unpaid subscriptions shall be uniform on all shares.
- (c) If the amount received by the Agency on a call shall be insufficient to meet the obligations which have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.
- (d) Liability on shares shall be limited to the unpaid portion of the issue price.

Article 9 Valuation of currencies

Whenever it shall be necessary for the purposes of this Convention to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Agency, after consultation with the International Monetary Fund.

Article 10 Refunds

- (a) The Agency shall, as soon as practicable, return to members amounts paid on calls on subscribed capital if and to the extent that:
 - (i) the call shall have been made to pay a claim resulting from a guarantee or reinsurance contract and thereafter the Agency shall have recovered its payment, in whole or in part, in a freely usable currency; or
 - (ii) the call shall have been made because of a default in payment by a member and thereafter such member shall have made good such default in whole or in part; or
 - (iii) the Council, by special majority, determines that the financial position of the Agency permits all or part of such amounts to be returned out of the Agency's revenues.

- (b) Any refund effected under this Article to a member shall be made in freely usable currency in the proportion of the payments made by that member to the total amount paid pursuant to calls made prior to such refund.
- (c) The equivalent of amounts refunded under this Article to a member shall become part of the callable capital obligations of the member under Article 7(ii).

CHAPTER III: OPERATIONS

Article 11 Covered risks

- (a) Subject to the provisions of Sections (b) and (c) below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risk:
 - (i) Currency transfer
 - any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer;
 - (ii) Expropriation and similar measures
 - any legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories;
 - (iii) Breach of contract
 - any repudiation or breach by the host government of a contract with the holder of a guarantee, when (a) the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or (b) a decision by such forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or (c) such a decision cannot be enforced; and
 - (iv) War and civil disturbance
 - any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.
- (b) Upon the joint application of the investor and the host country, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in Section (a) above, but in no case to the risk of devaluation or depreciation of currency.
- (c) Losses resulting from the following shall not be covered:
 - (i) any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and

- (ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

Article 12 Eligible investments

- (a) Eligible investments shall include equity interests, including medium- or long-term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.
- (b) The Board, by special majority, may extend eligibility to any other medium- or long-term form of investment, except that loans other than those mentioned in Section (a) above may be eligible only if they are related to a specific investment covered or to be covered by the Agency.
- (c) Guarantees shall be restricted to investments the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include:
 - (i) any transfer of foreign exchange made to modernize, expand, or develop an existing investment; and
 - (ii) the use of earnings from existing investments which could otherwise be transferred outside the host country.
- (d) In guaranteeing an investment, the Agency shall satisfy itself as to:
 - (i) the economic soundness of the investment and its contribution to the development of the host country;
 - (ii) compliance of the investment with the host country's laws and regulations;
 - (iii) consistency of the investment with the declared development objectives and priorities of the host country; and
 - (iv) the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

Article 13 Eligible investors

- (a) Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that:
 - (i) such natural person is a national of a member other than the host country;
 - (ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or nationals thereof, provided that such member is not the host country in any of the above cases; and
 - (iii) such juridical person, whether or not it is privately owned, operates on a commercial basis.
- (b) In case the investor has more than one nationality, for the purposes of Section (a) above the nationality of a member shall prevail over the nationality of a non-member, and the nationality of the host country shall prevail over the nationality of any other member.

- (c) Upon the joint application of the investor and the host country, the Board, by special majority, may extend eligibility to a natural person who is a national of the host country or a juridical person which is incorporated in the host country or the majority of whose capital is owned by its nationals, provided that the assets invested are transferred from outside the host country.

Article 14 Eligible host countries

Investments shall be guaranteed under this Chapter only if they are to be made in the territory of a developing member country.

Article 15 Host country approval

The Agency shall not conclude any contract of guarantee before the host government has approved the issuance of the guarantee by the Agency against the risks designated for cover.

Article 16 Terms and conditions

The terms and conditions of each contract of guarantee shall be determined by the Agency subject to such rules and regulations as the Board shall issue, provided that the Agency shall not cover the total loss of the guaranteed investment. Contracts of guarantee shall be approved by the President under the direction of the Board.

Article 17 Payment of claims

The President under the direction of the Board shall decide on the payment of claims to a holder of a guarantee in accordance with the contract of guarantee and such policies as the Board may adopt. Contracts of guarantee shall require holders of guarantees to seek, before a payment is made by the Agency, such administrative remedies as may be appropriate under the circumstances, provided that they are readily available to them under the laws of the host country. Such contracts may require the lapse of certain reasonable periods between the occurrence of events giving rise to claims and payments of claims.

Article 18 Subrogation

- (a) Upon paying or agreeing to pay compensation to a holder of a guarantee, the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and other obligors. The contract of guarantee shall provide the terms and conditions of such subrogation.
- (b) The rights of the Agency pursuant to Section (a) above shall be recognized by all members.
- (c) Amounts in the currency of the host country acquired by the Agency as subrogee pursuant to Section (a) above shall be accorded, with respect to use and conversion, treatment by the host country as favorable as the treatment to which such funds would

be entitled in the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the payment of its administrative expenditures and other costs. The Agency shall also seek to enter into arrangements with host countries on other uses of such currencies to the extent that they are not freely usable.

Article 19 Relationship to national and regional entities

The Agency shall cooperate with, and seek to complement the operations of, national entities of members and regional entities the majority of whose capital is owned by members, which carry out activities similar to those of the Agency, with a view to maximizing both the efficiency of their respective services and their contribution to increased flows of foreign investment. To this end, the Agency may enter into arrangements with such entities on the details of such cooperation, including in particular the modalities of reinsurance and coinsurance.

Article 20 Reinsurance of national and regional entities

- (a) The Agency may issue reinsurance in respect of a specific investment against a loss resulting from one or more of the non-commercial risks underwritten by a member or agency thereof or by a regional investment guarantee agency the majority of whose capital is owned by members. The Board, by special majority, shall from time to time prescribe maximum amounts of contingent liability which may be assumed by the Agency with respect to reinsurance contracts. In respect of specific investments which have been completed more than twelve months prior to receipt of the application for reinsurance by the Agency, the maximum amount shall initially be set at ten percent of the aggregate contingent liability of the Agency under this Chapter. The conditions of eligibility specified in Articles 11 to 14 shall apply to reinsurance operations, except that the reinsured investments need not be implemented subsequent to the application for reinsurance.
- (b) The mutual rights and obligations of the Agency and a reinsured member or agency shall be stated in contracts of reinsurance subject to such rules and regulations as the Board shall issue. The Board shall approve each contract for reinsurance covering an investment which has been made prior to receipt of the application for reinsurance by the Agency, with a view to minimizing risks, assuring that the Agency receives premiums commensurate with its risk, and assuring that the reinsured entity is appropriately committed toward promoting new investment in developing member countries.
- (c) The Agency shall, to the extent possible, assure that it or the reinsured entity shall have the rights of subrogation and arbitration equivalent to those the Agency would have if it were the primary guarantor. The terms and conditions of reinsurance shall require that administrative remedies are sought in accordance with Article 17 before a payment is made by the Agency. Subrogation shall be effective with respect to the host country concerned only after its approval of the reinsurance by the Agency. The Agency shall include in the contracts of reinsurance provisions requiring the reinsured to pursue with due diligence the rights or claims related to the reinsured investment.

Article 21 Cooperation with private insurers and with reinsurers

- (a) The Agency may enter into arrangements with private insurers in member countries to enhance its own operations and encourage such insurers to provide coverage of non-commercial risks in developing member countries on conditions similar to those applied by the Agency. Such arrangements may include the provision of reinsurance by the Agency under the conditions and procedures specified in Article 20.
- (b) The Agency may reinsure with any appropriate reinsurance entity, in whole or in part, any guarantee or guarantees issued by it.
- (c) The Agency will in particular seek to guarantee investments for which comparable coverage on reasonable terms is not available from private insurers and reinsurers.

Article 22 Limits of guarantee

- (a) Unless determined otherwise by the Council by special majority, the aggregate amount of contingent liabilities which may be assumed by the Agency under this Chapter shall not exceed one hundred and fifty percent of the amount of the Agency's unimpaired subscribed capital and its reserves plus such portion of its reinsurance cover as the Board may determine. The Board shall from time to time review the risk profile of the Agency's portfolio in the light of its experience with claims, degree of risk diversification, reinsurance cover and other relevant factors with a view to ascertaining whether changes in the maximum aggregate amount of contingent liabilities should be recommended to the Council. The maximum amount determined by the Council shall not under any circumstances exceed five times the amount of the Agency's unimpaired subscribed capital, its reserves and such portion of its reinsurance cover as may be deemed appropriate.
- (b) Without prejudice to the general limit of guarantee referred to in Section (a) above, the Board may prescribe:
 - (i) maximum aggregate amounts of contingent liability which may be assumed by the Agency under this Chapter for all guarantees issued to investors of each individual member. In determining such maximum amounts, the Board shall give due consideration to the share of the respective member in the capital of the Agency and the need to apply more liberal limitations in respect of investments originating in developing member countries; and
 - (ii) maximum aggregate amounts of contingent liability which may be assumed by the Agency with respect to such diversification factors as individual projects, individual host countries and types of investment or risk.

Article 23 Investment promotion

- (a) The Agency shall carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improving the environment for foreign investment flows to such countries. The Agency may, upon the request of a member, provide technical advice and assistance to improve the investment conditions in the territories of that member. In performing these activities, the Agency shall:

- (i) be guided by relevant investment agreements among member countries;
- (ii) seek to remove impediments, in both developed and developing member countries, to the flow of investment to developing member countries; and
- (iii) coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

(b) The Agency also shall:

- (i) encourage the amicable settlement of disputes between investors and host countries;
- (ii) endeavor to conclude agreements with developing member countries, and in particular with prospective host countries, which will assure that the Agency, with respect to investment guaranteed by it, has treatment at least as favorable as that agreed by the member concerned for the most favored investment guarantee agency or State in an agreement relating to investment, such agreements to be approved by special majority of the Board; and
- (iii) promote and facilitate the conclusion of agreements, among its members, on the promotion and protection of investments.

(c) The Agency shall give particular attention in its promotional efforts to the importance of increasing the flow of investments among developing member countries.

Article 24 Guarantees of sponsored investments

In addition to the guarantee operations undertaken by the Agency under this Chapter, the Agency may guarantee investments under the sponsorship arrangements provided for in Annex I to this Convention.

CHAPTER IV: FINANCIAL PROVISIONS

Article 25 Financial management

The Agency shall carry out its activities in accordance with sound business and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

Article 26 Premiums and fees

The Agency shall establish and periodically review the rates of premiums, fees and other charges, if any, applicable to each type of risk.

Article 27 Allocation of net income

- (a) Without prejudice to the provisions of Section (a)(iii) of Article 10, the Agency shall allocate net income to reserves until such reserves reach five times the subscribed capital of the Agency.

- (b) After the reserves of the Agency have reached the level prescribed in Section (a) above, the Council shall decide whether, and to what extent, the Agency's net income shall be allocated to reserves, be distributed to the Agency's members or be used otherwise. Any distribution of net income to the Agency's members shall be made in proportion to the share of each member in the capital of the Agency in accordance with a decision of the Council acting by special majority.

Article 28 Budget

The President shall prepare an annual budget of revenues and expenditures of the Agency for approval by the Board.

Article 29 Accounts

The Agency shall publish an Annual Report which shall include statements of its accounts and of the accounts of the Sponsorship Trust Fund referred to in Annex I to this Convention, as audited by independent auditors. The Agency shall circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

CHAPTER V: ORGANIZATION AND MANAGEMENT

Article 30 Structure of the Agency

The Agency shall have a Council of Governors, a Board of Directors, a President and staff to perform such duties as the Agency may determine.

Article 31 The Council

- (a) All the powers of the Agency shall be vested in the Council, except such powers as are, by the terms of this Convention, specifically conferred upon another organ of the Agency. The Council may delegate to the Board the exercise of any of its powers, except the power to:
- (i) admit new members and determine the conditions of their admission;
 - (ii) suspend a member;
 - (iii) decide on any increase or decrease in the capital;
 - (iv) increase the limit of the aggregate amount of contingent liabilities pursuant to Section (a) of Article 22;
 - (v) designate a member as a developing member country pursuant to Section (c) of Article 3;
 - (vi) classify a new member as belonging to Category One or Category Two for voting purposes pursuant to Section (a) of Article 39 or reclassify an existing member for the same purposes;
 - (vii) determine the compensation of Directors and their Alternates;
 - (viii) cease operations and liquidate the Agency;

- (ix) distribute assets to members upon liquidation; and
 - (x) amend this Convention, its Annexes and Schedules.
- (b) The Council shall be composed of one Governor and one Alternate appointed by each member in such manner as it may determine. No Alternate may vote except in the absence of his principal. The Council shall select one of the Governors as Chairman.
 - (c) The Council shall hold an annual meeting and such other meetings as may be determined by the Council or called by the Board. The Board shall call a meeting of the Council whenever requested by five members or by members having twenty-five percent of the total voting power.

Article 32 The Board

- (a) The Board shall be responsible for the general operations of the Agency and shall take, in the fulfillment of this responsibility, any action required or permitted under this Convention.
- (b) The Board shall consist of not less than twelve Directors. The number of Directors may be adjusted by the Council to take into account changes in membership. Each Director may appoint an Alternate with full power to act for him in case of the Director's absence or inability to act. The President of the Bank shall be ex officio Chairman of the Board, but shall have no vote except a deciding vote in case of an equal division.
- (c) The Council shall determine the term of office of the Directors. The first Board shall be constituted by the Council at its inaugural meeting.
- (d) The Board shall meet at the call of its Chairman acting on his own initiative or upon request of three Directors.
- (e) Until such time as the Council may decide that the Agency shall have a resident Board which functions in continuous session, the Directors and Alternates shall receive compensation only for the cost of attendance at the meetings of the Board and the discharge of other official functions on behalf of the Agency. Upon the establishment of a Board in continuous session, the Directors and Alternates shall receive such remuneration as may be determined by the Council.

Article 33 President and staff

- (a) The President shall, under the general control of the Board, conduct the ordinary business of the Agency. He shall be responsible for the organization, appointment and dismissal of the staff.
- (b) The President shall be appointed by the Board on the nomination of its Chairman. The Council shall determine the salary and terms of the contract of service of the President.
- (c) In the discharge of their offices, the President and the staff owe their duty entirely to the Agency and to no other authority. Each member of the Agency shall respect the international character of this duty and shall refrain from all attempts to influence the President or the staff in the discharge of their duties.
- (d) In appointing the staff, the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due

regard to the importance of recruiting personnel on as wide a geographical basis as possible.

- (e) The President and staff shall maintain at all times the confidentiality of information obtained in carrying out the Agency's operations.

Article 34 Political activity prohibited

The Agency, its President and staff shall not interfere in the political affairs of any member. Without prejudice to the right of the Agency to take into account all the circumstances surrounding an investment, they shall not be influenced in their decisions by the political character of the member or members concerned. Considerations relevant to their decisions shall be weighed impartially in order to achieve the purposes stated in Article 2.

Article 35 Relations with international organizations

The Agency shall, within the terms of this Convention, cooperate with the United Nations and with other inter-governmental organizations having specialized responsibilities in related fields, including in particular the Bank and the International Finance Corporation.

Article 36 Location of principal office

- (a) The principal office of the Agency shall be located in Washington DC unless the Council, by special majority, decides to establish it in another location.
- (b) The Agency may establish other offices as may be necessary for its work.

Article 37 Depositories for assets

Each member shall designate its central bank as a depository in which the Agency may keep holdings of such member's currency or other assets of the Agency or, if it has no central bank, it shall designate for such purpose such other institution as may be acceptable to the Agency.

Article 38 Channel of communication

- (a) Each member shall designate an appropriate authority with which the Agency may communicate in connection with any matter arising under this Convention. The Agency may rely on statements of such authority as being statements of the member. The Agency, upon the request of a member, shall consult with that member with respect to matters dealt with in Articles 19 to 21 and related to entities or insurers of that member.
- (b) Whenever the approval of any member is required before any act may be done by the Agency, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Agency may fix in notifying the member of the proposed act.

CHAPTER VI: VOTING, ADJUSTMENTS OF SUBSCRIPTIONS AND REPRESENTATION

Article 39 Voting and adjustments of subscriptions

- (a) In order to provide for voting arrangements that reflect the equal interest in the Agency of the two Categories of States listed in Schedule A of this Convention, as well as the importance of each member's financial participation, each member shall have 177 membership votes plus one subscription vote for each share of stock held by that member.
- (b) If at any time within three years after the entry into force of this Convention the aggregate sum of membership and subscription votes of members which belong to either of the two Categories of States listed in Schedule A of this Convention is less than forty percent of the total voting power, members from such a Category shall have such number of supplementary votes as shall be necessary for the aggregate voting power of the Category to equal such a percentage of the total voting power. Such supplementary votes shall be distributed among the members of such Category in the proportion that the subscription votes of each bears to the aggregate of subscription votes of the Category. Such supplementary votes shall be subject to automatic adjustment to ensure that such percentage is maintained and shall be cancelled at the end of the abovementioned three-year period.
- (c) During the third year following the entry into force of this Convention, the Council shall review the allocation of shares and shall be guided in its decision by the following principles:
 - (i) the votes of members shall reflect actual subscriptions to the Agency's capital and the membership votes as set out in Section (a) of this Article;
 - (ii) shares allocated to countries which shall not have signed the Convention shall be made available for reallocation to such members and in such manner as to make possible voting parity between the abovementioned Categories; and
 - (iii) the Council will take measures that will facilitate members' ability to subscribe to shares allocated to them.
- (d) Within the three-year period provided for in Section (b) of this Article, all decisions of the Council and Board shall be taken by special majority, except that decisions requiring a higher majority under this Convention shall be taken by such higher majority.
- (e) In case the capital stock of the Agency is increased pursuant to Section (c) of Article 5, each member which so requests shall be authorized to subscribe a proportion of the increase equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Agency, but no member shall be obligated to subscribe any part of the increased capital.
- (f) The Council shall issue regulations regarding the making of additional subscriptions under Section (e) of this Article. Such regulations shall prescribe reasonable time limits for the submission by members of requests to make such subscriptions.

Article 40 Voting in the Council

- (a) Each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise specified in this Convention, decisions of the Council shall be taken by a majority of the votes cast.
- (b) A quorum for any meeting of the Council shall be constituted by a majority of the Governors exercising not less than two-thirds of the total voting power.
- (c) The Council may by regulation establish a procedure whereby the Board, when it deems such action to be in the best interests of the Agency, may request a decision of the Council on a specific question without calling a meeting of the Council.

Article 41 Election of Directors

- (a) Directors shall be elected in accordance with Schedule B.
- (b) Directors shall continue in office until their successors are elected. If the office of a Director becomes vacant more than ninety days before the end of his term, another Director shall be elected for the remainder of the term by the Governors who elected the former Director. A majority of the votes cast shall be required for election. While the office remains vacant, the Alternate of the former Director shall exercise his powers, except that of appointing an Alternate.

Article 42 Voting in the Board

- (a) Each Director shall be entitled to cast the number of votes of the members whose votes counted towards his election. All the votes which a Director is entitled to cast shall be cast as a unit. Except as otherwise specified in this Convention, decisions of the Board shall be taken by a majority of the votes cast.
- (b) A quorum for a meeting of the Board shall be constituted by a majority of the Directors exercising not less than one-half of the total voting power.
- (c) The Board may by regulation establish a procedure whereby its Chairman, when he deems such action to be in the best interests of the Agency, may request a decision of the Board on a specific question without calling a meeting of the Board.

CHAPTER VII: PRIVILEGES AND IMMUNITIES

Article 43 Purposes of Chapter

To enable the Agency to fulfill its functions, the immunities and privileges set forth in this Chapter shall be accorded to the Agency in the territories of each member.

Article 44 Legal process

Actions other than those within the scope of Articles 57 and 58 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Agency shall be brought (i) by

members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 45 Assets

- (a) The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.
- (b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and moratoria of any nature; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.
- (c) For purposes of this Chapter, the term “assets” shall include the assets of the Sponsorship Trust Fund referred to in Annex I to this Convention and other assets administered by the Agency in furtherance of its objective.

Article 46 Archives and communications

- (a) The archives of the Agency shall be inviolable, wherever they may be.
- (b) The official communications of the Agency shall be accorded by each member the same treatment that is accorded to the official communications of the Bank.

Article 47 Taxes

- (a) The Agency, its assets, property and income, and its operations and transactions authorized by this Convention, shall be immune from all taxes and customs duties. The Agency shall also be immune from liability for the collection or payment of any tax or duty.
- (b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to Governors and their Alternates or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to the Chairman of the Board, Directors, their Alternates, the President or staff of the Agency.
- (c) No taxation of any kind shall be levied on any investment guaranteed or reinsured by the Agency (including any earnings therefrom) or any insurance policies reinsured by the Agency (including any premiums and other revenues therefrom) by whomsoever held: (i) which discriminates against such investment or insurance policy solely because it is guaranteed or reinsured by the Agency; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Agency.

Article 48 Officials of the Agency

All Governors, Directors, Alternates, the President and staff of the Agency:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange restrictions as are accorded by the members concerned to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by the members concerned to representatives, officials and employees of comparable rank of other members.

Article 49 Application of this Chapter

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Chapter and shall inform the Agency of the detailed action which it has taken.

Article 50 Waiver

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Agency and may be waived, to such extent and upon such conditions as the Agency may determine, in cases where such a waiver would not prejudice its interests. The Agency shall waive the immunity of any of its staff in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.

CHAPTER VIII: WITHDRAWAL, SUSPENSION OF MEMBERSHIP AND CESSATION OF OPERATIONS

Article 51 Withdrawal

Any member may, after the expiration of three years following the date upon which this Convention has entered into force with respect to such member, withdraw from the Agency at any time by giving notice in writing to the Agency at its principal office. The Agency shall notify the Bank, as depository of this Convention, of the receipt of such notice. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Agency. A member may revoke such notice as long as it has not become effective.

Article 52 Suspension of membership

- (a) If a member fails to fulfill any of its obligations under this Convention, the Council may, by a majority of its members exercising a majority of the total voting power, suspend its membership.
- (b) While under suspension a member shall have no rights under this Convention, except for the right of withdrawal and other rights provided in this Chapter and Chapter IX, but shall remain subject to all its obligations.
- (c) For purposes of determining eligibility for a guarantee or reinsurance to be issued under Chapter III or Annex I to this Convention, a suspended member shall not be treated as a member of the Agency.
- (d) The suspended member shall automatically cease to be a member one year from the date of its suspension unless the Council decides to extend the period of suspension or to restore the member to good standing.

Article 53 Rights and duties of States ceasing to be members

- (a) When a State ceases to be a member, it shall remain liable for all its obligations, including its contingent obligations, under this Convention which shall have been in effect before the cessation of its membership.
- (b) Without prejudice to Section (a) above, the Agency shall enter into an arrangement with such State for the settlement of their respective claims and obligations. Any such arrangement shall be approved by the Board.

Article 54 Suspension of operations

- (a) The Board may, whenever it deems it justified, suspend the issuance of new guarantees for a specified period.
- (b) In an emergency, the Board may suspend all activities of the Agency for a period not exceeding the duration of such emergency, provided that necessary arrangements shall be made for the protection of the interests of the Agency and of third parties.
- (c) The decision to suspend operations shall have no effect on the obligations of the members under this Convention or on the obligations of the Agency towards holders of a guarantee or reinsurance policy or towards third parties.

Article 55 Liquidation

- (a) The Council, by special majority, may decide to cease operations and to liquidate the Agency. Thereupon the Agency shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of assets and settlement of obligations. Until final settlement and distribution of assets, the Agency shall remain in existence and all rights and obligations of members under this Convention shall continue unimpaired.
- (b) No distribution of assets shall be made to members until all liabilities to holders of guarantees and other creditors shall have been discharged or provided for and until the Council shall have decided to make such distribution.

- (c) Subject to the foregoing, the Agency shall distribute its remaining assets to members in proportion to each member's share in the subscribed capital. The Agency shall also distribute any remaining assets of the Sponsorship Trust Fund referred to in Annex I to this Convention to sponsoring members in the proportion which the investments sponsored by each bears to the total of sponsored investments. No member shall be entitled to its share in the assets of the Agency or the Sponsorship Trust Fund unless that member has settled all outstanding claims by the Agency against it. Every distribution of assets shall be made at such times as the Council shall determine and in such manner as it shall deem fair and equitable.

CHAPTER IX: SETTLEMENT OF DISPUTES

Article 56 Interpretation and application of the Convention

- (a) Any question of interpretation or application of the provisions of this Convention arising between any member of the Agency and the Agency or among members of the Agency shall be submitted to the Board for its decision. Any member which is particularly affected by the question and which is not otherwise represented by a national in the Board may send a representative to attend any meeting of the Board at which such question is considered.
- (b) In any case where the Board has given a decision under Section (a) above, any member may require that the question be referred to the Council, whose decision shall be final. Pending the result of the referral to the Council, the Agency may, so far as it deems necessary, act on the basis of the decision of the Board.

Article 57 Disputes between the Agency and members

- (a) Without prejudice to the provisions of Article 56 and of Section (b) of this Article, any dispute between the Agency and a member or an agency thereof and any dispute between the Agency and a country (or agency thereof) which has ceased to be a member, shall be settled in accordance with the procedure set out in Annex II to this Convention.
- (b) Disputes concerning claims of the Agency acting as subrogee of an investor shall be settled in accordance with either (i) the procedure set out in Annex II to this Convention, or (ii) an agreement to be entered into between the Agency and the member concerned on an alternative method or methods for the settlement of such disputes. In the latter case, Annex II to this Convention shall serve as a basis for such an agreement which shall, in each case, be approved by the Board by special majority prior to the undertaking by the Agency of operations in the territories of the member concerned.

Article 58 Disputes involving holders of a guarantee or reinsurance

Any dispute arising under a contract of guarantee or reinsurance between the parties thereto shall be submitted to arbitration for final determination in accordance with such rules as shall be provided for or referred to in the contract of guarantee or reinsurance

CHAPTER X: AMENDMENTS

Article 59 Amendment by Council

- (a) This Convention and its Annexes may be amended by vote of three-fifths of the Governors exercising four-fifths of the total voting power, provided that:
 - (i) any amendment modifying the right to withdraw from the Agency provided in Article 51 or the limitation on liability provided in Section (d) of Article 8 shall require the affirmative vote of all Governors; and
 - (ii) any amendment modifying the loss-sharing arrangement provided in Articles 1 and 3 of Annex I to this Convention which will result in an increase in any member's liability thereunder shall require the affirmative vote of the Governor of each such member.
- (b) Schedules A and B to this Convention may be amended by the Council by special majority.
- (c) If an amendment affects any provision of Annex I to this Convention, total votes shall include the additional votes allotted under Article 7 of such Annex to sponsoring members and countries hosting sponsored investments.

Article 60 Procedure

Any proposal to amend this Convention, whether emanating from a member or a Governor or a Director, shall be communicated to the Chairman of the Board who shall bring the proposal before the Board. If the proposed amendment is recommended by the Board, it shall be submitted to the Council for approval in accordance with Article 59. When an amendment has been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Council shall specify a different date.

CHAPTER XI: FINAL PROVISIONS

Article 61 Entry into force

- (a) This Convention shall be open for signature on behalf of all members of the Bank and Switzerland and shall be subject to ratification, acceptance or approval by the signatory States in accordance with their constitutional procedures.

- (b) This Convention shall enter into force on the day when not less than five instruments of ratification, acceptance or approval shall have been deposited on behalf of signatory States in Category One, and nor less than fifteen such instruments shall have been deposited on behalf of signatory States in Category Two; provided that total subscriptions of these States amount to not less than one-third of the authorized capital of the Agency as prescribed in Article 5.
- (c) For each State which deposits its instrument of ratification, acceptance or approval after this Convention shall have entered into force, this Convention shall enter into force on the date of such deposit.
- (d) If this Convention shall not have entered into force within two years after its opening for signature, the President of the Bank shall convene a conference of interested countries to determine the future course of action.

Article 62 Inaugural meeting

Upon entry into force of this Convention, the President of the Bank shall call the inaugural meeting of the Council. This meeting shall be held at the principal office of the Agency within sixty days from the date on which this Convention has entered into force or as soon as practicable thereafter.

Article 63 Depository

Instruments of ratification, acceptance or approval of this Convention and amendments thereto shall be deposited with the Bank which shall act as the depository of this Convention. The depository shall transmit certified copies of this Convention to States members of the Bank and to Switzerland.

Article 64 Registration

The depository shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 65 Notification

The depository shall notify all signatory States and, upon the entry into force of this Convention, the Agency of the following:

- (a) signatures of this Convention;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 63;
- (c) the date on which this Convention enters into force in accordance with Article 61;
- (d) exclusions from territorial application pursuant to Article 66; and
- (e) withdrawal of a member from the Agency pursuant to Article 51.

Article 66 Territorial application

This Convention shall apply to all territories under the jurisdiction of a member including the territories for whose international relations a member is responsible, except those which are excluded by such member by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently

Article 67 Periodic reviews

- (a) The Council shall periodically undertake comprehensive reviews of the activities of the Agency as well as the results achieved with a view to introducing any changes required to enhance the Agency's ability to serve its objectives.
- (b) The first such review shall take place five years after the entry into force of this Convention. The dates of subsequent reviews shall be determined by the Council.

DONE at Seoul, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfill the functions with which it is charged under this Convention.

[Signatures not reproduced here.]

ANNEX I GUARANTEES OF SPONSORED INVESTMENTS UNDER ARTICLE 24

Article 1 Sponsorship

- (a) Any member may sponsor for guarantee an investment to be made by an investor of any nationality or by investors of any or several nationalities.
- (b) Subject to the provisions of Sections (b) and (c) of Article 3 of this Annex, each sponsoring member shall share with the other sponsoring members in losses under guarantees of sponsored investments, when and to the extent that such losses cannot be covered out of the Sponsorship Trust Fund referred to in Article 2 of this Annex, in the proportion which the amount of maximum contingent liability under the guarantees of investments sponsored by it bears to the total amount of maximum contingent liability under the guarantees of investments sponsored by all members.
- (c) In its decisions on the issuance of guarantees under this Annex, the Agency shall pay due regard to the prospects that the sponsoring member will be in a position to meet its obligations under this Annex and shall give priority to investments which are cosponsored by the host countries concerned.
- (d) The Agency shall periodically consult with sponsoring members with respect to its operations under this Annex.

Article 2 Sponsorship Trust Fund

- (a) Premiums and other revenues attributable to guarantees of sponsored investments, including returns on the investment of such premiums and revenues, shall be held in a separate account which shall be called the Sponsorship Trust Fund.
- (b) All administrative expenses and payments on claims attributable to guarantees issued under this Annex shall be paid out of the Sponsorship Trust Fund.
- (c) The assets of the Sponsorship Trust Fund shall be held and administered for the joint account of sponsoring members and shall be kept separate and apart from the assets of the Agency.

Article 3 Calls on sponsoring members

- (a) To the extent that any amount is payable by the Agency on account of a loss under a sponsored guarantee and such amount cannot be paid out of assets of the Sponsorship Trust Fund, the Agency shall call on each sponsoring member to pay into such Fund its share of such amount as shall be determined in accordance with Section (b) of Article 1 of this Annex.
- (b) No member shall be liable to pay any amount on a call pursuant to the provisions of this Article if as a result total payments made by that member will exceed the total amount of guarantees covering investments sponsored by it.
- (c) Upon the expiry of any guarantee covering an investment sponsored by a member, the liability of that member shall be decreased by an amount equivalent to the amount of such guarantee; such liability shall also be decreased on a pro rata basis upon payment by the Agency of any claim related to a sponsored investment and shall otherwise continue in effect until the expiry of all guarantees of sponsored investments outstanding at the time of such payment.
- (d) If any sponsoring member shall not be liable for an amount of a call pursuant to the provisions of this Article because of the limitation contained in Sections (b) and (c) above, or if any sponsoring member shall default in payment of an amount due in response to any such call, the liability for payment of such amount shall be shared pro rata by the other sponsoring members. Liability of members pursuant to this Section shall be subject to the limitation set forth in Sections (b) and (c) above.
- (e) Any payment by a sponsoring member pursuant to a call in accordance with this Article shall be made promptly and in freely usable currency.

Article 4 Valuation of currencies and refunds

The provisions on valuation of currencies and refunds contained in this Convention with respect to capital subscriptions shall be applied mutatis mutandis to funds paid by members on account of sponsored investments.

Article 5 Reinsurance

- (a) The Agency may, under the conditions set forth in Article 1 of this Annex, provide reinsurance to a member, an agency thereof, a regional agency as defined in Section

(a) of Article 20 of this Convention or a private insurer in a member country. The provisions of this Annex concerning guarantees and of Articles 20 and 21 of this Convention shall be applied *mutatis mutandis* to reinsurance provided under this Section.

(b) The Agency may obtain reinsurance for investments guaranteed by it under this Annex and shall meet the cost of such reinsurance out of the Sponsorship Trust Fund. The Board may decide whether and to what extent the loss-sharing obligation of sponsoring members referred to in Section (b) of Article 1 of this Annex may be reduced on account of the reinsurance cover obtained.

Article 6 Operational principles

Wither prejudice to the provisions of this Annex, the provisions with respect to guarantee operations under Chapter III of this Convention and to financial management under Chapter IV of this Convention shall be applied *mutatis mutandis* to guarantees of sponsored investments except that (i) such investments shall qualify for sponsorship if made in the territories of any member, and in particular of any developing member, by an investor or investors eligible under Section (a) of Article 1 of this Annex, and (ii) the Agency shall not be liable with respect to its own assets for any guarantee or reinsurance issued under this Annex and each contract of guarantee or reinsurance concluded pursuant to this Annex shall expressly so provide.

Article 7 Voting

For decisions relating to sponsored investments, each sponsoring member shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured on the basis of its sponsorship, and each member hosting a sponsored investment shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured with respect to any sponsored investment hosted by it. Such additional votes shall be cast only for decisions related to sponsored investments and shall otherwise be disregarded in determining the voting power of members.

ANNEX II SETTLEMENT OF DISPUTES BETWEEN A MEMBER AND THE AGENCY UNDER ARTICLE 57

Article 1 Application of the Annex

All disputes within the scope of Article 57 of this Convention shall be settled in accordance with the procedure set out in this Annex, except in the cases where the Agency has entered into an agreement with a member pursuant to Section (b)(ii) of Article 57.

Article 2 Negotiation

The parties to a dispute within the scope of this Annex shall attempt to settle such dispute by negotiation before seeking conciliation or arbitration. Negotiations shall be deemed to have been exhausted if the parties fail to reach a settlement within a period of one hundred and twenty days from the date of the request to enter into negotiation.

Article 3 Conciliation

- (a) If the dispute is not resolved through negotiation, either party may submit the dispute to arbitration in accordance with the provisions of Article 4 of this Annex, unless the parties, by mutual consent, have decided to resort first to the conciliation procedure provided for in this Article.
- (b) The agreement for recourse to conciliation shall specify the matter in dispute, the claims of the parties in respect thereof and, if available, the name of the conciliator agreed upon by the parties. In the absence of agreement on the conciliator, the parties may jointly request either the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter called ICSID) or the President of the International Court of Justice to appoint a conciliator. The conciliation procedure shall terminate if the conciliator has not been appointed within ninety days after the agreement for recourse to conciliation.
- (c) Unless otherwise provided in this Annex or agreed upon by the parties, the conciliator shall determine the rules governing the conciliation procedure and shall be guided in this regard by the conciliation rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (d) The parties shall cooperate in good faith with the conciliator and shall, in particular, provide him with all information and documentation which would assist him in the discharge of his functions; they shall give their most serious consideration to his recommendations.
- (e) Unless otherwise agreed upon by the parties, the conciliator shall, within a period not exceeding one hundred and eighty days from the date of his appointment, submit to the parties a report recording the results of his efforts and setting out the issues controversial between the parties and his proposals for their settlement.
- (f) Each party shall, within sixty days from the date of the receipt of the report, express in writing its views on the report to the other party.
- (g) Neither party to a conciliation proceeding shall be entitled to have recourse to arbitration unless:
 - (i) the conciliator shall have failed to submit his report within the period established in Section (e) above; or
 - (ii) the parties shall have failed to accept all of the proposals contained in the report within sixty days after its receipt; or
 - (iii) the parties, after an exchange of views on the report, shall have failed to agree on a settlement of all controversial issues within sixty days after receipt of the conciliator's report; or
 - (iv) a party shall have failed to express its views on the report as prescribed in Section (f) above.

- (h) Unless the parties agree otherwise, the fees of the conciliator shall be determined on the basis of the rates applicable to ICSID conciliation. These fees and the other costs of the conciliation proceedings shall be borne equally by the parties. Each party shall defray its own expenses.

Article 4 Arbitration

- (a) Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify the nature of the dispute, the relief sought and the name of the arbitrator appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).
- (b) If the Tribunal shall not have been constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President not yet selected shall be appointed, at the joint request of the parties, by the Secretary-General of ICSID. If there is no such joint request, or if the Secretary-General shall fail to make the appointment within thirty days of the request, either party may request the President of the International Court of Justice to make the appointment.
- (c) No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunal) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his predecessor and such successor shall have the same powers and duties of the arbitrator he succeeds.
- (d) The Tribunal shall convene first at such time and place as shall be determined by the President. Thereafter, the Tribunal shall determine the place and dates of its meetings.
- (e) Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure and shall be guided in this regard by the arbitration rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
- (f) The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board or the Council under Article 56 or within the jurisdiction of a judicial or arbitral body designated in an agreement under Article 1 of this Annex and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board or the Council or the designated body, as the case may be, and the arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.
- (g) The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Convention, any relevant agreement between the parties to the dispute, the Agency's by-laws and regulations, the applicable rules of international law, the domestic law of the member concerned as well as the applicable provisions of the investment contract, if any. Without prejudice to the provisions of this Convention, the Tribunal may decide a dispute *ex aequo et bono* if the Agency and the member

concerned so agree. The Tribunal may not bring a finding of non liquet on the ground of silence or obscurity of the law.

- (h) The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing, and shall be signed by at least two arbitrators and a copy thereof shall be transmitted to each party. The award shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.
- (i) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may, within sixty days after the award was rendered, request interpretation of the award by an application in writing to the President of the Tribunal which rendered the award. The President shall, if possible, submit the request to the Tribunal which rendered the award and shall convene such Tribunal within sixty days after receipt of the application. If this shall not be possible, a new Tribunal shall be constituted in accordance with the provisions of Sections (a) to (d) above. The Tribunal may stay enforcement of the award pending its decision on the requested interpretation.
- (j) Each member shall recognize an award rendered pursuant to this Article as binding and enforceable within its territories as if it were a final judgment of a court in that member. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought and shall not derogate from the law in force relating to immunity from execution.
- (k) Unless the parties shall agree otherwise, the fees and remuneration payable to the arbitrators shall be determined on the basis of the rates applicable to ICSID arbitration. Each party shall defray its own costs associated with the arbitration proceedings. The costs of the Tribunal shall be borne by the parties in equal proportion unless the Tribunal decides otherwise. Any question concerning the division of the costs of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

Article 5 Service of process

Service of any notice or process in connection with any proceeding under this Annex shall be made in writing. It shall be made by the Agency upon the authority designated by the member concerned pursuant to Article 38 of this Convention and by that member at the principal office of the Agency.

[The two Schedules to the Convention, on Membership and Subscriptions and on Election of Directors, are not reproduced here.]

CHAPTER FORTY-SIX

ASEAN Agreement for the Promotion and Protection of Investments

Manila, 15 December 1987

INTRODUCTION

This Agreement was entered into by Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand (i.e. at the time, the members of the Association of South East Asian Nations—ASEAN) to encourage intra-regional investments. It is a practical way of implementing the ideals of the 1967 ASEAN Declaration and of the 1976 Bali Concord, signed by the same countries. The 1977 Heads of Government meeting in Kuala Lumpur (Malaysia) specifically called for efforts to accelerate investments and the transfer of technology and know-how to and within the region. The Agreement applies ‘only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and which are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement’. An Agreement that would provide a framework for the transfer of capital and technology in the region is in order, but rigidly to limit its ambit to investments by nationals of member countries is not ambitious.

Investments under the terms so this Agreement include, but are not limited to, movable and immovable property and related rights, such as concession, liens, mortgages, pledges, intellectual property and goodwill. Shares, stocks, debentures and other interests in companies and related business organizations are also specified. Matters relating to taxation in member countries are exempted from the purview of the Agreement. This is difficult to reconcile with the provisions urging fair and equitable treatment. The most favoured nation principle is employed as a way of ensuring fair and equitable treatment of investments. The nationality principle is played down, by saying that ‘any two or more of the Contracting Parties may negotiate to accord national treatment within the framework of this Agreement’.

The Agreement has strong provisions on expropriation. Investments of nationals of the states parties are not to be expropriated, nationalized or subjected to any measure having equivalent effect. The only basis for derogating from this is where such a step is in the public interest, where the property is taken for public use and this is done by a clear, due

process of law. There should be no discrimination, as, for example, in favour of nationals, and prompt and adequate compensation must be paid, based on the existing market value of the asset. This is a codification of the old Hull formula on expropriation, as against the now less fancied 1970s' Calvo doctrine, which calls for 'appropriate' compensation once the interests of the country that is nationalizing have been taken into account.

One subject likely to generate controversy is the provision on the repatriation of capital and earnings from investments. Each country is to allow the free transfer of capital, net profits, dividends, royalties, proceeds from liquidation, loan repayments, wages or other earnings from technical and human services. These transfers should be in a freely convertible currency. That is the point of contention. Many of the members of ASEAN have laws and policies that restrict transfers outside the region. Thus, at the height of the 1997 Asian financial crisis, the Prime Minister of Malaysia, Dr Mahathir bin Mohamad, imposed strict restrictions on money transfers from his country. This seems to have helped enormously in containing the crisis in Malaysia. At least the Agreement has a rider that says each 'Contracting Party shall, subject to its laws, rules and regulations, allow...free transfer' (article VII). Any disputes arising between parties regarding the working of the Agreement are to be settled amicably in the first instance; failing that, there is provision for binding arbitration. As a matter of general principle, member states are to consult regularly regarding the operation of the Agreement and the attainment of the ideals of ASEAN.

The Agreement came into force on 2 August 1988. It was updated by protocol in 1997. The original six countries to sign the treaty were subsequently joined in ASEAN by three more members.

AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS*

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand, hereinafter referred to as the Contracting Parties;

CONSIDERING that the Heads of Government of ASEAN [Association of South East Asian Nations] agreed inter alia on industrial co-operation among the, member states of ASEAN in the Declaration of ASEAN Concord signed at Denpasar, Bali on 24 February 1976;

FURTHER CONSIDERING that the Heads of Government of ASEAN in their Meeting in Kuala Lumpur on 4 to 5 August 1977, recognized inter alia that the acceleration of industrialization of the region requires the increased flow of technology and investments, and toward the attainment of this common objective, directed that measures be taken to stimulate the flow of technology, knowhow and private investments among the member states, and directed, in particular, the study of a regional mechanism, and the formulation of guidelines, which would facilitate such desired flow of technology, knowhow and private investments;

DESIRING that appropriate measures be taken to carry out the foregoing intents and to create favourable conditions for investments by nationals and companies of any ASEAN member state in the territory of the other ASEAN member states and to facilitate

the desired flow of private investments therein to increase prosperity in their respective territories;

RECOGNIZING that an agreement on the promotion and protection of such investments will contribute to the furtherance of the above mentioned purposes;

HAVE AGREED AS FOLLOWS:

Article I Definition

For the purpose of this Agreement:

1. The term “nationals” shall be as defined in the respective Constitutions and laws of each of the Contracting Parties.
2. The term “company” of a Contracting Party shall mean a corporation, partnership or other business association, incorporated or constituted under the laws in force in the territory of any Contracting Party wherein the place of effective management is situated.
3. The term “investment” shall mean every kind of asset and in particular shall include, though not exclusively:
 - a) movable and immovable property and any other proper rights such as mortgages, liens and pledges;
 - b) shares, stocks and debentures of companies or interests in the property of such companies;
 - c) claims to money or to any performed under contract having a financial value;
 - d) intellectual property rights and goodwill;
 - e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.
4. The term “earnings” shall mean amounts yielded by an investment, particularly, though not exclusively, profits, interest, capital gains, dividends, royalties or fees.
5. The term “freely usable currency” shall mean the United States Dollar, Pound Sterling, Deutschmark French Franc, Japanese Yen, or any other currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets.
6. The term “host country” shall mean the Contracting Party wherein the investment is made.

Article II Applicability or Scope

1. This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and which are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement.
2. This Agreement shall not affect the, rights and obligations of the Contracting, Parties with respect to investments which, under the provisions of paragraph 1 of this Article, do not fall within the scope of the Agreement.

3. This Agreement shall also apply to investments made prior to its entry into force, provided such investments are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for purpose of this Agreement subsequent in its entry into force.

Article III General Obligations

1. Each Contracting Party shall, in a manner consistent with its national objectives, encourage and create favourable conditions in its territory for investments from the other Contracting Parties. All investments to which this Agreement relates shall, subject to this Agreement, be governed by the laws and regulations of the host country, including rules of registration and valuation of such investments.
2. Investments of nationals or companies of and obligations of a Contracting Party in the territory of other Contracting Parties shall at all times be accorded fair and equitable treatment and shall enjoy full protection and in the territory of the host country.
3. Each Contracting Party shall observe any obligation arising from a particular commitment it may have entered into with regard to a specific investment of nationals or companies of the other Contracting Parties.

Article IV Treatment

1. Each Contracting Party shall, within its territory ensure full protection of the investments made in accordance with its legislation by investors of the other Contracting Parties and shall not impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment, extension, disposition or liquidation of such investments.
2. All investments made by investors of any Contracting Party shall enjoy fair and equitable treatment in the territory of any other Contracting Party. This treatment shall be no less favourable than that granted to investor of the most favoured nation.
3. Investor of any Contracting Party who within the territory of another Contracting Party suffers damages in relation to their investment activities—in connection with their investments, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to investors of any—third country, as regards restitution, compensation or other valuable consideration. Payments made under this provision shall be effectively realizable and freely transferable, subject to Article VII.
4. Any two or more of the Contracting Parties may negotiate to accord national treatment within the framework of this Agreement. Nothing herein shall entitle any other party to claim national treatment under the most-favoured-nation principle.

Article V Exception

The Provision of this Agreement shall not apply to matters of taxation in the territory of the Contracting Parties. Such matters shall be governed by Avoidance of Double Taxation between Contracting Parties and the domestic laws of each Contracting Party.

Article VI Expropriation and Compensation

1. Investments of nationals or companies of any Contracting Party shall not be subject to expropriation nationalisation or any measure equivalent thereto (in the article referred to as “expropriation”),

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of ASEAN (<http://www.aseansec.org/>).

except for public use, or public purpose, or in the public interest, and under due process of law, on a non-discriminatory basis and upon payment of adequate compensation. Such compensation shall amount to the market value of the investments affected, immediately before the measure of dispossession became public knowledge and it shall be freely transferable in freely usable currencies from the host country. The compensation shall be settled and paid without unreasonable delay. The national or company affected shall have the right, under the law of Contracting Party making the expropriation, to prompt review by a judicial body or some other independent authority of that Contracting Party in accordance with principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in its territory, and in which nationals or companies of another Contracting Party own shares, it shall apply the provisions of paragraph 1 of this Article so as to ensure the compensation provided for in that Paragraph to such nationals or companies to the extent of their interest in the assets expropriated.

Article VII Repatriation of Capital and Earnings

1. Each Contracting Party shall, subject to its laws, rules and regulations, allow without unreasonable delay the free transfer in any freely usable currency of:
 - a) the capital, net profits, dividends, royalties, technical assistance and technical fees, interests and other income, accruing from any investments of the nationals or companies of the other Contracting Parties;
 - b) the proceeds from the total or partial liquidation of any investments made by nationals or companies of the other Contracting Parties;
 - c) funds in repayment of loans given by nationals or companies of one Contracting Party to the nationals or companies of another Contracting Party which both Contracting Parties have recognized as investments;
 - d) the earnings of nationals of the other Contracting Parties who are employed and allowed to work in connection with an investment in its territory.
2. The exchange rate applicable to such transfer shall be the rate of exchange prevailing at the time of remittance.
3. The Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment no less favourable than that accorded to transfer originating from investments made by nationals or companies of any third State.

Article VIII Subrogation

If any of the Contracting Parties makes payment to any of its nationals or companies under a guarantee it has granted in respect of an investment made in the territory of another Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article IX and X, recognize the assignment of any right title or claim of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right, title or claim. This, however, does not necessarily imply a recognition on the part of the latter Contracting Party of the merits of any case or the amount of any claim arising therefrom.

Article IX Dispute between the Contracting Parties

1. Any dispute between and among, the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably between the parties to the dispute. Such settlement shall be reported to the ASEAN Economic Ministers (AEM).
2. If such a dispute cannot thus be settled it shall be submitted to the AEM for resolution.

Article X Arbitration

1. Any legal dispute arising directly out of an investment between any Contracting Party and a national or company of any of the other Contracting Parties shall, as far as possible, be settled amicably between the parties to the dispute.
2. If such a dispute cannot thus be settled within six months of its being raised, then either party can elect to submit the dispute for conciliation or arbitration and such election shall be binding on the other party. The dispute may be brought before the International Centre for Settlement of Investment Disputes (IGSID), the United Nations Commission on International Trade Law (UNCITRAL), the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN, whichever body the parties to the dispute mutually agree to appoint for the purposes of Conducting the arbitration.
3. In the event that the parties cannot agree within a period of three months on a suitable body for arbitration, an arbitral tribunal consisting of three members shall be formed. The Parties to the dispute shall appoint one member each, and these two members shall then select a national of a third Contracting Party to be the chairman of the tribunal, subject to the approval of the parties to the dispute. The appointment of the members and the chairman shall be made within two months and three months respectively, from the date a decision to form such an arbitral tribunal is made.
4. If the arbitral tribunal is not formed in the periods specified in paragraph 3 above, then earlier party to the dispute may, in the absence of any other relevant arrangement request the President of the International Court of Justice to make the required appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes and its decisions shall be binding. The Parties involved in the dispute shall bear the cost of their respective members to the arbitral tribunal and share equally the cost of the chairman

and other relevant costs. In all other respects, the arbitral tribunal shall determine its own procedures.

Article XI Consultation

The Contracting Parties agree to consult each other at the request of any Party on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement.

Article XII Amendments

All articles of this Agreement may be modified through amendments in writing to this Agreement agreed upon by consensus. All amendments shall become effective upon acceptance by all Contracting Parties.

Article XIII Entry Into Force

1. This Agreement shall enter into force on the 30th day after the deposit of the sixth Instrument of Ratification and shall thereafter remain in force for a period of the years.
2. This Agreement shall thereafter continue in force unless terminated by any Contracting Party giving not less than six months written notice through diplomatic channels. Provided however, that in respect of investments made while the Agreement was in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination, and without prejudice to the application thereafter of the rules of international law.

Article XIV Miscellaneous Provisions

1. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.
2. This Agreement shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each Contracting Party.
3. Each Contracting Party shall deposit its instrument of Ratification with Secretary-General of the ASEAN Secretariat who shall promptly inform each Contracting Party of such deposit.

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

DONE in Manila, Philippines this Fifteenth day of December Nineteen Hundred Eighty Seven in one original copy in the English Language.

CHAPTER FORTY-SEVEN

EC-EFTA Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

Lugano, 16 September 1988

INTRODUCTION

This Convention was entered into twenty years after the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. It is meant to complement the 1968 Brussels Convention, and not merely by extending similar provisions to countries outside the European Community (EC).

Unlike the Brussels Convention, the Lugano Convention accepts membership from countries of the European Free Trade Association (EFTA), as well as from the EC (since 1993, usually known as the European Union—EU), but also from other areas, provided any such non-EC or non-EFTA member is introduced by an EC or EFTA member country and accepted unanimously by all the existing parties to the Convention (or if it is an applicant to join either organization—thus, Poland became a party to the Convention in 2002, in advance of joining the EU two years later). Another difference between the two Conventions is that Lugano deals with substantive contractual and tort issues. Under article 5, a person domiciled in a contracting state may be sued in the state where the contract is to be performed, even if that state is different from the domicile. If the issue relates to the operations of a branch or agency and of a trust, the place where the branch or trust is located should have jurisdiction. In matters relating to maintenance, the courts of the country where the maintenance creditor is domiciled or habitually resident shall be seised of jurisdiction. In torts or delict, the place where the harm manifested shall be the proper forum. In civil actions for damages or restitution arising from a criminal activity, the court system that deals with the criminal proceedings is the proper forum for the adjoining civil claim. If the matter is in respect of maritime claims, specifically the costs of salvage of cargo or freight, the court that authorized the arrest or had the power to order the arrest of the ship will have the authority to deal with the recovery claims. It must be shown that the defendant had an interest in the freight or cargo at the time of the salvage. A person domiciled in a member country is also amenable to suits as a co-defendant in the court where any of the defendants is domiciled. Furthermore, a third-party warrantor or guarantor may be sued in the court where the original proceedings started.

As with the Brussels Convention, there are special provisions dealing with insurance and consumer disputes. On the one hand, the insurer domiciled in a member state can be sued either in the country in which he is domiciled or in the country in which the policyholder is domiciled, or in the country in which the property insured is damaged, if the property is an immovable one. On the other hand, the insurer may sue only in the courts of the country in which the defendant is, be he the policy-holder, the insured or the

beneficiary. In the case of consumer contracts, the consumer can bring an action in the contracting state where the defendant is domiciled or in the country member in which he himself is domiciled. Proceedings against the consumer can only take place in the country in which he is domiciled. The parties are allowed to depart from these conditions if they entered into an agreement to that effect and the agreement was reached after the dispute had arisen or allows the consumer, the insured or the policyholder to choose a different forum. The rationale for this apparent bias in favour of the insured or the consumer may be because of the perceived economic strength of the insurer and the creditor. It is also because, by advertising or contracting with the insured or the consumer, the insurer or creditor is taken to have contemplated the possible differences in legal systems, distance and costs.

The Protocols entered into after the Convention came into force are aimed at promoting uniformity of interpretation and application, and harmony with the European jurisprudence on the subject. In this case, it appears that the law and policy of the institutions of the EU and the jurisprudence of the European Court of Justice are held superior in cases of differences with the member's national or the Lugano Convention's jurisprudence.

The Convention came into force on 1 January 1992. The number of parties was unchanged for the next decade, despite the increase in the membership of the EU, because all those countries had been members of EFTA. Only with the accession (or imminence thereof) of 10 new EU members in 2004 did the number of parties to the Lugano Convention increase beyond the original 19. The text reproduced below takes no account of that development.

CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (LUGANO)*

DONE at Lugano on 16 September 1988 (88/592/EEC)

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THIS CONVENTION,

ANXIOUS to strengthen in their territories the legal protection of persons therein established,

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

AWARE of the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Economic Community and the States members of the European Free Trade Association,

TAKING INTO ACCOUNT the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as

amended by the Accession Conventions under the successive enlargements of the European Communities,

PERSUADED that the extension of the principles of that Convention to the States parties to this instrument will strengthen legal and economic cooperation in Europe,

DESIRING to ensure as uniform an interpretation as possible of this instrument,

HAVE in this spirit DECIDED to conclude this Convention and HAVE AGREED AS FOLLOWS:

TITLE I: SCOPE

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

TITLE II: JURISDICTION

Section 1: General provisions

Article 2

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

in Belgium: Article 15 of the civil code (Code civil/Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire/Gerechtelijk Wetboek),

in Denmark: Article 246(2) and (3) of the law on civil procedure (Lov om retterns pleje),

in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),

in Greece: Article 40 of the code of civil procedure (Κώδικας Πολιτικής Δικονομίας),

in France: Articles 14 and 15 of the civil code (Code civil),

in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

in Iceland: Article 77 of the Civil Proceedings Act (Lög um meäferä einkamála í héraði),

in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),

in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

in the Netherlands: Articles 126(3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

in Norway: Section 32 of the Civil Proceedings Act (Tvistemålsloven),

in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm)

in Portugal: Articles 65(1)(c), 65(2) and 65A(c) of the code of civil procedure (Código de Processo Civil) and Article 11 of the code of labour procedure (Código de Processo de Trabalho),

in Switzerland: le for du lieu du séquestre/Gerichtsstand des Arrestortes/foro del luogo del sequestro within the meaning of Article 4 of the loi fédérale sur le droit international privé/Bundesgesetz über das internationale Privatrecht/legge federale sul diritto internazionale private,

in Finland: the second, third and fourth sentences of Section 1 of Chapter 10 of the Code of Judicial Procedure (Oikeudenkäymiskaari/Rättegångsbalken),

in Sweden: the first sentence of Section 3 of Chapter 10 of the Code of Judicial Procedure (Rättegångsbalken),

in the United Kingdom: the rules which enable jurisdiction to be founded on:

- (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
- (b) the presence within the United Kingdom of property belonging to the defendant; or
- (c) the seizure by the plaintiff of property situated in the United Kingdom.

Article 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

Section 2: Special jurisdiction

Article 5

A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the

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employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged;

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;
7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:
 - (a) has been arrested to secure such payment, or
 - (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Contracting State in which the property is situated.

Article 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3: Jurisdiction in matters relating to insurance

Article 7

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5).

Article 8

An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled; or
2. in another Contracting State, in the courts for the place where the policy-holder is domiciled; or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; or
3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of the State; or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State; or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A.

Article 12A

The following are the risks referred to in Article 12(5):

1. any loss of or damage to:
 - (a) sea-going ships, installations situated off shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage;
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in (1)(b) above;
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1)(a) above, in particular loss of freight or charter-hire;
4. any risk or interest connected with any of those referred to in (1) to (3) above.

Section 4: Jurisdiction over consumer contracts

Article 13

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called 'the consumer', jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

1. a contract for the sale of goods on instalment credit terms; or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
3. any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.

Article 14

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5: Exclusive jurisdiction

Article 16

The following courts shall have exclusive jurisdiction, regardless of domicile:

1.
 - (a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;
 - (b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and neither party is domiciled in the Contracting State in which the property is situated;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the

- Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

Section 6: Prorogation of jurisdiction

Article 17

1. If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either:
 - (a) in writing or evidenced in writing, or
 - (b) in a form which accords with practices which the parties have established between themselves, or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

2. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.
3. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Article 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.
4. If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.
5. In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen.

Article 18

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction.

This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

Section 7: Examination as to jurisdiction and admissibility

Article 19

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Article 20

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

Section 8: Lis Pendens related actions

Article 21

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 22

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9: Provisional, including protective, measures

Article 24

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

TITLE III: RECOGNITION AND ENFORCEMENT

Article 25

For the purposes of this Convention, ‘judgment’ means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1: Recognition

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Section 2 and 3 of this Title, apply for a decision that the judgment be recognized.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State of origin, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgment is irreconcilable with an earlier judgment given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed.

Article 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Sections 3, 4 or 5 of Title II or in a case provided for in Article 59.

A judgment may furthermore be refused recognition in any case provided for in Article 54B(3) or 57(4).

In its examination of the grounds of jurisdiction referred to in the foregoing paragraphs, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

Subject to the provisions of the first and second paragraphs, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

Article 29

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 30

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin by reason of an appeal.

Section 2: Enforcement

Article 31

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 32

1. The application shall be submitted:

in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
 in Denmark, to the byret,
 in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
 in Greece, to the Μονομελές Πρωτοδικείο,
 in Spain, to the Juzgado de Primera Instancia,
 in France, to the presiding judge of the tribunal de grande instance,
 in Ireland, to the High Court,
 in Iceland, to the héraðsdómari,
 in Italy, to the corte d'appello,
 in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
 in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
 in Norway, to the herredsrett or byrett as namsrett,
 in Austria, to the Landesgericht or the Kreisgericht,
 in Portugal, to the Tribunal Judicial de Círculo,
 in Switzerland:

- (a) in respect of judgments ordering the payment of a sum of money, to the juge de la mainlevée/Rechtsöffnungsrichter/ giudice competente a pronunciare sul rigetto dell'opposizione, within the framework of the procedure governed by Articles 80 and 81 of the loi fédérale sur la poursuite pour dettes et la faillite/Bundesgesetz über Schuldbetreibung und Konkurs/legge federale sulla esecuzione e sul fallimento;
- (b) in respect of judgments ordering a performance other than the payment of a sum of money, to the juge cantonal d'exequatur compétent/zuständiger kantonaler Vollstreckungsrichter/ giudice cantonale competente a pronunciare l'exequatur,
 - in Finland, to the ulosotonhaltija/överexekutor,
 - in Sweden, to the Svea hovrätt,
 - in the United Kingdom:
- (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;

- (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
- (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

2. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33

The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 35

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Article 36

If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 37

1. An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

in Belgium, with the tribunal de première instance or rechtsbank van eerste aanleg,
 in Denmark, with the landsret,
 in the Federal Republic of Germany, with the Oberlandesgericht,
 in Greece, with the Εφετείο,
 in Spain, with the Audiencia Provincial,
 in France, with the cour d'appel,
 in Ireland, with the High Court,
 in Iceland, with the héraðsdómari,
 in Italy, with the corte d'appello,
 in Luxembourg, with the Cour supérieure de justice sitting as a court of civil appeal,
 in the Netherlands, with the arrondissements-rechtsbank,
 in Norway, with the lagmannsrett,
 in Austria, with the Landesgericht or the Kreisgericht,
 in Portugal, with the Tribunal da Relação,
 in Switzerland, with the tribunal cantonal/Kantonsgericht/tribunale cantonale,
 in Finland, with the hovioikeus/hovrätt,
 in Sweden, with the Svea hovrätt,
 in the United Kingdom:

- (a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
- (b) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
- (c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

2. The judgment given on the appeal may be contested only:

in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
 in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
 in the Federal Republic of Germany, by a Rechtsbeschwerde,
 in Ireland, by an appeal on a point of law to the Supreme Court,
 in Iceland, by an appeal to the Hæstiréttur,
 in Norway, by an appeal (kjæremål or anke) to the Høyesteretts Kjæremålsutvalg or Høyesterett,
 in Austria, in the case of an appeal, by a Revisionsrekurs and, in the case of opposition proceedings, by a Berufung with the possibility of a Revision,
 in Portugal, by an appeal on a point of law,

in Switzerland, by a recours de droit public devant le tribunal fédéral/staatsrechtliche Beschwerde beim Bundesgericht/ricorso di diritto pubblico davanti al tribunale federale,
 in Finland, by an appeal to the korkein oikeus/högsta domstolen,
 in Sweden, by an appeal to the högsta domstolen,
 in the United Kingdom, by a single further appeal on a point of law.

Article 38

The court with which the appeal under Article 37(1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Article 40

1. If the application for enforcement is refused, the applicant may appeal:

in Belgium, to the cour d'appel or hof van beroep,
 in Denmark, to the landsret,
 in the Federal Republic of Germany, to the Oberlandesgericht,
 in Greece, to the Εφετείο,
 in Spain, to the Audiencia Provincial,
 in France, to the cour d'appel,
 in Ireland, to the High Court,
 in Iceland, to the héraðsdómari,
 in Italy, to the corte d'appello,
 in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
 in the Netherlands, to the gerechtshof,
 in Norway, to the lagmannsrett,
 in Austria, to the Landesgericht or the Kreisgericht,
 in Portugal, to the Tribunal da Relação,
 in Switzerland, to the tribunal cantonal/Kantonsgericht/tribunale cantonale,
 in Finland, to the hovioikeus/hovrätt,

in Sweden, to the Svea hovrätt,
in the United Kingdom:

- (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
- (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
- (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41

A judgment given on an appeal provided for in Article 40 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in Iceland, by an appeal to the Hæstiréttur,
- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts kjæremålsutvalg or Høyesterett,
- in Austria, by a Revisionsrekurs,
- in Portugal, by an appeal on a point of law,
- in Switzerland, by a recours de droit public devant le tribunal fédéral/staatsrechtliche Beschwerde beim Bundesgericht/ricorso di diritto pubblico davanti al tribunale federale,
- in Finland, by an appeal to the korkein oikeus/högsta domstolen,
- in Sweden, by an appeal to the högsta domstolen,
- in the United Kingdom, by a single further appeal on a point of law.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Article 44

An applicant who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aids or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark or in Iceland in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Section 3: Common provisions

Article 46

A party seeking recognition or applying for enforcement of a judgment shall produce:

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State of origin, the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

Article 48

If the documents specified in Articles 46(2) and 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Article 49

No legalization or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative *ad litem*.

TITLE IV: AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 50

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Articles 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Article 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments.

TITLE V: GENERAL PROVISIONS

Article 52

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

Article 53

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

TITLE VI: TRANSITIONAL PROVISIONS

Article 54

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.

However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

If the parties to a dispute concerning a contract had agreed in writing before the entry into force of this Convention that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

Article 54A

For a period of three years from the entry into force of this Convention for Denmark, Greece, Ireland, Iceland, Norway, Finland and Sweden, respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 7 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, for one of these States, these provisions shall cease to have effect for that State.

1. A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:
 - (a) the claimant is domiciled in the latter State; or
 - (b) the claim arose in the latter State; or
 - (c) the claim concerns the voyage during which the arrest was made or could have been made; or
 - (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations; or
 - (e) the claim is for salvage; or

- (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.
2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out under 5(o), (p) or (q) of this Article.
 3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.
 4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.
 5. The expression 'maritime claim' means a claim arising out of one or more of the following:
 - (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connection with the operation on any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by charter party or otherwise;
 - (e) agreement relating to the carriage of goods in any ship whether by charter party or otherwise;
 - (f) loss of or damage to goods including baggage carried in any ship;
 - (g) general average;
 - (h) bottomry;
 - (i) towage;
 - (j) pilotage;
 - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
 - (l) construction, repair or equipment of any ship or dock charges and dues;
 - (m) wages of masters, officers or crew;
 - (n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
 - (o) dispute as to the title to or ownership of any ship;
 - (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
 - (q) the mortgage or hypothecation of any ship.
 6. In Denmark, the expression 'arrest' shall be deemed as regards the maritime claims referred to under 5(o) and (p) of this Article, to include a 'forbud', where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje).
 7. In Iceland, the expression 'arrest' shall be deemed, as regards the maritime claims referred to under 5(o) and (p) of this Article, to include a 'lögðann', where that is the

only procedure allowed in respect of such a claim under Chapter III of the law on arrest and injunction (lög um kyrrsetningu og lögbann).

TITLE VII: RELATIONSHIP TO THE BRUSSELS CONVENTION AND TO OTHER CONVENTIONS

Article 54B

1. This Convention shall not prejudice the application by the Member States of the European Communities of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968 and of the Protocol on interpretation of that Convention by the Court of Justice, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, all of these Conventions and the Protocol being hereinafter referred to as the 'Brussels Convention'.
2. However, this Convention shall in any event be applied:
 - (a) in matters of jurisdiction, where the defendant is domiciled in the territory of a Contracting State which is not a member of the European Communities, or where Article 16 or 17 of this Convention confer a jurisdiction on the courts of such a Contracting State;
 - (b) in relation to a *lis pendens* or to related actions as provided for in Articles 21 and 22, when proceedings are instituted in a Contracting State which is not a member of the European Communities and in a Contracting State which is a member of the European Communities;
 - (c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not a member of the European Communities.
3. In addition to the grounds provided for in Title III recognition or enforcement may be refused if the ground of jurisdiction on which the judgment has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a Contracting State which is not a member of the European Communities, unless the judgment may otherwise be recognized or enforced under any rule of law in the State addressed.

Article 55

Subject to the provisions of Articles 54(2) and 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

the Convention between the Swiss Confederation and France on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869,

the Treaty between the Swiss Confederation and Spain on the mutual enforcement of judgments in civil or commercial matters, signed at Madrid on 19 November 1896,

the Convention between the Swiss Confederation and the German Reich on the recognition and enforcement of judgments and arbitration awards, signed at Berne on 2 November 1929,

the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments, signed at Copenhagen on 16 March 1932,

the Convention between the Swiss Confederation and Italy on the recognition and enforcement of judgments, signed at Rome on 3 January 1933,

the Convention between Sweden and the Swiss Confederation on the recognition and enforcement of judgments and arbitral awards signed at Stockholm on 15 January 1936,

the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,

the Convention between the Swiss Confederation and Belgium on the recognition and enforcement of judgments and arbitration awards, signed at Berne on 29 April 1959,

the Convention between the Federal Republic of Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,

the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,

the Convention between Austria and the Swiss Confederation on the recognition and enforcement of judgments, signed at Berne on 16 December 1960,

the Convention between Norway and the United Kingdom providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at London on 12 June 1961,

the Convention between the United Kingdom and Austria providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Vienna on 14 July 1961, with amending Protocol signed at London on 6 March 1970,

the Convention between the Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,

the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,

the Convention between Luxembourg and Austria on the recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,

the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,

the Convention between Norway and the Federal Republic of Germany on the recognition and enforcement of judgments and enforceable documents, in civil and commercial matters, signed at Oslo on 17 June 1977,

the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,

the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,

the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,

the Convention between Norway and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 21 May 1984, and

the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986.

Article 56

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 57

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
2. This Convention shall not prevent a court of a Contracting State which is party to a convention referred to in the first paragraph from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in a Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.
3. Judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention referred to in the first paragraph shall be recognized and enforced in the other Contracting States in accordance with Title III of this Convention.
4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not a contracting party to a convention referred to in the first paragraph and the person against whom recognition or enforcement is sought is domiciled in that State, unless the judgment may otherwise be recognized or enforced under any rule of law in the State addressed.
5. Where a convention referred to in the first paragraph to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

Article 58

(None)

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or
2. if the property constitutes the security for a debt which is the subject-matter of the action.

TITLE VIII: FINAL PROVISIONS

Article 60

The following may be parties to this Convention:

- (a) States which, at the time of the opening of this Convention for signature, are members of the European Communities or of the European Free Trade Association;
- (b) States which, after the opening of this Convention for signature, become members of the European Communities or of the European Free Trade Association;
- (c) States invited to accede in accordance with Article 62(1)(b).

Article 61

1. This Convention shall be opened for signature by the States members of the European Communities or of the European Free Trade Association.
2. The Convention shall be submitted for ratification by the signatory States. The instruments of ratification shall be deposited with the Swiss Federal Council.
3. The Convention shall enter into force on the first day of the third month following the date on which two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, deposit their instruments of ratification.
4. The Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification.

Article 62

1. After entering into force this Convention shall be open to accession by:
 - (a) the States referred to in Article 60(b);
 - (b) other States which have been invited to accede upon a request made by one of the Contracting States to the depositary State. The depositary State shall invite the State concerned to accede only if, after having communicated the contents of the communications that this State intends to make in accordance with Article 63, it has obtained the unanimous agreement of the signatory States and the Contracting States referred to in Article 60(a) and (b).
2. If an acceding State wishes to furnish details for the purposes of Protocol 1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.
3. In respect of an acceding State, the Convention shall take effect on the first day of the third month following the deposit of its instrument of accession.
4. However, in respect of an acceding State referred to in paragraph 1(a) or (b), the Convention shall take effect only in relations between the acceding State and the Contracting States which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

Article 63

Each acceding State shall, when depositing its instrument of accession, communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if need be, the details prescribed during the negotiations for the purposes of Protocol 1.

Article 64

1. This Convention is concluded for an initial period of five years from the date of its entry into force in accordance with Article 61(3), even in the case of States which ratify it or accede to it after that date.
2. At the end of the initial five-year period, the Convention shall be automatically renewed from year to year.
3. Upon the expiry of the initial five-year period, any contracting State may, at any time, denounce the Convention by sending a notification to the Swiss Federal Council.
4. The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Swiss Federal Council of the notification of denunciation.

Article 65

The following are annexed to this Convention:

- a Protocol 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol 2, on the uniform interpretation of the Convention,

a Protocol 3, on the application of Article 57.

These Protocols shall form an integral part of the Convention [but are not reproduced below].

Article 66

Any Contracting State may request the revision of this Convention. To that end, the Swiss Federal Council shall issue invitations to a revision conference within a period of six months from the date of the request for revision.

Article 67

The Swiss Federal Council shall notify the States represented at the Diplomatic Conference of Lugano and the States who have later acceded to the Convention of:

- (a) the deposit of each instrument of ratification or accession;
- (b) the dates of entry into force of this Convention in respect of the Contracting States;
- (c) any denunciation received pursuant to Article 64;
- (d) any declaration received pursuant to Article Ia of Protocol 1;
- (e) any declaration received pursuant to Article Ib of Protocol 1;
- (f) any declaration received pursuant to Article IV of Protocol 1;
- (g) any communication made pursuant to Article VI of Protocol 1.

Article 68

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, all fourteen texts being equally authentic, shall be deposited in the archives of the Swiss Federal Council. The Swiss Federal Council shall transmit a certified copy to the Government of each State represented at the Diplomatic Conference of Lugano and to the Government of each acceding State.

[Signatures are not reproduced here. Annexed to the Convention were three Protocols, On Certain Questions of Jurisdiction, Procedure and Enforcement, On the Uniform Interpretation of the Convention Preamble, and On the Application of Article 57, as well as three Declarations, but they are not reproduced here.]

CHAPTER FORTY-EIGHT

UN (UNCITRAL) Convention on International Bills of Exchange and International Promissory Notes

New York, NY, 9 December 1988

INTRODUCTION

The fact that international payment mechanisms constitute the hub of the system of international transactions cannot be over-emphasized. Different legal traditions have attempted regional harmonization of the payment system. For example, the Geneva Convention of 1931 on Uniform Laws for Bills of Exchange, Promissory Notes and Cheques served a few countries in the civil law tradition, while the United Kingdom Bills of Exchange Act 1882 was followed by a number of countries in the common law world. The non-existence of a uniform global payment system was both a gap in and an obstacle to international trade and investments. It is this that the UN Commission on International Trade Law (UNCITRAL) identified and made proposals for, after it had dealt with international sale of goods and arbitration.

The Convention covers only international bills of exchange and international promissory notes. Those two sets of instruments must conform to certain requirements. These include a statement on the top of the document saying 'International Bill of Exchange (UNCITRAL Convention)' or 'International Promissory Note (UNCITRAL Convention)'. This means that businesses and individuals in states parties to the Convention are not bound to use or follow the Convention route; they keep the choice. The Convention defines an international bill of exchange as 'a written instrument' containing 'an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order', The instrument must be 'payable on demand or at a definite time', as well as signed (by the drawer) and dated.

A bill of exchange must specify at least two of the following places and indicate that any two are located in different states: the place where the bill is drawn; the place indicated next to the signature of the drawer; the place indicated next to the name of the drawee; the place indicated next to the name of the payee; and the place of payment. The place where the bill is drawn or the place of payment, as stated on the bill, must be in a contracting state. All these conditions apply to an international promissory note too, except that there is no requirement for an indication of the place next to the name of a

drawee. Contracting states are permitted to reserve the right to insist that the two places of where the bill is made and where it is drawn must be in two contracting states.

An interesting feature of the Convention bill of exchange is that, once all the requirements are satisfied, it is valid even if any previous endorsement was fraudulent. Article 15(3) states: 'A person is not prevented from being a holder by the fact that the instrument was obtained by him or any previous holder under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument'. This seems to continue the common law practice regarding domestic bills of exchange in assessing instruments only on the information on the face of the instrument. This can also be justified on policy grounds—the uninhibited circulation of the instrument. The determination of forgery or fraudulent issue of instruments is left to domestic legal regimes. At the same time, the Convention does not cover cheques, nor does it allow: negotiable instruments to be drawn; two or more drawees; or payment to the bearer of the instrument.

The Convention recognizes contemporary advances in technology and finance, and allows for instruments to bear interest at variable rates, without loss of negotiability or value. There is also allowance for instalment payments, denomination of instruments in units of value other than national currencies (for example, the IMF's special drawing right—SDR) and, more interestingly, signatures need not be in handwriting. Authentication can also be effected by facsimile or other equivalent electronic means.

The Convention, which was adopted by the General Assembly in December 1988 and had four accessions and three signatures by the end of 2004, has not yet come into force (10 actions are needed).

UNITED NATIONS CONVENTION ON INTERNATIONAL BILLS OF
EXCHANGE AND INTERNATIONAL PROMISSORY NOTES
(ANNEX TO RESOLUTION 43/165 OF THE GENERAL ASSEMBLY
OF THE UNITED NATIONS)*

**CHAPTER I: SPHERE OF APPLICATION AND FORM OF THE
INSTRUMENT**

Article 1

1. This Convention applies to an international bill of exchange when it contains the heading "International bill of exchange (UNCITRAL Convention)" and also contains in its text the words "International bill of exchange (UNCITRAL Convention)".
2. This Convention applies to an international promissory note when it contains the heading "International promissory note (UNCITRAL Convention)" and also contains in its text the words "International promissory note (UNCITRAL Convention)".
3. This Convention does not apply to cheques.

Article 2

1. An international bill of exchange is a bill of exchange which specifies at least two of the following places and indicates that any two so specified are situated in different States:

- (a) The place where the bill is drawn;
- (b) The place indicated next to the signature of the drawer;
- (c) The place indicated next to the name of the drawee;
- (d) The place indicated next to the name of the payee;
- (e) The place of payment,

provided that either the place where the bill is drawn or the place of payment is specified on the bill and that such place is situated in a Contracting State.

2. An international promissory note is a promissory note which specifies at least two of the following places and indicates that any two so specified are situated in different States:

- (a) The place where the note is made;
- (b) The place indicated next to the signature of the maker;
- (c) The place indicated next to the name of the payee;
- (d) The place of payment,

provided that the place of payment is specified on the note and that such place is situated in a Contracting State.

3. This Convention does not deal with the question of sanctions that may be imposed under national law in cases where an incorrect or false statement has been made on an instrument in respect of a place referred to in paragraph 1 or 2 of this article. However, any such sanctions shall not affect the validity of the instrument or the application of this Convention.

Article 3

1. A bill of exchange is a written instrument which:

- (a) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order;
- (b) Is payable on demand or at a definite time;
- (c) Is dated;
- (d) Is signed by the drawer.

2. A promissory note is a written instrument which:

- (a) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order;
- (b) Is payable on demand or at a definite time;
- (c) Is dated;
- (d) Is signed by the maker.

CHAPTER II: INTERPRETATION

Section 1: General provisions

Article 4

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international transactions.

Article 5

In this Convention:

- (a) “Bill” means an international bill of exchange governed by this Convention;
- (b) “Note” means an international promissory note governed by this Convention;
- (c) “Instrument” means a bill or a note;
- (d) “Drawee” means a person on whom a bill is drawn and who has not accepted it;
- (e) “Payee” means a person in whose favour the drawer directs payment to be made or to whom the maker promises to pay;
- (f) “Holder” means a person in possession of an instrument in accordance with article 15;
- (g) “Protected holder” means a holder who meets the requirements of article 29;
- (h) “Guarantor” means any person who undertakes an obligation of guarantee under article 46, whether governed by paragraph 4(b) (“guaranteed”) or paragraph 4(c) (“aval”) of article 47;
- (i) “Party” means a person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor;
- (j) “Maturity” means the time of payment referred to in paragraphs 4, 5, 6 and 7 of article 9;
- (k) “Signature” means a handwritten signature, its facsimile or an equivalent authentication effected by any other means; “forged signature” includes a signature by the wrongful use of such means;
- (l) “Money” or “currency” includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement.

Article 6

For the purposes of this Convention, a person is considered to have knowledge of a fact if he has actual knowledge of that fact or could not have been unaware of its existence.

Section 2: Interpretation of formal requirements

Article 7

The sum payable by an instrument is deemed to be a definite sum although the instrument states that it is to be paid:

- (a) With interest;
- (b) By instalments at successive dates;
- (c) By instalments at successive dates with a stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due;
- (d) According to a rate of exchange indicated in the instrument or to be determined as directed by the instrument; or
- (e) In a currency other than the currency in which the sum is expressed in the instrument.

Article 8

1. If there is a discrepancy between the sum expressed in words and the sum expressed in figures, the sum payable by the instrument is the sum expressed in words.
2. If the sum is expressed more than once in words, and there is a discrepancy, the sum payable is the smaller sum. The same rule applies if the sum is expressed more than once in figures only, and there is a discrepancy.

*We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

3. If the sum is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made, as indicated in the instrument, and the specified currency is not identified as the currency of any particular State, the currency is to be considered as the currency of the State where payment is to be made.
4. If an instrument states that the sum is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.
5. A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.
6. A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions.

7. If the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly in the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited.
8. If a variable rate does not qualify under paragraph 6 of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with paragraph 2 of article 70.

Article 9

1. An instrument is deemed to be payable on demand:
 - (a) If it states that it is payable at sight or on demand or on presentment or if it contains words of similar import; or
 - (b) If no time of payment is expressed.
2. An instrument payable at a definite time which is accepted or endorsed or guaranteed after maturity is an instrument payable on demand as regards the acceptor, the endorser or the guarantor.
3. An instrument is deemed to be payable at a definite time if it states that it is payable:
 - (a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the instrument;
 - (b) At a fixed period after sight;
 - (c) By instalments at successive dates; or
 - (d) By instalments at successive dates with the stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due.
4. The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument.
5. The time of payment of a bill payable at a fixed period after sight is determined by the date of acceptance or, if the bill is dishonoured by non-acceptance, by the date of protest or, if protest is dispensed with, by the date of dishonour.
6. The time of payment of an instrument payable on demand is the date on which the instrument is presented for payment.
7. The time of payment of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if his visa is refused, by the date of presentment.
8. If an instrument is drawn, or made, payable one or more months after a stated date or after the date of the instrument or after sight, the instrument is payable on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument is payable on the last day of that month.

Article 10

1. A bill may be drawn:
 - (a) By two or more drawers;

(b) Payable to two or more payees.

2. A note may be made:

(a) By two or more makers;

(b) Payable to two or more payees.

3. If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder may be exercised only by all of them.

Article 11

A bill may be drawn by the drawer:

(a) On himself;

(b) Payable to his order.

Section 3: Completion of an incomplete instrument

Article 12

1. An incomplete instrument which satisfies the requirements set out in paragraph 1 of article 1 and bears the signature of the drawer or the acceptance of the drawee, or which satisfies the requirements set out in paragraph 2 of article 1 and paragraph 2(d) of article 3, but which lacks other elements pertaining to one or more of the requirements set out in articles 2 and 3, may be completed, and the instrument so completed is effective as a bill or a note.

2. If such an instrument is completed without authority or otherwise than in accordance with the authority given:

(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority when he became a holder;

(b) A party who signed the instrument after the completion is liable according to the terms of the instrument so completed.

CHAPTER III: TRANSFER

Article 13

An instrument is transferred:

(a) By endorsement and delivery of the instrument by the endorser to the endorsee; or

(b) By mere delivery of the instrument if the last endorsement is in blank.

Article 14

1. An endorsement must be written on the instrument or on a slip affixed thereto (“allonge”). It must be signed.
2. An endorsement may be:
 - (a) In blank, that is, by a signature alone or by a signature accompanied by a statement to the effect that the instrument is payable to a person in possession of it;
 - (b) Special, that is, by a signature accompanied by an indication of the person to whom the instrument is payable.
3. A signature alone, other than that of the drawee, is an endorsement only if placed on the back of the instrument.

Article 15

1. A person is a holder if he is:
 - (a) The payee in possession of the instrument; or
 - (b) In possession of an instrument which has been endorsed to him, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, even if any endorsement was forged or was signed by an agent without authority.
2. If an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to be an endorsee by the endorsement in blank.
3. A person is not prevented from being a holder by the fact that the instrument was obtained by him or any previous holder under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument.

Article 16

The holder of an instrument on which the last endorsement is in blank may:

- (a) Further endorse it either by an endorsement in blank or by a special endorsement;
- (b) Convert the blank endorsement into a special endorsement by indicating in the endorsement that the instrument is payable to himself or to some other specified person; or
- (c) Transfer the instrument in accordance with subparagraph (b) of article 13.

Article 17

1. If the drawer or the maker has inserted in the instrument such words as “not negotiable”, “not transferable”, “not to order”, “pay (X) only”, or words of similar import, the instrument may not be transferred except for purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

2. If an endorsement contains the words “not negotiable”, “not transferable”, “not to order”, “pay (X) only”, or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

Article 18

1. An endorsement must be unconditional.
2. A conditional endorsement transfers the instrument whether or not the condition is fulfilled. The condition is ineffective as to those parties and transferees who are subsequent to the endorsee.

Article 19

An endorsement in respect of a part of the sum due under the instrument is ineffective as an endorsement.

Article 20

If there are two or more endorsements, it is presumed, unless the contrary is proved, that each endorsement was made in the order in which it appears on the instrument.

Article 21

1. If an endorsement contains the words “for collection”, “for deposit”, “value in collection”, “by procuration”, “pay any bank”, or words of similar import authorizing the endorsee to collect the instrument, the endorsee is a holder who:
 - (a) May exercise all rights arising out of the instrument;
 - (b) May endorse the instrument only for purposes of collection;
 - (c) Is subject only to the claims and defences which may be set up against the endorser.
2. The endorser for collection is not liable on the instrument to any subsequent holder.

Article 22

1. If an endorsement contains the words “value in security”, “value in pledge”, or any other words indicating a pledge, the endorsee is a holder who:
 - (a) May exercise all rights arising out of the instrument;
 - (b) May endorse the instrument only for purposes of collection;
 - (c) Is subject only to the claims and defences specified in article 28 or article 30.
2. If such an endorsee endorses for collection, he is not liable on the instrument to any subsequent holder.

Article 23

The holder of an instrument may transfer it to a prior party or to the drawee in accordance with article 13; however, if the transferee has previously been a holder of the instrument, no endorsement is required, and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 24

An instrument may be transferred in accordance with article 13 after maturity, except by the drawee, the acceptor or the maker.

Article 25

1. If an endorsement is forged, the person whose endorsement is forged, or a party who signed the instrument before the forgery, has the right to recover compensation for any damage that he may have suffered because of the forgery against:
 - (a) The forger;
 - (b) The person to whom the instrument was directly transferred by the forger;
 - (c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsees for collection.
2. However, an endorsee for collection is not liable under paragraph 1 of this article if he is without knowledge of the forgery:
 - (a) At the time he pays the principal or advises him of the receipt of payment; or
 - (b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.
3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph 1 of this article if, at the time he pays the instrument, he is without knowledge of the forgery, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.
4. Except as against the forger, the damages recoverable under paragraph 1 of this article may not exceed the amount referred to in article 70 or article 71.

Article 26

1. If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal, or a party who signed the instrument before such endorsement, has the right to recover compensation for any damage that he may have suffered because of such endorsement against:
 - (a) The agent;
 - (b) The person to whom the instrument was directly transferred by the agent;
 - (c) A party or the drawee who paid the instrument to the agent directly or through one or more endorsees for collection.

2. However, an endorsee for collection is not liable under paragraph 1 of this article if he is without knowledge that the endorsement does not bind the principal:
 - (a) At the time he pays the principal or advises him of the receipt of payment; or
 - (b) At the time he receives payment, if this is later,
unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.
3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph 1 of this article if, at the time he pays the instrument, he is without knowledge that the endorsement does not bind the principal, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.
4. Except as against the agent, the damages recoverable under paragraph 1 of this article may not exceed the amount referred to in article 70 or article 71.

CHAPTER IV: RIGHTS AND LIABILITIES

Section 1: The rights of a holder and of a protected holder

Article 27

1. The holder of an instrument has all the rights conferred on him by this Convention against the parties to the instrument.
2. The holder may transfer the instrument in accordance with article 13.

Article 28

1. A party may set up against a holder who is not a protected holder:
 - (a) Any defence that may be set up against a protected holder in accordance with paragraph 1 of article 30;
 - (b) Any defence based on the underlying transaction between himself and the drawer or between himself and his transferee, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it;
 - (c) Any defence arising from the circumstances as a result of which he became a party, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it;
 - (d) Any defence which may be raised against an action in contract between himself and the holder;
 - (e) Any other defence available under this Convention.
2. The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person, but only if he took the

instrument with knowledge of such claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it.

3. A holder who takes an instrument after the expiration of the time-limit for presentment for payment is subject to any claim to, or defence against liability on, the instrument to which his transferor is subject.
4. A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the instrument unless:
 - (a) The third person asserted a valid claim to the instrument; or
 - (b) The holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

Article 29

“Protected holder” means the holder of an instrument which was complete when he took it or which was incomplete within the meaning of paragraph 1 of article 12 and was completed in accordance with authority given, provided that when he became a holder:

- (a) He was without knowledge of a defence against liability on the instrument referred to in paragraphs 1(a), (b), (c) and (e) of article 28;
- (b) He was without knowledge of a valid claim to the instrument of any person;
- (c) He was without knowledge of the fact that it had been dishonoured by non-acceptance or by non-payment;
- (d) The time-limit provided by article 55 for presentment of that instrument for payment had not expired;
- (e) He did not obtain the instrument by fraud or theft or participate in a fraud or theft concerning it.

Article 30

1. A party may not set up against a protected holder any defence except:
 - (a) Defences under paragraph 1 of article 33, article 34, paragraph 1 of article 35, paragraph 3 of article 36, paragraph 1 of article 53, paragraph 1 of article 57, paragraph 1 of article 63 and article 84 of this Convention;
 - (b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party;
 - (c) Defences based on his incapacity to incur liability on the instrument or on the fact that he signed without knowledge that his signature made him a party to the instrument, provided that his lack of knowledge was not due to his negligence and provided that he was fraudulently induced so to sign.
2. The rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised.

Article 31

1. The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument which the protected holder had.
2. Those rights are not vested in a subsequent holder if:
 - (a) He participated in a transaction which gives rise to a claim to, or a defence against liability on, the instrument;
 - (b) He has previously been a holder, but not a protected holder.

Article 32

Every holder is presumed to be a protected holder unless the contrary is proved.

Section 2: Liabilities of the parties

A. General Provisions

Article 33

1. Subject to the provisions of articles 34 and 36, a person is not liable on an instrument unless he signs it.
2. A person who signs an instrument in a name which is not his own is liable as if he had signed it in his own name.

Article 34

A forged signature on an instrument does not impose any liability on the person whose signature was forged. However, if he consents to be bound by the forged signature or represents that it is his own, he is liable as if he had signed the instrument himself.

Article 35

1. If an instrument is materially altered:
 - (a) A party who signs it after the material alteration is liable according to the terms of the altered text;
 - (b) A party who signs it before the material alteration is liable according to the terms of the original text. However, if a party makes, authorizes or assents to a material alteration, he is liable according to the terms of the altered text.
2. A signature is presumed to have been placed on the instrument after the material alteration unless the contrary is proved.
3. Any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

Article 36

1. An instrument may be signed by an agent.
2. The signature of an agent placed by him on an instrument with the authority of his principal and showing on the instrument that he is signing in a representative capacity for that named principal, or the signature of a principal placed on the instrument by an agent with his authority, imposes liability on the principal and not on the agent.
3. A signature placed on an instrument by a person as agent but who lacks authority to sign or exceeds his authority, or by an agent who has authority to sign but who does not show on the instrument that he is signing in a representative capacity for a named person, or who shows on the instrument that he is signing in a representative capacity but does not name the person whom he represents, imposes liability on the person signing and not on the person whom he purports to represent.
4. The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.
5. A person who is liable pursuant to paragraph 3 of this article and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

Article 37

The order to pay contained in a bill does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee.

B. The Drawer

Article 38

1. The drawer engages that upon dishonour of the bill by nonacceptance or by non-payment, and upon any necessary protest, he will pay the bill to the holder, or to any endorser or any endorser's guarantor who takes up and pays the bill.
2. The drawer may exclude or limit his own liability for acceptance or for payment by an express stipulation in the bill. Such a stipulation is effective only with respect to the drawer. A stipulation excluding or limiting liability for payment is effective only if another party is or becomes liable on the bill.

C. The Maker

Article 39

1. The maker engages that he will pay the note in accordance with its terms to the holder, or to any party who takes up and pays the note.
2. The maker may not exclude or limit his own liability by a stipulation in the note. Any such stipulation is ineffective.

D. The Drawee and the Acceptor

Article 40

1. The drawee is not liable on a bill until he accepts it.
2. The acceptor engages that he will pay the bill in accordance with the terms of his acceptance to the holder, or to any party who takes up and pays the bill.

Article 41

1. An acceptance must be written on the bill and may be effected:
 - (a) By the signature of the drawee accompanied by the word “accepted” or by words of similar import; or
 - (b) By the signature alone of the drawee.
2. An acceptance may be written on the front or on the back of the bill.

Article 42

1. An incomplete bill which satisfies the requirements set out in paragraph 1 of article 1 may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.
2. A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or by non-payment.
3. If a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer or the holder may insert the date of acceptance.
4. If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article 43

1. An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.
2. If the drawee stipulates in the bill that his acceptance is subject to qualification:
 - (a) He is nevertheless bound according to the terms of his qualified acceptance;
 - (b) The bill is dishonoured by non-acceptance.
3. An acceptance relating to only a part of the sum payable is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.
4. An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

- (a) The place in which payment is to be made is not changed;
- (b) The bill is not drawn payable by another agent.

E. The Endorser

Article 44

1. The endorser engages that upon dishonour of the instrument by non-acceptance or by non-payment, and upon any necessary protest, he will pay the instrument to the holder, or to any subsequent endorser or any endorser's guarantor who takes up and pays the instrument.
2. An endorser may exclude or limit his own liability by an express stipulation in the instrument. Such a stipulation is effective only with respect to that endorser.

F. The Transferor by Endorsement or by Mere Delivery

Article 45

1. Unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, represents to the holder to whom he transfers the instrument that:
 - (a) The instrument does not bear any forged or unauthorized signature;
 - (b) The instrument has not been materially altered;
 - (c) At the time of transfer, he has no knowledge of any fact which would impair the right of the transferee to payment of the instrument against the acceptor of a bill or, in the case of an unaccepted bill, the drawer, or against the maker of a note.
2. Liability of the transferor under paragraph 1 of this article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.
3. If the transferor is liable under paragraph 1 of this article, the transferee may recover, even before maturity, the amount paid by him to the transferor, with interest calculated in accordance with article 70, against return of the instrument.

G. The Guarantor

Article 46

1. Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party.
2. A guarantee must be written on the instrument or on a slip affixed thereto ("allonge").
3. A guarantee is expressed by the words "guaranteed", "aval", "good as aval" or words of similar import, accompanied by the signature of the guarantor. For the purposes of

this Convention, the words “prior endorsements guaranteed” or words of similar import do not constitute a guarantee.

4. A guarantee may be effected by a signature alone on the front of the instrument. A signature alone on the front of the instrument, other than that of the maker, the drawer or the drawee, is a guarantee.
5. A guarantor may specify the person for whom he has become guarantor. In the absence of such specification, the person for whom he has become guarantor is the acceptor or the drawee in the case of a bill, and the maker in the case of a note.
6. A guarantor may not raise as a defence to his liability the fact that he signed the instrument before it was signed by the person for whom he is a guarantor, or while the instrument was incomplete.

Article 47

1. The liability of a guarantor on the instrument is of the same nature as that of the party for whom he has become guarantor.
2. If the person for whom he has become guarantor is the drawee, the guarantor engages:
 - (a) To pay the bill at maturity to the holder, or to any party who takes up and pays the bill;
 - (b) If the bill is payable at a definite time, upon dishonour by non-acceptance and upon any necessary protest, to pay it to the holder, or to any party who takes up and pays the bill.
3. In respect of defences that are personal to himself, a guarantor may set up:
 - (a) Against a holder who is not a protected holder only those defences which he may set up under paragraphs 1, 3 and 4 of article 28;
 - (b) Against a protected holder only those defences which he may set up under paragraph 1 of article 30.
4. In respect of defences that may be raised by the person for whom he has become a guarantor:
 - (a) A guarantor may set up against a holder who is not a protected holder only those defences which the person for whom he has become a guarantor may set up against such holder under paragraphs 1, 3 and 4 of article 28;
 - (b) A guarantor who expresses his guarantee by the words “guaranteed”, “payment guaranteed” or “collection guaranteed”, or words of similar import, may set up against a protected holder only those defences which the person for whom he has become a guarantor may set up against a protected holder under paragraph 1 of article 30;
 - (c) A guarantor who expresses his guarantee by the words “aval” or “good as aval” may set up against a protected holder only:
 - i. The defence, under paragraph 1(b) of article 30, that the protected holder obtained the signature on the instrument of the person for whom he has become a guarantor by a fraudulent act;

- ii. The defence, under article 53 or article 57, that the instrument was not presented for acceptance or for payment;
 - iii. The defence, under article 63, that the instrument was not duly protested for non-acceptance or for non-payment;
 - iv. The defence, under article 84, that a right of action may no longer be exercised against the person for whom he has become guarantor;
- (d) A guarantor who is not a bank or other financial institution and who expresses his guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph (b) of this paragraph;
 - (e) A guarantor which is a bank or other financial institution and which expresses its guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph (c) of this paragraph.

Article 48

1. Payment of an instrument by the guarantor in accordance with article 72 discharges the party for whom he became guarantor of his liability on the instrument to the extent of the amount paid.
2. The guarantor who pays the instrument may recover from the party for whom he has become guarantor and from the parties who are liable on it to that party the amount paid and any interest.

CHAPTER V: PRESENTMENT, DISHONOUR BY NON-ACCEPTANCE OR NON-PAYMENT, AND RECOURSE

Section 1: Presentment for acceptance and dishonour by non-acceptance

Article 49

1. A bill may be presented for acceptance.
2. A bill must be presented for acceptance:
 - (a) If the drawer has stipulated in the bill that it must be presented for acceptance;
 - (b) If the bill is payable at a fixed period after sight; or
 - (c) If the bill is payable elsewhere than at the residence or place of business of the drawee, unless it is payable on demand.

Article 50

1. The drawer may stipulate in the bill that it must not be presented for acceptance before a specified date or before the occurrence of a specified event. Except where a bill must be presented for acceptance under paragraph 2(b) or (c) of article 49, the drawer may stipulate that it must not be presented for acceptance.

2. If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph 1 of this article and acceptance is refused, the bill is not thereby dishonoured.
3. If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.

Article 51

A bill is duly presented for acceptance if it is presented in accordance with the following rules:

- (a) The holder must present the bill to the drawee on a business day at a reasonable hour;
- (b) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill;
- (c) If a bill is payable on a fixed date, presentment for acceptance must be made before or on that date;
- (d) A bill payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;
- (e) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

Article 52

1. A necessary or optional presentment for acceptance is dispensed with if:
 - (a) The drawee is dead, or no longer has the power freely to deal with his assets by reason of his insolvency, or is a fictitious person, or is a person not having capacity to incur liability on the instrument as an acceptor; or
 - (b) The drawee is a corporation, partnership, association or other legal entity which has ceased to exist.
2. A necessary presentment for acceptance is dispensed with if:
 - (a) A bill is payable on a fixed date, and presentment for acceptance cannot be effected before or on that date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome; or
 - (b) A bill is payable at a fixed period after sight, and presentment for acceptance cannot be effected within one year of its date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome.
3. Subject to paragraphs 1 and 2 of this article, delay in a necessary presentment for acceptance is excused, but presentment for acceptance is not dispensed with, if the bill is drawn with a stipulation that it must be presented for acceptance within a stated time-limit, and the delay in presentment for acceptance is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.

Article 53

1. If a bill which must be presented for acceptance is not so presented, the drawer, the endorsers and their guarantors are not liable on the bill.
2. Failure to present a bill for acceptance does not discharge the guarantor of the drawee of liability on the bill.

Article 54

1. A bill is considered to be dishonoured by non-acceptance:
 - (a) If the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or if the holder cannot obtain the acceptance to which he is entitled under this Convention;
 - (b) If presentment for acceptance is dispensed with pursuant to article 52, unless the bill is in fact accepted.
2.
 - (a) If a bill is dishonoured by non-acceptance in accordance with paragraph 1(a) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors, subject to the provisions of article 59.
 - (b) If a bill is dishonoured by non-acceptance in accordance with paragraph 1(b) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors.
 - (c) If a bill is dishonoured by non-acceptance in accordance with paragraph 1 of this article, the holder may claim payment from the guarantor of the drawee upon any necessary protest.
3. If a bill payable on demand is presented for acceptance, but acceptance is refused, it is not considered to be dishonoured by non-acceptance.

Section 2: Presentment for payment and dishonour by non-payment

Article 55

An instrument is duly presented for payment if it is presented in accordance with the following rules:

- (a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour;
- (b) A note signed by two or more makers may be presented to any one of them, unless the note clearly indicates otherwise;
- (c) If the drawee or the acceptor or the maker is dead, presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate;

- (d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument;
- (e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow;
- (f) An instrument which is payable on demand must be presented for payment within one year of its date;
- (g) An instrument must be presented for payment:
 - i. At the place of payment specified on the instrument;
 - ii. If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated in the instrument; or
 - iii. If no place of payment is specified and the address of the drawee or the acceptor or the maker is not indicated, at the principal place of business or habitual residence of the drawee or the acceptor or the maker;
- (h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

Article 56

- 1. Delay in making presentment for payment is excused if the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.
- 2. Presentment for payment is dispensed with:
 - (a) If the drawer, an endorser or a guarantor has expressly waived presentment; such waiver:
 - i. If made on the instrument by the drawer, binds any subsequent party and benefits any holder;
 - ii. If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;
 - iii. If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;
 - (b) If an instrument is not payable on demand, and the cause of delay in making presentment referred to in paragraph 1 of this article continues to operate beyond thirty days after maturity;
 - (c) If an instrument is payable on demand, and the cause of delay in making presentment referred to in paragraph 1 of this article continues to operate beyond thirty days after the expiration of the time-limit for presentment for payment;
 - (d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to make payment, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;

(e) If there is no place at which the instrument must be presented in accordance with subparagraph (g) of article 55.

3. Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance.

Article 57

1. If an instrument is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable on it.
2. Failure to present an instrument for payment does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

Article 58

1. An instrument is considered to be dishonoured by non-payment:
 - (a) If payment is refused upon due presentment or if the holder cannot obtain the payment to which he is entitled under this Convention;
 - (b) If presentment for payment is dispensed with pursuant to paragraph 2 of article 56 and the instrument is unpaid at maturity.
2. If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 59, exercise a right of recourse against the drawer, the endorsers and their guarantors.
3. If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 59, exercise a right of recourse against the endorsers and their guarantors.

Section 3: Recourse

Article 59

If an instrument is dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 60 to 62.

A. Protest

Article 60

1. A protest is a statement of dishonour drawn up at the place where the instrument has been dishonoured and signed and dated by a person authorized in that respect by the law of that place. The statement must specify:
 - (a) The person at whose request the instrument is protested;
 - (b) The place of protest;

(c) The demand made and the answer given, if any, or the fact that the drawee or the acceptor or the maker could not be found.

2. A protest may be made:

- (a) On the instrument or on a slip affixed thereto (“allonge”); or
- (b) As a separate document, in which case it must clearly identify the instrument that has been dishonoured.

3. Unless the instrument stipulates that protest must be made, a protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration must be to the effect that acceptance or payment is refused.
4. A declaration made in accordance with paragraph 3 of this article is a protest for the purpose of this Convention.

Article 61

Protest for dishonour of an instrument by non-acceptance or by nonpayment must be made on the day on which the instrument is dishonoured or on one of the four business days which follow.

Article 62

1. Delay in protesting an instrument for dishonour is excused if the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, protest must be made with reasonable diligence.
2. Protest for dishonour by non-acceptance or by non-payment is dispensed with:
- (a) If the drawer, an endorser or a guarantor has expressly waived protest; such waiver:
 - i. If made on the instrument by the drawer, binds any subsequent party and benefits any holder;
 - ii. If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;
 - iii. If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;
 - (b) If the cause of the delay in making protest referred to in paragraph 1 of this article continues to operate beyond thirty days after the date of dishonour;
 - (c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;
 - (d) If presentment for acceptance or for payment is dispensed with in accordance with article 52 or paragraph 2 of article 56.

Article 63

1. If an instrument which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable on it.
2. Failure to protest an instrument does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

B. Notice of Dishonour

Article 64

1. The holder, upon dishonour of an instrument by non-acceptance or by non-payment, must give notice of such dishonour:
 - (a) To the drawer and the last endorser;
 - (b) To all other endorsers and guarantors whose addresses the holder can ascertain on the basis of information contained in the instrument.
2. An endorser or a guarantor who receives notice must give notice of dishonour to the last party preceding him and liable on the instrument.
3. Notice of dishonour operates for the benefit of any party who has a right of recourse on the instrument against the party notified.

Article 65

1. Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument is sufficient notice, provided it is accompanied by a statement indicating that it has been dishonoured.
2. Notice of dishonour is duly given if it is communicated or sent to the party to be notified by means appropriate in the circumstances, whether or not it is received by that party.
3. The burden of proving that notice has been duly given rests upon the person who is required to give such notice.

Article 66

Notice of dishonour must be given within the two business days which follow:

- (a) The day of protest or, if protest is dispensed with, the day of dishonour; or
- (b) The day of receipt of notice of dishonour.

Article 67

1. Delay in giving notice of dishonour is excused if the delay is caused by circumstances which are beyond the control of the person required to give notice, and which he could

neither avoid nor overcome. When the cause of the delay ceases to operate, notice must be given with reasonable diligence.

2. Notice of dishonour is dispensed with:

- (a) If, after the exercise of reasonable diligence, notice cannot be given;
- (b) If the drawer, an endorser or a guarantor has expressly waived notice of dishonour; such waiver:
 - i. If made on the instrument by the drawer, binds any subsequent party and benefits any holder;
 - ii. If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;
 - iii. If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;
- (c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 68

If a person who is required to give notice of dishonour fails to give it to a party who is entitled to receive it, he is liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article 70 or article 71.

Section 4: Amount payable

Article 69

- 1. The holder may exercise his rights on the instrument against any one party, or several or all parties, liable on it and is not obliged to observe the order in which the parties have become bound. Any party who takes up and pays the instrument may exercise his rights in the same manner against parties liable to him.
- 2. Proceedings against a party do not preclude proceedings against any other party, whether or not subsequent to the party originally proceeded against.

Article 70

- 1. The holder may recover from any party liable:
 - (a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;
 - (b) After maturity:
 - i. The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;

- ii. If interest has been stipulated to be paid after maturity, interest at the rate stipulated, or, in the absence of such stipulation, interest at the rate specified in paragraph 2 of this article, calculated from the date of presentment on the sum specified in subparagraph (b)(i) of this paragraph;
- iii. Any expenses of protest and of the notices given by him;

(c) Before maturity:

- i. The amount of the instrument with interest, if interest has been stipulated for, to the date of payment; or, if no interest has been stipulated for, subject to a discount from the date of payment to the date of maturity, calculated in accordance with paragraph 4 of this article;
 - ii. Any expenses of protest and of the notices given by him.
2. The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.
 3. Nothing in paragraph 2 of this article prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.
 4. The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or, if he does not have a place of business, his habitual residence, or, if there is no such rate, then at such rate as is reasonable in the circumstances.

Article 71

A party who pays an instrument and is thereby discharged in whole or in part of his liability on the instrument may recover from the parties liable to him:

- (a) The entire sum which he has paid;
- (b) Interest on that sum at the rate specified in paragraph 2 of article 70, from the date on which he made payment;
- (c) Any expenses of the notices given by him.

CHAPTER VI: DISCHARGE

Section 1: Discharge by payment

Article 72

1. A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession of it, the amount due pursuant to article 70 or article 71:
 - (a) At or after maturity; or
 - (b) Before maturity, upon dishonour by non-acceptance.

2. Payment before maturity other than under paragraph 1(b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.
3. A party is not discharged of liability if he pays a holder who is not a protected holder, or a party who has taken up and paid the instrument, and knows at the time of payment that the holder or that party acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.
4.
 - (a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:
 - i. To the drawee making such payment, the instrument;
 - ii. To any other person making such payment, the instrument, a receipted account, and any protest.
 - (b) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument or on a slip affixed thereto ("allonge") and that a receipt therefor be given to him.
 - (c) If an instrument payable by instalments at successive dates is dishonoured by non-acceptance or by non-payment as to any of its instalments and a party, upon dishonour, pays the instalment, the holder who receives such payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.
 - (d) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment under article 58.
 - (e) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder to whom the instrument has been subsequently transferred.

Article 73

1. The holder is not obliged to take partial payment.
2. If the holder who is offered partial payment does not take it, the instrument is dishonoured by non-payment.
3. If the holder takes partial payment from the drawee, the guarantor of the drawee, or the acceptor or the maker:
 - (a) The guarantor of the drawee, or the acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid;
 - (b) The instrument is to be considered as dishonoured by nonpayment as to the amount unpaid.

4. If the holder takes partial payment from a party to the instrument other than the acceptor, the maker or the guarantor of the drawee:
 - (a) The party making payment is discharged of his liability on the instrument to the extent of the amount paid;
 - (b) The holder must give such party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.
5. The drawee or a party making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.
6. If the balance is paid, the person who receives it and who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 74

1. The holder may refuse to take payment at a place other than the place where the instrument was presented for payment in accordance with article 55.
2. In such case if payment is not made at the place where the instrument was presented for payment in accordance with article 55, the instrument is considered to be dishonoured by non-payment.

Article 75

1. An instrument must be paid in the currency in which the sum payable is expressed.
2. If the sum payable is expressed in a monetary unit of account within the meaning of subparagraph (1) of article 5 and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of monetary units of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment.
3. The drawer or the maker may indicate in the instrument that it must be paid in a specified currency other than the currency in which the sum payable is expressed. In that case:
 - (a) The instrument must be paid in the currency so specified;
 - (b) The amount payable is to be calculated according to the rate of exchange indicated in the instrument. Failing such indication, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of maturity:
 - i. Ruling at the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55, if the specified currency is that of that place (local currency); or

- ii. If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55;
- (c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:
 - i. If the rate of exchange is indicated in the instrument, according to that rate;
 - ii. If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the date of dishonour or on the date of actual payment;
- (d) If such an instrument is dishonoured by non-payment, the amount payable is to be calculated:
 - i. If the rate of exchange is indicated in the instrument, according to that rate;
 - ii. If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.
- 4. Nothing in this article prevents a court from awarding damages for loss caused to the holder by reason of fluctuations in rates of exchange if such loss is caused by dishonour for non-acceptance or by non-payment.
- 5. The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55 or at the place of actual payment.

Article 76

- 1. Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory and its provisions relating to the protection of its currency, including regulations which it is bound to apply by virtue of international agreements to which it is a party.
- 2.
 - (a) If, by virtue of the application of paragraph 1 of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55.
 - (b)
 - i. If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated, at the option of the holder, at the rate of exchange ruling on the date of dishonour or on the date of actual payment.
 - ii. If such an instrument is dishonoured by non-payment, the amount is to be calculated, at the option of the holder, according to the rate of exchange ruling on the date of presentment or on the date of actual payment.

iii. Paragraphs 4 and 5 of article 75 are applicable where appropriate.

Section 2: Discharge of other parties

Article 77

1. If a party is discharged in whole or in part of his liability on the instrument, any party who has a right on the instrument against him is discharged to the same extent.
2. Payment by the drawee of the whole or a part of the amount of a bill to the holder, or to any party who takes up and pays the bill, discharges all parties of their liability to the same extent, except where the drawee pays a holder who is not a protected holder, or a party who has taken up and paid the bill, and knows at the time of payment that the holder or that party acquired the bill by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

CHAPTER VII: LOST INSTRUMENTS

Article 78

1. If an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraph 2 of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession of the instrument.

2

- (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:
 - i. The elements of the lost instrument pertaining to the requirements set forth in paragraph 1 or paragraph 2 of articles 1, 2 and 3; for this purpose the person claiming payment of the lost instrument may present to that party a copy of that instrument;
 - (ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;
 - ii. The facts which prevent production of the instrument.
 - iii. (iii) The facts which prevent production of the instrument.
- (b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.
- (c) The nature of the security and its terms are to be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing

such an agreement, the court may determine whether security is called for and, if so, the nature of the security and its terms.

- (d) If the security cannot be given, the court may order the party from whom payment is claimed to deposit the sum of the lost instrument, and any interest and expenses which may be claimed under article 70 or article 71, with the court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

Article 79

1. A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must give notice of such presentment to the person whom he paid.
2. Such notice must be given on the day the instrument is presented or on one of the two business days which follow and must state the name of the person presenting the instrument and the date and place of presentment.
3. Failure to give notice renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the damages do not exceed the amount referred to in article 70 or article 71.
4. Delay in giving notice is excused when the delay is caused by circumstances which are beyond the control of the person who has paid the lost instrument and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, notice must be given with reasonable diligence.
5. Notice is dispensed with when the cause of delay in giving notice continues to operate beyond thirty days after the last day on which it should have been given.

Article 80

1. A party who has paid a lost instrument in accordance with the provisions of article 78 and who is subsequently required to, and does, pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:
 - (a) If security was given, to realize the security; or
 - (b) If an amount was deposited with the court or other competent authority or institution, to reclaim the amount so deposited.
2. The person who has given security in accordance with the provisions of paragraph 2(b) of article 78 is entitled to obtain release of the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

Article 81

For the purpose of making protest for dishonour by non-payment, a person claiming payment of a lost instrument may use a written statement that satisfies the requirements of paragraph 2(a) of article 78.

Article 82

A person receiving payment of a lost instrument in accordance with article 78 must deliver to the party paying the written statement required under paragraph 2(a) of article 78, receipted by him, and any protest and a receipted account.

Article 83

1. A party who pays a lost instrument in accordance with article 78 has the same rights which he would have had if he had been in possession of the instrument.
2. Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article 82.

CHAPTER VIII: LIMITATION (PRESCRIPTION)

Article 84

1. A right of action arising on an instrument may no longer be exercised after four years have elapsed:
 - (a) Against the maker, or his guarantor, of a note payable on demand, from the date of the note;
 - (b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, from the date of maturity;
 - (c) Against the guarantor of the drawee of a bill payable at a definite time, from the date of maturity or, if the bill is dishonoured by non-acceptance, from the date of protest for dishonour or, where protest is dispensed with, from the date of dishonour;
 - (d) Against the acceptor of a bill payable on demand or his guarantor, from the date on which it was accepted or, if no such date is shown, from the date of the bill;
 - (e) Against the guarantor of the drawee of a bill payable on demand, from the date on which he signed the bill or, if no such date is shown, from the date of the bill;
 - (f) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or by non-payment or, where protest is dispensed with, from the date of dishonour.
2. A party who pays the instrument in accordance with article 70 or article 71 may exercise his right of action against a party liable to him within one year from the date on which he paid the instrument.

CHAPTER IX: FINAL PROVISIONS

Article 85

The Secretary-General of the United Nations is hereby designated as the Depositary for this Convention.

Article 86

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 30 June 1990.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 87

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.
2. These declarations are to be notified to the Depositary and are to state expressly the territorial units to which the Convention extends.
3. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 88

1. Any State may declare at the time of signature, ratification, acceptance, approval or accession that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States.
2. No other reservations are permitted.

Article 89

1. This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of twelve months after the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 90

1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the Depositary.
2. The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the Depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the Depositary. The Convention remains applicable to instruments drawn or made before the date at which the denunciation takes effect.

DONE at New York, this ninth day of December, one thousand nine hundred and eighty-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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

CHAPTER FORTY-NINE

Convention on Insider Trading

Strasbourg, 20 April 1989

INTRODUCTION

With the increasing momentum towards greater integration of the countries of Europe, led mainly by economic interests and ideals, it is inevitable that they will continue to have legal instruments concerning the significant levers of economic activity. In this instance, it is securities trading, specifically ‘insider dealing’. Insider dealing could have devastating consequences for the economies of the countries where it takes place. For one thing, it destroys confidence in the stock market. A dimension of insider dealing that is difficult to control under existing domestic regulations is the trans-boundary or international aspects. With modern communications and other technologies, it is possible to deal in securities in countries where one is neither resident nor registered nor regulated. Therefore, one justification for the Convention is to set up a system and to coordinate efforts at countering insider trading.

The Convention defines an insider trader as someone ‘who is the president or chairman, or a member of a board of directors or other administrative or supervisory organ, or is the authorised agent or in the employment of an issuer of securities, and has effected or caused to be effected an operation on an organised stock market knowingly using information not yet disclosed to the public, the possession of which he obtained by reason of his occupation and the disclosure of which was likely to have a significant influence on the stock market, with a view to securing an advantage for himself or a third party’. This is the nub of the Convention. The definition covers official employees of a company or their agents, but, unlike the legal position in the USA, as enunciated by the courts, nonemployees and persons unconnected to the employees or servants or agents of the company are excluded from the coverage of the European Convention. So, for example, a waitress who discovers a valuable document relating to the stocks of the company, or a criminal who steals such a document, may freely benefit from the information contained therein. Still, the Convention also provides a defence even to employees and agents of the company—if he or she did not ‘knowingly’ use the information to trade to his or her advantage, and if he or she did not come by the information in the course of his or her employment.

As stated earlier, it appears that the Convention’s preoccupation is with co-operation and co-ordination of efforts among country members to deal with the problem of insider

trading. Parties are to exchange information whenever there is a suspicion of irregular activity on the stock markets. These exchanges of information must be handled by designated authorities in each member state. They are also to have surveillance schemes to monitor improper or unequal access to information relating to securities. Where this Convention is silent on rules for the gathering and exchange of information on suspected insider activity, the rules of evidence in the domestic jurisdiction are to be relied on. In all of this, secrecy is to be maintained, as any improper disclosure can be damaging to the company and all concerned. Furthermore, none of the information requested from a member country is to be used for tax, customs or currency purposes, unless otherwise stated by the requested party.

A major drawback of the Convention is that it applies to European Community (EC) member states only if there is no EC legislation on the matter. Considering the vast EC material on corporate matters, and taken together with article 15, which provides for the possibility of any state or intergovernmental organization acceding to the Convention, there is an indication that the European Convention on Insider Trading is more for 'outsiders' or non-European countries than European countries.

The Council of Europe's Convention on Insider Trading (ETS No. 130) entered into force on 10 January 1991. However, the version reproduced below, as amended by a protocol (ETS No. 133) of 11 September 1989, came into force on 1 October 1991. At the end of April 2005 the Convention (and its amending Protocol) had eight parties, with one additional signature as yet unratified.

CONVENTION ON INSIDER TRADING (AS AMENDED BY PROTOCOL)*

PREAMBLE

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatories hereto,

CONSIDERING that the aim of the Council of Europe is to achieve a greater unity between its members;

CONSIDERING that certain financial transactions in securities traded on stock exchanges are carried out by persons seeking to avoid losses or to make profits by using the privileged information available to them, thus undermining equality of opportunity as between investors and the credibility of the market;

CONSIDERING that such behaviour is also proving dangerous for the economies of the member States concerned and in particular for the proper functioning of the stock markets;

CONSIDERING that, because of the internationalisation of markets and the ease of present-day communications, operations of this nature are carried out sometimes on the market of a State by persons not resident in that State or acting through persons not resident there;

CONSIDERING that efforts to counter such practices which are already being made on the domestic level in many member States make it essential to set up specific machinery to deal with these situations and co-ordinate endeavours at international level,

HAVE AGREED AS FOLLOWS:

CHAPTER I: DEFINITIONS

Article 1

1. For the purposes of this Convention an irregular operation of insider trading means an irregular operation carried out by a person:
 - (a) who is the president or chairman, or a member of a board of directors or other administrative or supervisory organ, or is the authorised agent or in the employment of an issuer of securities, and has effected or caused to be effected an operation on an organised stock market knowingly using information not yet disclosed to the public, the possession of which he obtained by reason of his occupation and the disclosure of which was likely to have a significant influence on the stock market, with a view to securing an advantage for himself or a third party;
 - (b) who has entered into the transactions described above knowingly using not yet disclosed information which he obtained in the performance of his duties or in the course of his occupation;
 - (c) who has entered into the transactions described above knowingly using not yet disclosed information communicated to him by one of the persons mentioned in a or b above.
2. For the purposes of applying this Convention:
 - (a) the expression “organised stock market” signifies stock markets subject to regulations established by authorities recognised by the government for this purpose;
 - (b) the term “stock” signifies transferable securities issued according to the national legislation of each Party by business firms or companies or other issuers, where such securities may be bought and sold on a market organised in accordance with the provisions of paragraph a above, as well as other transferable securities admitted on that market in conformity with the national rules applicable to it;
 - (c) the expression “operation” signifies any act on an organised stock market which gives or may give entitlement to stock as provided for in paragraph b above.

CHAPTER II: EXCHANGE OF INFORMATION

Article 2

The Parties undertake, in accordance with the provisions of this chapter, to provide each other with the greatest possible measure of mutual assistance in the exchange of information relating to matters establishing or giving rise to the belief that irregular operations of insider trading have been carried out.

Article 3

Each Party may, by a declaration to the Secretary General of the Council of Europe, undertake to provide other Parties, subject to reciprocity, with the greatest possible

measure of mutual assistance in the exchange of information necessary for the surveillance of operations carried out in the organised stock markets which could adversely affect equal access to information for all users of the stock market or the quality of the information supplied to investors in order to ensure honest dealing.

Article 4

1. Each Party shall designate one or more authorities actually responsible for submitting any request for assistance, and for receiving and taking action on requests for assistance from the corresponding authorities designated by each Party.
2. Each Party shall, in a declaration addressed to the Secretary General of the Council of Europe, indicate the name and address of the authority or authorities designated in accordance with the provisions of this article and any modification thereto.
3. The Secretary General shall notify these declarations to the other Parties.

Article 5

1. Reasons shall be given for making a request for assistance.
2. The request shall contain a description of the facts establishing or giving rise to the belief that irregular operations of insider trading have been carried out or, if assistance is requested according to the rules laid down by Parties under Article 3, reference to the principles mentioned in that article which have been violated.
3. The request shall contain reference to the provisions by virtue of which the operations are irregular in the State of the requesting authority.
4. The request shall be in or translated into one of the official languages of the State of the requested authority, or in one of the official languages of the Council of Europe.
5. The request shall specify:
 - (a) the requesting authority and the requested authority;
 - (b) the information sought by the requesting authority, the persons or bodies which may be in possession of it, or the place where it may be available;
 - (c) the reasons for and the purpose of the requesting authority's application, and the use it will make of the information under its national law; and
 - (d) how soon a response is required and, in cases of urgency, the reasons therefor.

Article 6

1. The execution of requests for assistance by the requested authority is carried out in accordance with the rules and procedures laid down by the law of the Party in which that authority operates.
2. When the search for information so requires, and in the absence of specific provisions, the rules laid down by national law for obtaining evidence shall be capable of being applied by the requested authority or on its behalf. Sanctions laid down for breaches of professional secrecy shall not apply in regard to the information provided compulsorily in the course of enquiries.

3. These provisions shall not prejudice the rights accorded to the defendant by national law.
4. Save to the extent strictly necessary to carry out the request, the requested authority and the persons seeking the information requested are bound to maintain secrecy about the request, the component parts of the request and the information so gathered.

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5. However, at the time of the designation of the authority, provided for by Article 4, each Party shall declare the derogations to the principle set forth in paragraph 4 of this article possibly imposed or permitted by national law: either to guarantee free access of citizens to the files of the administration; or,
6. when the designated authority is obliged to denounce to other administrative or judicial authorities information communicated or gathered within the framework of the request; or,
7. provided the requesting authority has been informed, to investigate violations of the law of the requested Party or to secure compliance with such law.

Article 7

1. The requesting authority may not use the information supplied for purposes other than those set out in its request.
2. The requested authority may refuse to supply the requested information or subsequently oppose its use for purposes set out in the request or fix certain conditions unless:
 - (a) the facts are within the scope of Article 1 and
 - (b) the purposes set out are in conformity with the aims defined in Article 2 and
 - (c) the facts constitute in each State an irregularity as regards the rules of both States.
3. When the requesting authority wishes to use the information supplied for purposes other than those set out in the initial request it must inform in advance the requested authority who may refuse to consent to such use unless the conditions in paragraph 2 above are fulfilled.
4. The information supplied may be used before a criminal court only in cases where it could have been obtained by application of Chapter III.
5. No authority of the requesting Party may use or transmit this information for tax, customs or currency purposes unless otherwise provided in a declaration by the requested Party.

Article 8

The requested authority may refuse to give effect to the request for assistance or to supply the information obtained, if:

- (a) the request is not in conformity with this Convention;
- (b) the communication of the information obtained might constitute an infringement of the sovereignty, security, essential interests or public policy (*ordre public*) of the requested Party;
- (c) the irregularities to which the requested information relates or the sanctions provided for such irregularities are time-barred under the law of the requesting or of the requested Party;
- (d) the requested information relates to matters which arose before the Convention entered into force for the requesting or the requested Party;
- (e) proceedings have already been commenced before the authorities in the requested Party in respect of the same matters and against the same persons, or if they have been finally adjudicated upon in respect of the same matters by the competent authorities of the requested Party;
- (f) the authorities of the requested Party have decided not to commence proceedings or to stop proceedings in respect of the same matters.

Article 9

The requested authority shall, in so far as it is able to do so, supply the information requested by the requesting authority in the form desired by that authority or in the form currently in use between them.

Article 10

1. Any Party which has ascertained that there has been a substantial breach by the requesting authority of the confidentiality of the information provided may suspend the application of Chapter II of this Convention with respect to the Party which has failed to discharge its obligation and shall notify the Secretary General of the Council of Europe of its decision. The Party may lift the suspension at any time and shall notify the Secretary General accordingly.
2. Any Party which intends to make use of the procedure provided for in paragraph 1 must first give an opportunity to the Party concerned to make observations on the alleged breach of confidentiality.
3. The Secretary General of the Council of Europe shall inform the member States and the Parties to this Convention of any use made of the procedure provided for in paragraph 1.

Article 11

Parties may agree that, notwithstanding the provisions of paragraph 4 of Article 5, requests for assistance and replies thereto may be drawn up in the language of their choice and made according to simplified procedures or by employing means of communication other than the exchange of written correspondence.

CHAPTER III: MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 12

1. The Parties undertake to afford each other the widest measure of mutual assistance in criminal matters relating to offences involving insider trading.
2. Nothing in this Convention shall be construed as restricting or prejudicing the application of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto among States party to these instruments or of specific agreements or arrangements on mutual assistance in criminal matters in force between Parties.

CHAPTER IV: FINAL PROVISIONS

Article 13

This Convention shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 14

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 13.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 15

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe or any international intergovernmental organisation to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
2. In respect of any acceding State or international intergovernmental organisation, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 16

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 16 bis

In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall therefore not apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned.

Article 17

Without prejudice to the application of Article 6, no reservation may be made to the Convention.

Article 18

1. After the entry into force of the present Convention, a group of experts representing the Parties to the Convention and the member States of the Council of Europe not being Parties to the Convention shall be convened at the request of at least two Parties or on the initiative of the Secretary General of the Council of Europe.
2. This group shall have the task of preparing an evaluation of the application of the Convention and making appropriate suggestions.

Article 19

Difficulties with regard to the interpretation and application of this Convention shall be settled by direct consultation between the competent administrative authorities and, if the need arises, through diplomatic channels.

Article 20

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General; denunciation shall not prejudice requests already in progress at the time of denunciation.

Article 21

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any Party to this Convention of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Convention in accordance with Articles 14, 15 and 16;
- (b) any other act, notification or communication relating to this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention [signatures are not reproduced].

DONE at Strasbourg, the 20th April 1989 in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State and any international intergovernmental organisation invited to accede to this Convention.

CHAPTER FIFTY

Agreement Establishing the European Bank for Reconstruction and Development

Paris, 29 May 1990

INTRODUCTION

This initiative was borne out of the collapse of the Soviet bloc and the end of the Cold War. The thinking of that momentous period and the desire not to go back to the previous system dominates this Agreement. All contracting parties committed themselves to the principles of multi-party, democratic governance, the rule of law, respect for human rights and a freemarket economy. The reconstruction of the economies of Eastern European countries along capitalist lines was believed to be critical to their reintegration into the world economy. The European Bank for Reconstruction and Development (EBRD) was, therefore, to be at the forefront of this effort. It was designed to be a conduit for financial and managerial resources in support of the transition to a market economy, by promoting private enterprise, assisting with the restructuring, privatization and a decentralization of the economy. It was also to provide technical assistance in the preparation, evaluation, financing and execution of appropriate projects, to encourage the development of capital markets and, in keeping with the time, to promote environmentally sound and sustainable development.

Membership of the Bank is open to European countries, as well as to non-European countries, that are members of the IMF. Interestingly, membership was also opened to the European Community (EC) and to the European Investment Bank as distinct entities. Each member state appoints a representative to serve on the Board of Governors of the Bank. The powers of the Bank are all vested in the Board of Governors, which may, in turn, delegate to the Board of Directors. The following functions, however, cannot be delegated: the power over membership; adjustments to the authorized capital stock; co-operation agreements with other international organizations; approval of the financial statements of the Bank; determination of reserves and the distribution of net profits; the election of the Board of Directors and their remuneration; amendments of the Agreement; and the possible winding up of the activities of the Bank.

Next to the Board of Governors is the Board of Directors, made up of 23 people from member countries elected by the Board of Governors. The election of directors is not only based on the voting power conferred by the proportion of capital subscribed, but

also on geographical location or general economic status of the member countries. Thus, the largest single group of members consists of countries mainly in Western Europe (nine) and of the EC and the European Investment Bank. The remainder of the stock is shared equally between South-Eastern and Central European countries, non-European countries and other European countries. Directors serve for a renewable term of three years. The Board of Directors sees to the general operations of the Bank. Specifically, in accordance with the directives given by the Governors, the Board of Directors enunciate policies and take decisions on loans, guarantees, investments in equity, borrowing and technical assistance. It also approves the budget of the Bank. The daily management of the Bank is vested in the President of the Bank, elected by the Board of Governors. The President serves for a renewable period of four years. He is responsible for staff recruitment and management.

The operations of the Bank are focused on countries from Eastern Europe. The non-negotiable conditionality is that any beneficiary country must be on an irreversible march to a market economy and pluralistic, democratic governance. In cases where assistance had started, but the recipient country backslides into a command or controlled system, the Board of Governors, acting on the recommendation of the Directors may decide to suspend assistance. The operations of the Bank may take the form of loans, guarantees, participation in syndicated loans, equity investment, underwriting of equity issue of securities and by facilitating access to international and other forms of capital. Projects by private entrepreneurs and privatization of state-owned enterprises appear to be the chosen 'cherry' for the Bank's involvement. Not more than 40% of the Bank's financial assistance in any one country is to go to the state sector, and this includes local and national government and their agencies. More generally, the Bank is restrained from giving out more than its total unsubscribed capital, reserves and surpluses. In other words, its books must balance. Other operating principles include: diversification of its investments; not giving disproportionate amount of its resources to any one member; detailed evaluation of 'bankable' documents presented by project sponsors; the determination of ability to repay; effective supervision to ensure that the money raised is used only for the purposes stated and will be released in instalments only for work done. In cases of losses, the Bank is to make good by relying on subscribed capital, net income, special and general reserve. As with all banks, this Bank is to operate efficiently, but there is no doubt that it is also to be sensitive to politics.

The Agreement came into force on 28 March 1991, bringing the Bank into formal existence. By 2004 there were 60 country members and two institutional members (the European Community and the European Investment Bank).

AGREEMENT ESTABLISHING THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT*

THE CONTRACTING PARTIES;

COMMITTED to the fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economics;

RECALLING the Final Act of the Helsinki Conference on Security and Cooperation in Europe, and in particular its Declaration on Principles;

WELCOMING the intent of Central and Eastern European countries to further the practical implementation of multiparty democracy, strengthening democratic institutions, the rule of law and respect for human rights and their willingness to implement reforms in order to evolve towards market-oriented economies;

CONSIDERING the importance of close and coordinated cooperation in order to promote the economic progress of Central and Eastern European countries to help their economies become more internationally competitive and assist them in their reconstruction and development and thus to reduce, where appropriate, any risks related to the financing of their economies;

CONVINCED that the establishment of a multilateral financial institution which is European in its basic character and broadly international in its membership would help serve these ends and would constitute a new and unique structure of cooperation in Europe;

HAVE AGREED to establish hereby the European Bank for Reconstruction and Development (hereinafter called “the Bank”) which shall operate in accordance with the following:

CHAPTER I: PURPOSE, FUNCTIONS AND MEMBERSHIP

Article 1 Purpose

In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.

Article 2 Functions

1. To fulfil on a long-term basis its purpose of fostering the transition of Central and Eastern European countries towards open market-oriented economies and the promotion of private and entrepreneurial initiative, the Bank shall assist the recipient member countries to implement structural and sectoral economic reforms, including demonopolization, decentralization and privatization, to help their economies become fully integrated into the international economy by measures:
 - (i) to promote, through private and other interested investors, the establishment, improvement and expansion of productive, competitive and private sector activity, in particular small and medium sized enterprises;
 - (ii) to mobilize domestic and foreign capital and experienced management to the end described in (i);
 - (iii) to foster productive investment, including in the service and financial sectors, and in related infrastructure where that is necessary to support private and entrepreneurial initiative, thereby assisting in making a competitive environment and raising productivity, the standard of living and conditions of labour;

- (iv) to provide technical assistance for the preparation, financing and implementation of relevant projects, whether individual or in the context of specific investment programmes;
 - (v) to stimulate and encourage the development of capital markets;
 - (vi) to give support to sound and economically viable projects involving more than one recipient member country;
 - (vii) to promote in the full range of its activities environmentally sound and sustainable development; and
 - (viii) to undertake such other activities and provide such other services as may further these functions.
2. In carrying out the functions referred to in paragraph 1 of this Article, the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the Organisation for Economic Cooperation and Development, and shall cooperate with the United Nations and its Specialised Agencies and other related bodies, and any entity, whether public or private, concerned with the economic development of, and investment in, Central and Eastern European countries.

Article 3 Membership

1. Membership in the Bank shall be open:
- (i) to (1) European countries and (2) non-European countries which are members of the International Monetary Fund; and
 - (ii) to the European Economic Community and the European Investment Bank.
2. Countries eligible for membership under paragraph 1 of this Article, which do not become members in accordance with Article 61 of this Agreement, may be admitted, under such terms and conditions as the Bank may determine, to membership in the Bank upon the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

CHAPTER II: CAPITAL

Article 4 Authorized capital stock

1. The original authorized capital stock shall be ten thousand million (10,000,000,000) ECU. It shall be divided into one million (1,000,000) shares, having a par value of ten thousand (10,000)

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ECU each, which shall be available for subscription only by members in accordance with the provisions of Article 5 of this Agreement.

2. The original capital stock shall be divided into paid-in shares and callable shares. The initial total aggregate par value of paid-in shares shall be three thousand million (3,000,000,000) ECU.
3. The authorized capital stock may be increased at such time and under such terms as may seem advisable, by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

Article 5 Subscription of shares

1. Each member shall subscribe to shares of the capital stock of the Bank, subject to fulfilment of the member's legal requirements. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in the proportion of three (3) to seven (7). The initial number of shares available to be subscribed to by Signatories to this Agreement which become members in accordance with Article 61 of this Agreement shall be that set forth in Annex A. No member shall have an initial subscription of less than one hundred (100) shares.
2. The initial number of shares to be subscribed to by countries which are admitted to membership in accordance with paragraph 2 of Article 3 of this Agreement shall be determined by the Board of Governors; provided, however, that no such subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by countries which are members of the European Economic Community, together with the European Economic Community and the European Investment Bank, below the majority of the total subscribed capital stock.
3. The Board of Governors shall at intervals of not more than five (5) years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase. No member shall be obliged to subscribe to any part of an increase of capital stock.
4. Subject to the provisions of paragraph 3 of this Article, the Board of Governors may, at the request of a member, increase the subscription of that member, or allocate shares to that member within the authorized capital stock which are not taken up by other members; provided, however, that such increase shall not have the effect of reducing the percentage of capital stock held by countries which are members of the European Economic Community, together with the European Economic Community and the European Investment Bank, below the majority of the total subscribed capital stock.
5. Shares of stock initially subscribed to by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors, by a vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members, decides to issue them in special circumstances on other terms.

6. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.
7. The liability of the members on shares shall be limited to the unpaid portion of their issue price. No member shall be liable, by reason of its membership, for obligations of the Bank.

Article 6 Payment of subscriptions

1. Payment of the paid-in shares of the amount initially subscribed to by each Signatory to this Agreement, which becomes a member in accordance with Article 61 of this Agreement, shall be made in five (5) instalments of twenty (20) per cent each of such amount. The first instalment shall be paid by each member within sixty (60) days after the date of the entry into force of this Agreement, or after the date of deposit of its instrument of ratification, acceptance or approval in accordance with Article 61, if this latter is later than the date of the entry into force. The remaining four (4) instalments shall each become due successively one year from the date on which the preceding instalment became due and shall each, subject to the legislative requirements of each member, be paid.
2. Fifty (50) per cent of payment of each instalment pursuant to paragraph 1 of this Article, or by a member admitted in accordance with paragraph 2 of Article 3 of this Agreement, may be made in promissory notes or other obligations issued by such member and denominated in ECU, in United States dollars or in Japanese yen, to be drawn down as the Bank needs funds for disbursement as a result of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing and payable to the Bank at par value upon demand. Demands upon such notes or obligations shall, over reasonable periods of time, be made so that the value of such demands in ECU at the time of demand from each member is proportional to the number of paid-in shares subscribed to and held by each such member depositing such notes or obligations.
3. All payment obligations of a member in respect of subscription to shares in the initial capital stock shall be settled either in ECU, in United States dollars or in Japanese yen on the basis of the average exchange rate of the relevant currency in terms of the ECU for the period from 30 September 1989 to 31 March 1990 inclusive.
4. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call, taking account of Articles 17 and 42 of this Agreement, only as and when required by the Bank to meet its liabilities.
5. In the event of a call referred to in paragraph 4 of this Article, payment shall be made by the member in ECU, in United States dollars or in Japanese yen. Such calls shall be uniform in ECU value upon each callable share calculated at the time of the call.
6. The Bank shall determine the place for any payment under this Article not later than one month after the inaugural meeting of its Board of Governors, provided that, before such determination, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the European Investment Bank, as trustee for the Bank.
7. For subscriptions other than those described in paragraphs 1, 2 and 3 of this Article, payments by a member in respect of subscription to paid-in shares in the authorized

capital stock shall be made in ECU, in United States dollars or in Japanese yen whether in cash or in promissory notes or in other obligations.

8. For the purposes of this Article, payment or denomination in ECU shall include payment or denomination in any fully convertible currency which is equivalent on the date of payment or encashment to the value of the relevant obligation in ECU.

Article 7 Ordinary capital resources

As used in this Agreement, the term “ordinary capital resources” of the Bank shall include the following:

- (i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed to pursuant to Article 5 of this Agreement;
- (ii) funds raised by borrowings of the Bank by virtue of powers conferred by subparagraph (i) of Article 20 of this Agreement, to which the commitment to calls provided for in paragraph 4 of Article 6 of this Agreement is applicable;
- (iii) funds received in repayment of loans or guarantees and proceeds from the disposal of equity investment made with the resources indicated in sub-paragraphs (i) and (ii) of this Article;
- (iv) income derived from loans and equity investment, made from the resources indicated in sub-paragraphs (i) and (ii) of this Article, and income derived from guarantees and underwriting not forming part of the special operations of the Bank; and
- (v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 19 of this Agreement.

CHAPTER III: OPERATIONS

Article 8 Recipient countries and use of resources

1. The resources and facilities of the Bank shall be used exclusively to implement the purpose and carry out the functions set forth, respectively, in Articles 1 and 2 of this Agreement.
2. The Bank may conduct its operations in countries from Central and Eastern Europe which are proceeding steadily in the transition towards market oriented economies and the promotion of private and entrepreneurial initiative, and which apply, by concrete steps and otherwise, the principles as set forth in Article 1 of this Agreement.
3. In cases where a member might be implementing policies which are inconsistent with Article 1 of this Agreement, or in exceptional circumstances, the Board of Directors shall consider whether access by a member to Bank resources should be suspended or otherwise modified and may make recommendations accordingly to the Board of Governors. Any decision on these matters shall be taken by the Board of Governors by a majority of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.
- 4.

- (i) Any potential recipient country may request that the Bank provide access to its resources for limited purposes over a period of three (3) years beginning after the entry into force of this Agreement. Any such request shall be attached as an integral part of this Agreement as soon as it is made,
- (ii) During such a period:
 - a. the Bank shall provide to such a country, and to enterprises in its territory, upon their request, technical assistance and other types of assistance directed to finance its private sector, to facilitate the transition of state-owned enterprises to private ownership and control, and to help enterprises operating competitively and moving to participation in the market oriented economy, subject to the proportion set forth in paragraph 3 of Article 11 of this Agreement;
 - b. the total amount of any assistance thus provided shall not exceed the total amount of cash disbursed and promissory notes issued by that country for its shares.
- (iii) At the end of this period, the decision to allow such a country access beyond the limits specified in sub-paragraphs (a) and (b) shall be taken by the Board of Governors by a majority of not less than three-fourths of the Governors representing not less than eighty-five (85) per cent of the total voting power of the members.

Article 9 Ordinary and special operations

The operations of the Bank shall consist of ordinary operations financed from the ordinary capital resources of the Bank referred to in Article 7 of this Agreement and special operations financed from the Special Funds resources referred to in Article 19 of this Agreement. The two types of operations may be combined.

Article 10 Separation of operations

1. The ordinary capital resources and the Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separately from each other. The financial statements of the Bank shall show the reserves of the Bank, together with its ordinary operations, and, separately, its special operations.
2. The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of special operations or other activities for which Special Funds resources were originally used or committed.
3. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses appertaining directly to special operations shall be charged to Special Funds resources. Any other expenses shall, subject to paragraph 1 of Article 18 of this Agreement, be charged as the Bank shall determine.

Article 11 Methods of operation

1. The Bank shall carry out its operations in furtherance of its purpose and functions as set out in Articles 1 and 2 of this Agreement in any or all of the following ways:
 - (i) by making, or confinancing together with multilateral institutions, commercial banks or other interested sources, or participating in, loans to private sector enterprises, loans to any state-owned enterprise operating competitively and moving to participation in the market oriented economy, and loans to any state-owned enterprise to facilitate its transition to private ownership and control; in particular to facilitate or enhance the participation of private and/or foreign capital in such enterprises;
 - (ii)
 - a. by investment in the equity capital of private sector enterprises;
 - b. by investment in the equity capital of any state-owned enterprise operating competitively and moving to participation in the market oriented economy, and investment in the equity capital of any state-owned enterprise to facilitate its transition to private ownership and control; in particular to facilitate or enhance the participation of private and/or foreign capital in such enterprises; and
 - c. by underwriting, where other means of financing are not appropriate, the equity issue of securities by both private sector enterprises and such state-owned enterprises referred to in (b) above for the ends mentioned in that sub-paragraph;
 - (iii) by facilitating access to domestic and international capital markets by private sector enterprises or by other enterprises referred to in sub-paragraph (i) of this paragraph for the ends mentioned in that sub-paragraph, through the provision of guarantees, where other means of financing are not appropriate, and through financial advice and other forms of assistance;
 - (iv) by deploying Special Funds resources in accordance with the agreements determining their use; and
 - (v) by making or participating in loans and providing technical assistance for the reconstruction or development of infrastructure, including environmental programmes, necessary for private sector development and the transition to a market-oriented economy.

For the purposes of this paragraph, a state-owned enterprise shall not be regarded as operating competitively unless it operates autonomously in a competitive market environment and unless it is subject to bankruptcy laws.

2.
 - (i) The Board of Directors shall review at least annually the Bank's operations and lending strategy in each recipient country to ensure that the purpose and the functions of the Bank, as set out in Articles 1 and 2 of this Agreement, are fully served. Any decision pursuant to such a review shall be taken by a majority of not

less than two-thirds of the Directors, representing not less than three-fourths of the total voting power of the members.

- (ii) The said review shall involve the consideration of, inter alia, each recipient country's progress made on decentralization, demonopolization and privatization and the relative shares of the Bank's lending to private enterprises, to state-owned enterprises in the process of transition to participation in the market-oriented economy or privatization, for infrastructure, for technical assistance, and for other purposes.

3.

- (i) Not more than forty (40) per cent of the amount of the Bank's total committed loans, guarantees and equity investments, without prejudice to its other operations referred to in this Article, shall be provided to the state sector. Such percentage limit shall apply initially over a two (2) year period, from the date of commencement of the Bank's operations, taking one year with another, and thereafter in respect of each subsequent financial year.
- (ii) For any country, not more than forty (40) per cent of the amount of the Bank's total committed loans, guarantees and equity investments over a period of five (5) years, taking one year with another, and without prejudice to the Bank's other operations referred to in this Article, shall be provided to the state sector.
- (iii) For the purposes of this paragraph,
 - a. the state sector includes national and local governments, their agencies, and enterprises owned or controlled by any of them;
 - b. a loan or guarantee to, or equity investment in, a state-owned enterprise which is implementing a programme to achieve private ownership and control shall not be considered as made to the state sector;
 - c. loans to a financial intermediary for onlending to the private sector shall not be considered as made to the state sector.

Article 12 Limitations on ordinary operations

1. The total amount of outstanding loans, equity investments and guarantees made by the Bank in its ordinary operations shall not be increased at any time, if by such increase the total amount of its unimpaired subscribed capital, reserves and surpluses included in its ordinary capital resources would be exceeded.
2. The amount of any equity investment shall not normally exceed such percentage of the equity capital of the enterprise concerned as shall be determined, by a general rule, to be appropriate by the Board of Directors. The Bank shall not seek to obtain by such an investment a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize such investment, in which case the Bank may take such

action and exercise such rights as it may deem necessary for the protection of its interests.

3. The amount of the Bank's disbursed equity investments shall not at any time exceed an amount corresponding to its total unimpaired paid-in subscribed capital, surpluses and general reserve.
4. The Bank shall not issue guarantees for export credits nor undertake insurance activities.

Article 13 Operating principles

The Bank shall operate in accordance with the following principles:

- (i) the Bank shall apply sound banking principles to all its operations;
- (ii) the operations of the Bank shall provide for the financing of specific projects, whether individual or in the context of specific investment programmes, and for technical assistance, designed to fulfil its purpose and functions as set out in Articles 1 and 2 of this Agreement;
- (iii) the Bank shall not finance any undertaking in the territory of a member if that member objects to such financing;
- (iv) the Bank shall not allow a disproportionate amount of its resources to be used for the benefit of any member;
- (v) the Bank shall seek to maintain reasonable diversification in all its investments;
- (vi) before a loan, guarantee or equity investment is granted, the applicant shall have submitted an adequate proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal, together with recommendations, on the basis of a staff study;
- (vii) the Bank shall not undertake any financing, or provide any facilities, when the applicant is able to obtain sufficient financing or facilities elsewhere on terms and conditions that the Bank considers reasonable;
- (viii) in providing or guaranteeing financing, the Bank shall pay due regard to the prospect that the borrower and its guarantor, if any, will be in a position to meet their obligations under the financing contract;
- (ix) in case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditure as it is actually incurred;
- (x) the Bank shall seek to revolve its funds by selling its investments to private investors whenever it can appropriately do so on satisfactory terms;
- (xi) in its investments in individual enterprises, the Bank shall undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Bank, and the terms and conditions normally obtained by private investors for similar financing;
- (xii) the Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged; and
- (xiii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used

only for the purposes for which the loan or the equity investment was granted and with due attention to considerations of economy and efficiency.

Article 14 Terms and conditions for loans and guarantees

1. In the case of loans made, participated in, or guaranteed by the Bank, the contract shall establish the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other fees, charges, maturities and dates of payment in respect of the loan or the guarantee, respectively. In setting such terms and conditions, the Bank shall take fully into account the need to safeguard its income.
2. Where the recipient of loans or guarantees of loans is not itself a member, but is a state-owned enterprise, the Bank may, when it appears desirable, bearing in mind the different approaches appropriate to public and state-owned enterprises in transition to private ownership and control, require the member or members in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of such member or members acceptable to the Bank, to guarantee the repayment of the principal and the payment of interest and other fees and charges of the loan in accordance with the terms thereof. The Board of Directors shall review annually the Bank's practice in this matter, paying due attention to the Bank's creditworthiness.
3. The loan or guarantee contract shall expressly state the currency or currencies, or ECU, in which all payments to the Bank there under shall be made.

Article 15 Commission and fees

1. The Bank shall charge, in addition to interest, a commission on loans made or participated in as part of its ordinary operations. The terms and conditions of this commission shall be determined by the Board of Directors.
2. In guaranteeing a loan as part of its ordinary operations, or in underwriting the sale of securities, the Bank shall charge fees, payable at rates and times determined by the Board of Directors, to provide suitable compensation for its risks.
3. The Board of Directors may determine any other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations.

Article 16 Special reserve

1. The amount of commissions and fees received by the Bank pursuant to Article 15 of this Agreement shall be set aside as a special reserve which shall be kept for meeting the losses of the Bank in accordance with Article 17 of this Agreement. The special reserve shall be held in such liquid form as the Bank may decide.
2. If the Board of Directors determines that the size of the special reserve is adequate, it may decide that all or part of the said commission or fees shall henceforth form part of the income of the Bank.

Article 17 Methods of meeting the losses of the Bank

1. In the Bank's ordinary operations, in cases of arrears or default on loans made, participated in, or guaranteed by the Bank, and in cases of losses on underwriting and in equity investment, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate provisions against possible losses.
2. Losses arising in the Bank's ordinary operations shall be charged:
 - (i) first, to the provisions referred to in paragraph 1 of this Article;
 - (ii) second, to net income;
 - (iii) third, against the special reserve provided for in Article 16 of this Agreement;
 - (iv) fourth, against its general reserve and surpluses;
 - (v) fifth, against the unimpaired paid-in capital; and
 - (vi) last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraphs 4 and 5 of Article 6 of this Agreement.

Article 18 Special Funds

1. The Bank may accept the administration of Special Funds which are designed to serve the purpose and come within the functions of the Bank. The full cost of administering any such Special Fund shall be charged to that Special Fund.
2. Special Funds accepted by the Bank may be used in any manner and on any terms and conditions consistent with the purpose and the functions of the Bank, with the other applicable provisions of this Agreement, and with the agreement or agreements relating to such Funds.
3. The Bank shall adopt such rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, except for those provisions expressly applicable only to ordinary operations of the Bank.

Article 19 Special Funds resources

The term "Special Funds resources" shall refer to the resources of any Special Fund and shall include:

- (i) funds accepted by the Bank for inclusion in any Special Fund;
- (ii) funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by such Special Fund; and
- (iii) income derived from investment of Special Funds resources.

CHAPTER IV: BORROWING AND OTHER MISCELLANEOUS POWERS

Article 20 General powers

1. The Bank shall have, in addition to the powers specified else where in this Agreement, the power to:
 - (i) borrow funds in member countries or elsewhere, provided always that:
 - a. before making a sale of its obligations in the territory of a country, the Bank shall have obtained its approval; and
 - b. where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval;
 - (ii) invest or deposit funds not needed in its operations;
 - (iii) buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;
 - (iv) guarantee securities in which it has invested in order to facilitate their sale;
 - (v) underwrite, or participate in the underwriting of, securities issued by any enterprise for purposes consistent with the purpose and functions of the Bank;
 - (vi) provide technical advice and assistance which serve its purpose and come within its functions;
 - (vii) exercise such other powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement; and
 - (viii) conclude agreements of cooperation with any public or private entity or entities.
2. Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government or member, unless it is in fact the obligation of a particular Government or member, in which case it shall so state.

CHAPTER V: CURRENCIES

Article 21 Determination and use of currencies

1. Whenever it shall become necessary under this Agreement to determine whether any currency is fully convertible for the purposes of this Agreement, such determination shall be made by the Bank, taking into account the paramount need to preserve its own financial interests, after consultation, if necessary, with the International Monetary Fund.
2. Members shall not impose any restrictions on the receipt, holding, use or transfer by the Bank of the following:
 - (i) currencies or ECU received by the Bank in payment of subscriptions to its capital stock, in accordance with Article 6 of this Agreement;

- (ii) currencies obtained by the Bank by borrowing;
- (iii) currencies and other resources administered by the Bank as contributions to Special Funds; and
- (iv) currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments, or the proceeds of disposal of such investments made out of any of the funds referred to in subparagraphs (i) to (iii) of this paragraph, or in payment of commission, fees or other charges.

CHAPTER VI: ORGANIZATION AND MANAGEMENT

Article 22 Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and such other officers and staff as may be considered necessary.

Article 23 Board of Governors: composition

1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one Alternate. Each Governor and Alternate shall serve at the pleasure of the appointing member. No Alternate may vote except in the absence of his or her principal. At each of its annual meetings, the Board shall elect one of the Governors as Chairman who shall hold office until the election of the next Chairman.
2. Governors and Alternates shall serve as such without remuneration from the Bank.

Article 24 Board of Governors: powers

1. All the powers of the Bank shall be vested in the Board of Governors.
2. The Board of Governors may delegate to the Board of Directors any or all of its powers, except the power to:
 - (i) admit new members and determine the conditions of their admission;
 - (ii) increase or decrease the authorized capital stock of the Bank;
 - (iii) suspend a member;
 - (iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
 - (v) authorize the conclusion of general agreements for cooperation with other international organizations;
 - (vi) elect the Directors and the President of the Bank;
 - (vii) determine the remuneration of the Directors and Alternate Directors and the salary and other terms of the contract of service of the President;
 - (viii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;
 - (ix) determine the reserves and the allocation and distribution of the net profits of the Bank;
 - (x) amend this Agreement;

- (xi) decide to terminate the operations of the Bank and to distribute its assets; and
- (xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.

3. The Board of Governors shall retain full power to exercise authority over any matter delegated or assigned to the Board of Directors under paragraph 2 of this Article, or elsewhere in this Agreement.

Article 25 Board of Governors: procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by not less than five (5) members of the Bank or members holding not less than one quarter of the total voting power of the members.
2. Two-thirds of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.
3. The Board of Governors may be regulation establish a procedure whereby the Board of Directors may, when the latter deems such action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.
4. The Board of Governors, and the Board of Directors to the extent authorized, may adopt such rules and regulations and establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

Article 26 Board of Directors: composition

1. The Board of Directors shall be composed of twenty-three (23) members who shall not be members of the Board of Governors, and of whom:
 - (i) eleven (11) shall be elected by the Governors representing Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom, the European Economic Community and the European Investment Bank; and
 - (ii) twelve (12) shall be elected by the Governors representing other members, of whom:
 - a. four (4), by the Governors representing those countries listed in Annex A as Central and Eastern European countries eligible for assistance from the Bank;
 - b. four (4), by the Governors representing those countries listed in Annex A as other European countries;
 - c. four (4), by the Governors representing those countries listed in Annex A as non-European countries.

Directors, as well as representing members whose Governors have elected them, may also represent members who assign their votes to them.

2. Directors shall be persons of high competence in economic and financial matters and shall be elected in accordance with Annex B.
3. The Board of Governors may increase or decrease the size, or revise the composition, of the Board of Directors, in order to take into account changes in the number of members of the Bank, by an affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Without prejudice to the exercise of these powers for subsequent elections, the number and composition of the second Board of Directors shall be as set out in paragraph 1 of this Article.
4. Each Director shall appoint an Alternate with full power to act for him or her when he or she is not present. Directors and Alternates shall be nationals of member countries. No member shall be represented by more than one Director. An Alternate may participate in meetings of the Board but may vote only when he or she is acting in place of his or her principal.
5. Directors shall hold office for a term of three (3) years and may be re-elected; provided that the first Board of Directors shall be elected by the Board of Governors at its inaugural meeting, and shall hold office until the next immediately following annual meeting of the Board of Governors or, if that Board shall so decide at that annual meeting, until its next subsequent annual meeting. They shall continue in office until their successors shall have been chosen and assumed office. If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his or her term, a successor shall be chosen in accordance with Annex B, for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his or her term, a successor may similarly be chosen for the remainder of the term, by the votes cast by such Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter, except that of appointing an Alternate.

Article 27 Board of Directors: powers

Without prejudice to the powers of the Board of Governors as provided in Article 24 of this Agreement, the Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (i) prepare the work of the Board of Governors;
- (ii) in conformity with the general directions of the Board of Governors, establish policies and take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, the furnishing of technical assistance, and other operations of the Bank;
- (iii) submit the audited accounts for each financial year for approval of the Board of Governors at each annual meeting; and
- (iv) approve the budget of the Bank.

Article 28 Board of Directors: procedure

1. The Board of Directors shall normally function at the principal office of the Bank and shall meet as often as the business of the Bank may require.
2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds of the total voting power of the members.
3. The Board of Governors shall adopt regulations under which, if there is no Director of its nationality, a member may send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

Article 29 Voting

1. The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank. In the event of any member failing to pay any part of the amount due in respect of its obligations in relation to paid-in shares under Article 6 of this Agreement, such member shall be unable for so long as such failure continues to exercise that percentage of its voting power which corresponds to the percentage which the amount due but unpaid bears to the total amount of paid-in shares subscribed to by that member in the capital stock of the Bank.
2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power of the members voting.
3. In voting in the Board of Directors each Director shall be entitled to cast the number of votes to which the Governors who have elected him or her are entitled and those to which any Governors who have assigned their votes to him or her, pursuant to Section D of Annex B, are entitled. A Director representing more than one member may cast separately the votes of the members he or she represents. Except as otherwise expressly provided in this Agreement, and except for general policy decisions in which cases such policy decisions shall be taken by a majority of not less than two-thirds of the total voting power of the members voting, all matters before the Board of Directors shall be decided by a majority of the voting power of the members voting.

Article 30 The President

1. The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President of the Bank. The President, while holding office, shall not be a Governor or a Director or an Alternate for either.
2. The term of office of the President shall be four (4) years. He or she may be re-elected. He or she shall, however, cease to hold office when the Board of Governors so decides by an affirmative vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. If the office of the President for any reason becomes vacant, the Board of Governors, in accordance with

the provisions of paragraph 1 of this Article, shall elect a successor for up to four (4) years.

3. The President shall not vote, except that he or she may cast a deciding vote in case of an equal division. He or she may participate in meetings of the Board of Governors and shall chair the meetings of the Board of Directors.
4. The President shall be the legal representative of the Bank.
5. The President shall be chief of the staff of the Bank. He or she shall be responsible for the organisation, appointment and dismissal of the officers and staff in accordance with regulations to be adopted by the Board of Directors. In appointing officers and staff, he or she shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Bank.
6. The President shall conduct, under the direction of the Board of Directors, the current business of the Bank.

Article 31 Vice-President(s)

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. A Vice-President shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, a Vice-President shall exercise the authority and perform the functions of the President.
2. A Vice-President may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that he or she may cast the deciding vote when acting in place of the President.

Article 32 International character of the Bank

1. The Bank shall not accept Special Funds or other loans or assistance that may in any way prejudice, deflect or otherwise alter its purpose or functions.
2. The Bank, its President, Vice-President(s), officers and staff shall in their decisions take into account only considerations relevant to the Bank's purpose, functions and operations, as set out in this Agreement. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.
3. The President, Vice-President(s), officers and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 33 Location of offices

1. The principal office of the Bank shall be located in London.
2. The Bank may establish agencies or branch offices in the territory of any member of the Bank.

Article 34 Depositories and channels of communication

1. Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository for all the Bank's holdings of its currency as well as other assets of the Bank.
2. Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement.

Article 35 Publication of reports and provision of information

1. The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three (3) months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations. The financial accounts shall be kept in ECU.
2. The Bank shall report annually on the environmental impact of its activities and may publish such other reports as it deems desirable to advance its purpose.
3. Copies of all reports, statements and publications made under this Article shall be distributed to members.

Article 36 Allocation and distribution of net income

1. The Board of Governors shall determine at least annually what part of the Bank's net income, after making provision for reserves and, if necessary, against possible losses under paragraph 1 of Article 17 of this Agreement, shall be allocated to surplus or other purposes and what part, if any, shall be distributed. Any such decision on the allocation of the Bank's net income to other purposes shall be taken by a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. No such allocation, and no distribution, shall be made until the general reserve amounts to at least ten (10) percent of the authorized capital stock.
2. Any distribution referred to in the preceding paragraph shall be made in proportion to the number of paid-in shares held by each member; provided that in calculating such number account shall be taken only of payments received in cash and promissory notes encashed in respect of such shares on or before the end of the relevant financial year.
3. Payments to each member shall be made in such manner as the Board of Governors shall determine. Such payments and their use by the receiving country shall be without restriction by any member.

CHAPTER VII: WITHDRAWAL AND SUSPENSION OF MEMBERSHIP; TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS

Article 37 Right of members to withdraw

1. Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office.
2. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice but in no event less than six (6) months after such notice is received by the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

Article 38 Suspension of membership

1. If a member fails to fulfil any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by not less than the same majority to restore the member to good standing.
2. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 39 Settlement of accounts with former members

1. After the date on which a member ceases to be a member, such former member shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans, equity investments or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur such liabilities with respect to loans, equity investments and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.
2. At the time a member ceases to be a member, the Bank shall arrange for the repurchase of such former member's shares as a part of the settlement of accounts with such former member in accordance with the provisions of this Article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date of cessation of membership, with the original purchase price of each share being its maximum value.
3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:
 - (i) any amount due to the former member for its shares shall be withheld so long as the former member, its central bank or any of its agencies or instrumentalities remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of

the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the former member resulting from its subscription for shares in accordance with paragraphs 4, 5 and 7 of Article 6 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date upon which the member ceases to be a member;

- (ii) payments for shares may be made from time to time, upon their surrender by the former member, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans, equity investments and guarantees in sub-paragraph (i) of this paragraph until the former member has received the full repurchase price;
- (iii) payments shall be made on such conditions and in such fully convertible currencies, or ECU, and on such dates, as the Bank determines; and
- (iv) if losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the member ceased to be a member, or if a net loss is sustained by the Bank on equity investments held by it on such date, and the amount of such losses exceeds the amount of the reserves provided against losses on the date when the member ceased to be a member, such former member shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions under paragraph 4 of Article 6 of this Agreement, to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

4. If the Bank terminates its operations pursuant to Article 41 of this Agreement within six (6) months of the date upon which any member ceases to be a member, all rights of such former member shall be determined in accordance with the provisions of Articles 41 to 43 of this Agreement.

Article 40 Temporary suspension of operations

In an emergency, the Board of Directors may suspend temporarily operations in respect of new loans, guarantees, underwriting, technical assistance and equity investments pending an opportunity for further consideration and action by the Board of Governors.

Article 41 Termination of operations

The Bank may terminate its operations by the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Upon such termination of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 42 Liability of members and payment of claims

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
2. Creditors on ordinary operations holding direct claims shall be paid first out of the assets of the Bank, secondly out of the payments to be made to the Bank in respect of unpaid paid-in shares, and then out of payments to be made to the Bank in respect of callable capital stock. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and holders of contingent claims.

Article 43 Distribution of assets

1. No distribution under this Chapter shall be made to members on account of their subscriptions to the capital stock of the Bank until:
 - (i) all liabilities to creditors have been discharged or provided for; and
 - (ii) the Board of Governors has decided by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members, to make a distribution.
2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of assets. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.
3. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

CHAPTER VIII: STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 Purposes of Chapter

To enable the Bank to fulfil its purpose and the functions with which it is entrusted, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member country.

Article 45 Status of the Bank

The Bank shall possess full legal personality and, in particular, the full legal capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and

(iii) to institute legal proceedings.

Article 46 Position of the Bank with regard to judicial process

Actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 47 Immunity of assets from seizure

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 48 Immunity of archives

The archives of the Bank, and in general all documents belonging to it or held by it, shall be inviolable.

Article 49 Freedom of assets from restrictions

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 50 Privilege for communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

Article 51 Immunities of officers and employees

All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, employee or expert.

Article 52 Privileges of officers and employees

1. All Governors, Directors, Alternates, officers and employees of the Bank and experts of the Bank, performing missions for the Bank:
 - (i) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
 - (ii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.
2. The spouses and immediate dependants of those Directors, Alternate Directors, officers, employees and experts of the Bank who are resident in the country in which the principal office of the Bank is located shall be accorded opportunity to take employment in that country. The spouses and immediate dependants of those Directors, Alternate Directors, officers, employees and experts of the Bank who are resident in a country in which any agency or branch office of the Bank is located should, wherever possible, in accordance with the national law of that country, be accorded similar opportunity in that country. The Bank shall negotiate specific agreements implementing the provisions of this paragraph with the country in which the principal office of the Bank is located and, as appropriate, with the other countries concerned.

Article 53 Exemption from taxation

1. Within the scope of its official activities the Bank, its assets, property, and income shall be exempt from all direct taxes.
2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Bank are made or used by the Bank and when the price of such purchases or services includes taxes or duties, the member that has levied the taxes or duties shall, if they are identifiable, take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement.
3. Goods imported by the Bank and necessary for the exercise of its official activities shall be exempt from all import duties and taxes, and from all import prohibitions and restrictions. Similarly goods exported by the Bank and necessary for the exercise of its official activities shall be exempt from all export duties and taxes, and from all export prohibitions and restrictions.
4. Goods acquired or imported and exempted under this Article shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance with conditions laid down by the members which have granted exemptions or reimbursements.
5. The provisions of this Article shall not apply to taxes or duties which are no more than charges for public utility services.
6. Directors, Alternate Directors, officers and employees of the Bank shall be subject to an internal effective tax for the benefit of the Bank on salaries and emoluments paid

by the Bank, subject to conditions to be laid down and rules to be adopted by the Board of Governors within a period of one year from the date of entry into force of this Agreement. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax. The members may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

7. Notwithstanding the provisions of paragraph 6 of this Article, a member may deposit, with its instrument of ratification, acceptance or approval, a declaration that such member retains for itself, its political subdivisions or its local authorities the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member. The Bank shall be exempt from any obligation for the payment, withholding or collection of such taxes. The Bank shall not make any reimbursement for such taxes.
8. Paragraph 6 of this Article shall not apply to pensions and annuities paid by the Bank.
9. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank, or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
10. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank, or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 54 Implementation of Chapter

Each member shall promptly take such action as is necessary for the purpose of implementing the provisions of this Chapter and shall inform the Bank of the detailed action which it has taken.

Article 55 Waiver of immunities, privileges and exemptions

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President or a Vice-President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and

under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice-President.

CHAPTER IX: AMENDMENTS, INTERPRETATION, ARBITRATION

Article 56 Amendments

1. Any proposal to amend this Agreement, whether emanating from a member, a Governor or the Board of Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before that Board. If the proposed amendment is approved by the Board the Bank shall, by any rapid means of communication, ask all members whether they accept the proposed amendment. When not less than threefourths of the members (including at least two countries from Central and Eastern Europe listed in Annex A), having not less than four-fifths of the total voting power of the members, have accepted the proposed amendment, the Bank shall certify that fact by formal communication addressed to all members.
2. Notwithstanding paragraph 1 of this Article:
 - (i) acceptance by all members shall be required in the case of any amendment modifying:
 - a. the right to withdraw from the Bank;
 - b. the rights pertaining to purchase of capital stock provided for in paragraph 3 of Article 5 of this Agreement;
 - c. the limitations on liability provided for in paragraph 7 of Article 5 of this Agreement; and
 - d. the purpose and functions of the Bank defined by Articles 1 and 2 of this Agreement;
 - (ii) acceptance by not less than three-fourths of the members having not less than eighty-five (85) percent of the total voting power of the members shall be required in the case of any amendment modifying paragraph 4 of Article 8 of this Agreement.

When the requirements for accepting any such proposed amendment have been met, the Bank shall certify that fact by formal communication addressed to all members.
3. Amendments shall enter into force for all members three (3) months after the date of the formal communication provided for in paragraphs 1 and 2 of this Article unless the Board of Governors specifies a different period.

Article 57 Interpretation and application

1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank, or between any members of the Bank,

shall be submitted to the Board of Directors for its decision. If there is no Director of its nationality in that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in the meeting of the Board of Directors during such consideration. The representative of such member shall, however, have no vote. Such right of representation shall be regulated by the Board of Governors.

2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may so far as it deems it necessary, act on the basis of the decision of the Board of Directors.

Article 58 Arbitration

If a disagreement should arise between the Bank and a member which has ceased to be a member, or between the Bank and any member after adoption of a decision to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three (3) arbitrators, one appointed by the Bank, another by the member or former member concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article 59 Approval deemed given

Whenever the approval or the acceptance of any member is required before any act may be done by the Bank, except under Article 56 of this Agreement, approval or acceptance shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

CHAPTER X: FINAL PROVISIONS

Article 60 Signature and deposit

1. This Agreement, deposited with the Government of the French Republic (hereinafter called "the Depository"), shall remain open until 31 December 1990 for signature by the prospective members whose names are set forth in Annex A to this Agreement.
2. The Depository shall communicate certified copies of this Agreement to all the Signatories.

Article 61 Ratification, acceptance or approval

1. The Agreement shall be subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall, subject to paragraph 2 of this Article, be deposited with the Depository not later than 31 March 1991. The Depository shall duly notify the other Signatories of each deposit and the date thereof.
2. Any Signatory may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until one year after the date of its entry into force or, if necessary, until such later date as may be decided by a majority of Governors, representing a majority of the total voting power of the members.
3. A Signatory whose instrument referred to in paragraph 1 of this Article is deposited before the date on which this Agreement enters into force shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph shall become a member of the Bank on the date on which its instrument of ratification, acceptance or approval is deposited.

Article 62 Entry into force

1. This Agreement shall enter into force when instruments of ratification, acceptance or approval have been deposited by Signatories whose initial subscriptions represent not less than two-thirds of the total subscriptions set forth in Annex A, including at least two countries from Central and Eastern Europe listed in Annex A.
2. If this Agreement has not entered into force by 31 March 1991, the Depository may convene a conference of interested prospective members to determine the future course of action and decide a new date by which instruments of ratification, acceptance or approval shall be deposited.

Article 63 Inaugural meeting and commencement of operations

1. As soon as this Agreement enters into force under Article 62 of this Agreement, each member shall appoint a Governor. The Depository shall call the first meeting of the Board of Governors within sixty (60) days of entry into force of this Agreement under Article 62 or as soon as possible thereafter.
2. At its first meeting, the Board of Governors:
 - (i) shall elect the President;
 - (ii) shall elect the Directors of the Bank in accordance with Article 26 of this Agreement;
 - (iii) shall make arrangements for determining the date of the commencement of the Bank's operations; and
 - (iv) shall make such other arrangements as appear to it necessary to prepare for the commencement of the Bank's operations.
3. The Bank shall notify its members of the date of commencement of its operations

DONE at Paris on 29 May 1990 in a single original, whose English, French, German and Russian texts are equally authentic, which shall be deposited in the archives of the

Depository which shall transmit a duly certified copy to each of the other prospective members whose names are set forth in Annex A.

[Signatures not reproduced here.]

ANNEX A

Initial Subscriptions to the Authorized Capital Stock for Prospective Members which may become Members in Accordance with Article 61

	NUMBER OF SHARES	CAPITAL SUBSCRIPTION (in million ECU)
European Communities		
Belgium	22800	228.00
Denmark	12000	120.00
France	85175	851.75
Germany, Federal Republic of	85175	851.75
Greece	6500	65.00
Ireland	3000	30.00
Italy	85175	851.75
Luxembourg	2000	20.00
Netherlands	24800	248.00
Portugal	4200	42.00
Spain United Kingdom	34000 85175	340.00 851.75
European Economic Community	30000	300.00
European Investment Bank	30000	300.00
Other European Countries		
Austria	22800	228.00
Cyprus	1000	10.00
Finland	12500	125.00
Iceland	1000	10.00
Israel	6500	65.00
Liechtenstein	200	2.00
Malta	100	1.00
Norway	12500	125.00

	Sweden	22800	228.00
	Switzerland	22800	228.00
	Turkey	11500	115.00
		NUMBER OF SHARES	CAPITAL SUBSCRIPTION (in million ECU)
C. Recipient Countries			
	Bulgaria	7900	79.00
	Czechoslovakia	12800	128.00
	German Democratic Republic	15500	155.00
	Hungary	7900	79.00
	Poland	12800	128.00
	Romania	4800	48.00
	Union of Soviet Socialist Republics	60000	600.00
	Yugoslavia	12800	128.00
D. Non-European Countries			
	Australia	10000	100.00
	Canada	34000	340.00
	Egypt	1000	10.00
	Japan	85175	851.75
	Korea, Republic of	6500	65.00
	Mexico	3000	30.00
	Morocco	1000	10.00
	New Zealand	1000	10.00
	United States of America	100000	1000.00
E.	Non-allocated shares	125	1.25
	TOTAL	1000000	10000.00
(*) Prospective members are listed under the above categories only for the purpose of this Agreement. Recipient countries are referred to elsewhere in this Agreement as Central and Eastern European Countries. [Note appeared in original text.]			

ANNEX B

Section A: Election of Directors by Governors representing Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom, the European Economic Community and the European Investment Bank (hereinafter referred to as Section A Governors).

1. The provisions set out below in this Section shall apply exclusively to this Section.
2. Candidates for the office of Director shall be nominated by Section A Governors, provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section A Governors.
3. Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.
4. Subject to paragraph 10 of this Section, the 11 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 4.5 percent of the total of the votes which can be cast (eligible votes) in Section A shall be considered elected.
5. Subject to paragraph 10 of this Section, if 11 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 11 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:
 - (a) those Governors who voted in the first ballot for a person not elected and
 - (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 5.5 percent of the eligible votes.
6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 5.5 percent of the eligible votes, the 5.5 percent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 5.5 percent is reached.
7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 4.5 percent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 5.5 percent and shall not be eligible to vote in a further ballot.
8. Subject to paragraph 10 of this Section, if, after the second ballot, 11 persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until 11 persons have been elected, provided that, if at any stage 10 persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the 11th may be elected by a simple majority of the remaining votes cast.
9. In the case of an increase or decrease in the number of Directors to be elected by Section A Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.4 percent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section B: Election of Directors by Governors representing Other Countries.

Section B(i): Election of Directors by Governors representing those countries listed in Annex A as Central and Eastern European Countries (recipient countries) (hereinafter referred to as Section B(i) Governors).

1. The provisions set out below in this Section shall apply exclusively to this Section.
2. Candidates for the office of Director shall be nominated by Section B(i) Governors, provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B(i) Governors.
3. Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.
4. Subject to paragraph 10 of this Section, the 4 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 12 percent of the total of the votes which can be cast (eligible votes) in Section B(i) shall be considered elected.
5. Subject to paragraph 10 of this Section, if 4 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 4 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:
 - (a) those Governors who voted in the first ballot for a person not elected and
 - (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 13 percent of the eligible votes.
6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 13 percent of the eligible votes, the 13 percent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 13 percent is reached.

7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 12 percent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 13 percent and shall not be eligible to vote in a further ballot.
8. Subject to paragraph 10 of this Section, if, after the second ballot, 4 persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until 4 persons have been elected, provided that, if at any stage 3 persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the 4th may be elected by a simple majority of the remaining votes cast.
9. In the case of an increase or decrease in the number of Directors to be elected by Section B(i) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.
10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 percent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section B(ii): Election of Directors by Governors representing those countries listed in Annex A as other European countries (hereinafter referred to as Section B(ii) Governors).

1. The provisions set out below in this Section shall apply exclusively to this Section.
2. Candidates for the office of Director shall be nominated by Section B(ii) Governors, provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B(ii) Governors.
3. Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.
4. Subject to paragraph 10 of this Section, the 4 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 20.5 percent of the votes which can be cast (eligible votes) in Section B(ii) shall be considered elected.
5. Subject to paragraph 10 of this Section, if 4 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 4 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:
 - (a) those Governors who voted in the first ballot for a person not elected and

- (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 21.5 percent of the eligible votes.
6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 21.5 percent of the eligible votes, the 21.5 percent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 21.5 percent is reached.
 7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 20.5 percent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 21.5 percent and shall not be eligible to vote in a further ballot.
 8. Subject to paragraph 10 of this Section, if, after the second ballot, 4 persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until 4 persons have been elected, provided that, if at any stage 3 persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the 4th may be elected by a simple majority of the remaining votes cast.
 9. In the case of an increase or decrease in the number of Directors to be elected by Section B(ii) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.
 10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 percent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section B(iii): Election of Directors by Governors representing those countries listed in Annex A as Non-European Countries (hereinafter referred to as Section B(iii) Governors).

1. The provisions set out below in this Section shall apply exclusively to this Section.
2. Candidates for the office of Director shall be nominated by Section B(iii) Governors, provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B(iii) Governors.
3. Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.
4. Subject to paragraph 10 of this Section, the 4 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 8 percent of the

total of the votes which can be cast (eligible votes) in Section B(iii) shall be considered elected.

5. Subject to paragraph 10 of this Section, if 4 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 4 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:

(a) those Governors who voted in the first ballot for a person not elected and

(b) those Governors whose vote for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 9 percent of the eligible votes.

6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 9 percent of the eligible votes, the 9 percent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 9 percent is reached.

7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 8 percent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 9 percent and shall not be eligible to vote in a further ballot.

8. Subject to paragraph 10 of this Section, if, after the second ballot, 4 persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until 4 persons have been elected, provided that, if at any stage 3 persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the 4th may be elected by a simple majority of the remaining votes cast.

9. In the case of an increase or decrease in the number of Directors to be elected by Section B(iii) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 5 percent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

***Section C: Arrangements for the Election of Directors representing
Countries Not Listed in Annex A.***

If the Board of Governors decides, in accordance with paragraph 3 of Article 26 of this Agreement, to increase or decrease the size, or revise the composition, of the Board of

Directors, in order to take into account changes in the number of members of the Bank, the Board of Governors shall first consider whether any amendments are required to this Annex, and may make any such amendments as it deems necessary as part of such decision.

Section D: Assignment of Votes.

Any Governor who does not participate in voting for the election or whose vote does not contribute to the election of a Director under Section A or Section B(i) or Section B(ii) or Section B(iii) of this Annex may assign the votes to which he or she is entitled to an elected Director, provided that such Governor shall first have obtained the agreement of all those Governors who have elected that Director to such assignment.

A decision by any Governor not to participate in voting for the election of a Director shall not affect the calculation of the eligible votes to be made under Section A, Section B(i), Section B(ii) or Section B(iii) of this Annex.

CHAPTER FIFTY-ONE

European Convention on Certain International Aspects of Bankruptcy

Istanbul, 5 June 1990

INTRODUCTION

This Convention was initiated by the Council of Europe, although it is open to non-members. The signatories are all members of the Council. The Convention governs insolvency proceedings that entail the appointment of a liquidator and the liquidation of the assets of a company. Bankruptcy proceedings against insurance and credit companies are exempted from the coverage of this Convention.

The Convention pays a lot of attention to the procedures involved in bankruptcy issues. The decision to open the bankruptcy must come from a court or judicial body of competent jurisdiction. It must be effective in the country where the proceedings opened and must not be contrary to the public policy of a country where the liquidation order may be enforced. The contracting party where the debtor is registered or has the nerve centre of his operations is the competent jurisdiction. In case of multiplicity of competencies and proceedings, the court that first issues the order or judgment will have priority. The appointment of a liquidator itself must be evidenced by a certified copy of the court order or a certified copy of the record of the body that opened the proceedings. The order must be published in the media of the country where the liquidator is to act. Upon his appointment and after the expiration of a period of two months where all objections, if any, are dismissed, the liquidator may take measures or cause steps to be taken to protect and preserve the value of the assets of the debtor. This he can do without necessarily removing the assets from the particular jurisdiction. However, within the broad powers conferred on him, he may take steps to administer, manage or dispose of the assets of the debtor, which may involve the removal of the assets from the country where they are located. Contracting parties can allow any foreign liquidator to exercise powers over and above what is prescribed by the Convention.

Without even going into another contracting country with the bankruptcy order, the court of a country where the debtor has assets or establishment may open secondary bankruptcy proceedings, upon being satisfied on application that bankruptcy has been declared in another contracting country. The secondary bankruptcy may be declared whether or not the debtor is actually insolvent in the second country. The application for

the secondary bankruptcy may be made by the liquidator appointed by the primary bankruptcy court or by any other person permitted by the law of the second contracting country. Creditors from primary and secondary bankruptcy jurisdictions must be treated equally. All known creditors must be informed promptly by the appropriate authority or by the liquidator of the bankruptcy proceedings in both the primary and secondary countries. This will help creditors to lodge their claims in a proper fashion. A creditor in a country other than the one where the proceedings have been opened may lodge a claim with the appropriate authority or with the liquidator.

This Convention is another effort at bringing order into transnational business. There is no gainsaying that many companies have global networks with investors in many countries. It is, therefore, important to rationalize and protect investors across countries when the company is in financial difficulty.

The Convention will come into force upon three countries ratifying it, but by mid-2005 only one had done so (Cyprus).

EUROPEAN CONVENTION ON CERTAIN INTERNATIONAL ASPECTS OF BANKRUPTCY*

PREAMBLE

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatories hereto,

CONSIDERING that the aim of the Council of Europe is to achieve a greater unity between its members;

CONSIDERING that bankruptcy proceedings and similar proceedings more and more frequently concern persons who exercise activities outside the national territory;

CONSIDERING that it is necessary to guarantee a minimum of legal co-operation by dealing with certain international aspects of bankruptcy such as the power of administrators and liquidators in bankruptcy to act outside the national territory, the possibility of resorting to the opening of secondary bankruptcies in the territory of other Parties and the possibility for creditors to lodge their claims in the bankruptcies opened abroad,

HAVE AGREED AS FOLLOWS:

CHAPTER 1: GENERAL PROVISIONS

Article 1: Scope of the Convention

1. This Convention shall apply to collective insolvency proceedings which entail a disinvestment of the debtor and the appointment of a liquidator and which may entail the liquidation of the assets.

Such proceedings, hereafter referred to as “bankruptcy”, are listed in Appendix A which is an integral part of this Convention [but not reproduced here].

Appendix A shall contain proceedings of the member States of the Council of Europe as well as of any State acceding to the Convention under the terms of Article 35.

This Convention shall not apply to proceedings relating to insurance companies or credit institutions.

2. When a bankruptcy is opened in a Party, this Convention shall govern:

- (a) the exercise in other Parties of certain powers of the liquidator concerning the administration of the debtor's assets;
- (b) the opening of secondary bankruptcies in other Parties;
- (c) the information to be given to creditors residing in other Parties and the lodgement of their claims.

3. For the purposes of this Convention:

- (a) "liquidator" means any person or body whose function is to administer or liquidate the assets of the bankrupt or to supervise the activities of the debtor.

These persons and bodies are listed in Appendix B, which is an integral part of this Convention [but not reproduced here];

- (b) "disinvestment of the debtor" means the placing of power to manage, control and dispose of the assets in the hands of a liquidator.

Article 2: Proof of the appointment of the liquidator

The appointment of the liquidator shall be evidenced by a certified copy of the original decision appointing him or by an official certificate of appointment issued by the court or any other competent authority which has opened the bankruptcy. A translation in the official language or one of the official languages of the Party where the liquidator exercises his powers may be required. No legalisation or other similar formality shall be required.

Article 3: Opening of a bankruptcy

The decision to open the bankruptcy must:

- (a) emanate from a court or other authority having competence under Article 4;
- (b) be effective in the territory of the Party where the bankruptcy is opened; and
- (c) not be manifestly contrary to the public policy of the Party in which the liquidator intends to exercise his powers under the terms of Chapter II or in which the opening of a secondary bankruptcy is requested under the terms of Chapter III.

Article 4: Indirect international competence

- 1. The courts or other authorities of the Party in which the debtor has the centre of his main interests shall be considered as being competent for opening the bankruptcy. For companies and legal persons, unless the contrary is proved, the place of the registered office shall be presumed to be the centre of their main interests.

2. The courts or other authorities of the Party in whose territory the debtor has an establishment shall also be considered as being competent:

- (a) if the centre of the debtor's main interests is not located in the territory of any Party; or
- (b) if the bankruptcy cannot be opened by a court or other authority of the Party competent under paragraph 1 because of the provisions of its national law and of the capacity of the debtor. In this event, that Party shall not be obliged to apply this Convention.

However, when the bankruptcy of a debtor is opened under paragraph a or b by courts or other authorities in various Parties in which he has an establishment, the court or authority which first gave judgment shall alone be considered competent.

Article 5 Partial payment of the creditors

Without prejudice to claims guaranteed by securities or rights over land or other property, a creditor who has received part payment in respect of his claim in a bankruptcy opened in one Party may not participate in a dividend for the same claim in a bankruptcy opened with regard to the same debtor in another Party, so long as the dividend received by the other creditors in the bankruptcy opened in that other Party is less than the dividend he has already received.

CHAPTER II: EXERCISE OF CERTAIN POWERS OF THE LIQUIDATOR

Article 6: Scope of Chapter II

In addition to the proceedings provided for in Article 1, paragraph 1, this chapter shall also apply to proceedings ordered by a court or an authority upon a request for the opening of a collective procedure under Article 1, paragraph 1, and which aim at the provisional protection of the assets of the debtor.

Article 7: Capacity of the liquidator

The liquidator may exercise his powers under the conditions set out in this chapter on presentation of the document mentioned in Article 2 and under the conditions mentioned in Article 3.

Article 8: Measures of protection and preservation of the assets

From the date of his appointment, the liquidator may take or cause to be taken, in accordance with the law of the Party in which he intends to act, any necessary steps to protect or preserve the value of the assets of the debtor, including the seeking of assistance from competent authorities in that Party without, however, removing those assets from the territory of the Party where they are situated.

Article 9: Advertisement of the liquidator's powers

A summary of the decision appointing the liquidator as provided by Article 2 must, after any necessary authorisation given by the competent authority of the Party where the liquidator intends to act, be advertised pursuant to the method of publication determined by that Party.

Article 10: Acts of administration, management and disposal of the debtor's assets

1. Within the powers conferred on him under the law of the Party in which the bankruptcy is opened and under the conditions set out in the following articles of this chapter, the liquidator may take or cause to be taken any acts to administer, manage or dispose of the debtor's assets including removing them from the territory of the Party where they are situated.
2. The implementation of these measures shall be subject to the law of the Party in whose territory the assets are situated.

Article 11: Conditions of exercise of the liquidator's powers

1. The liquidator's powers as set out in Article 10, paragraph 1, shall be suspended during a two-month period commencing the day after the publication of the notice referred to in Article 9. If, during this period or at any later stage, any request for bankruptcy or for proceedings to prevent bankruptcy has been made against the debtor in the Party where the assets are located, the powers of the liquidator shall be suspended until any such requests are rejected.

The liquidator shall be empowered to lodge an application for bankruptcy if the conditions for opening a bankruptcy under the national law of the Party where he intends to act are met.

2. During the period mentioned in paragraph 1, only creditors who, in the Party where the liquidator intends to exercise his powers, enjoy a right to preferential payment or would have enjoyed such a right if the bankruptcy had been opened in that Party, creditors who have a public law claim or creditors who have a claim arising from the operation of an establishment of the debtor or from employment in that Party, may commence or pursue individual legal action against the assets of the debtor.
3. On the expiration of the period mentioned in paragraph 1, the creditors may no longer commence individual legal action and only the liquidator shall have the power to take or cause to be taken the acts mentioned in Article 10, paragraph 1.

* The document above is printed with the kind permission of the Council of Europe. We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to Secretariat General of the Council of Europe (<http://www.coe.int/>) or via the website of the Treaty Office (conventions.coe.int).

Article 12: Objections to the liquidator's powers

1. Where an objection is made to the exercise of his powers, it shall be for the liquidator to request the court of the Party in whose territory the act is to be performed to declare that he is entitled to exercise those powers under the Convention.
2. If the extent of his powers is contested, it is for the liquidator to establish the same.

Article 13: Effects of discharge of payment and delivery of assets

1. Payment or delivery of assets to the liquidator made in good faith shall constitute a valid discharge. They shall be presumed to be made in good faith if made after the advertisement mentioned in Article 9 or after presentation of the certificate mentioned in Article 2.
2. Without prejudice to Article 11, paragraph 2, payment or delivery of assets to the debtor shall not constitute a valid discharge if they have been made after the advertisement provided under Article 9, unless the person who made them establishes that he did not have knowledge of this advertisement.

Article 14: Limitations to the exercise of the liquidator's powers

1. The opening or recognition of bankruptcy proceedings or of proceedings which prevent bankruptcy in the Party in which the liquidator intends to exercise his powers provided for in this chapter shall prevent the exercise of his powers in that Party.
2. The liquidator cannot perform in another Party an act which is:
 - (a) contrary to any security held by any person other than the debtor over land or other property established or recognised by the law of that Party; or
 - (b) manifestly contrary to the public policy of that Party.

Article 15: Extension of the liquidator's powers

Any Party may permit the foreign liquidator to exercise on its territory wider powers than those laid down in this chapter.

CHAPTER III: SECONDARY BANKRUPTCIES

Article 16: Secondary bankruptcy

Any debtor declared bankrupt by a court or any other competent authority under Article 4, paragraph 1 (main bankruptcy), may, by virtue of this fact alone, be declared bankrupt in any other Party (secondary bankruptcy), whether or not he is insolvent in that Party, provided that the decision declaring him bankrupt was made in accordance with Article 3, paragraphs b and c, and that no bankruptcy or proceedings to prevent bankruptcy have already been opened in that Party.

Article 17: International competence

Without prejudice to the other grounds of competence provided for by national law, the courts or authorities of any Party in which an establishment of the debtor is situated shall be competent to open a secondary bankruptcy. The courts or authorities of any Party in which assets of the debtor are situated shall be equally competent.

Article 18: Opening of the secondary bankruptcy

Upon production of the decision opening the main bankruptcy, the following shall be entitled to request the opening of the secondary bankruptcy:

- (a) the liquidator in the main bankruptcy; or
- (b) any other person or body granted the right to request the opening of a bankruptcy by the law of the Party where the opening of the secondary bankruptcy is requested.

Article 19: Applicable law

Except as otherwise provided in this Convention, the secondary bankruptcy shall be governed by the bankruptcy law of the Party where that bankruptcy is opened.

Article 20: Lodgement of claims

- 1. Any claim may be lodged in a secondary bankruptcy.
- 2. All claims lodged in the secondary bankruptcy shall, by means of copies, be notified to the liquidator or the competent authority of the main bankruptcy. Claims so notified shall be regarded as validly lodged in the main bankruptcy.

Article 21: Payment of claims

Claims enjoying a right to preferential payment or a security over land or other property, public law claims and claims arising from the operation of an establishment of the debtor or from employment in the Party where the secondary bankruptcy is opened shall be verified and, when admitted, shall be paid from the proceeds of the liquidation of the assets of the secondary bankruptcy.

Article 22: Transfer of the remaining assets

Following the payment of claims in conformity with Article 21, the remaining assets shall form part of the assets in the main bankruptcy. Any administrative act necessary to this effect shall be performed forthwith by the liquidator of the secondary bankruptcy.

Article 23: Claims arising after the opening of the main bankruptcy

- 1. Without prejudice to remedies provided to creditors by the law of the main bankruptcy, claims arising before the opening of the secondary bankruptcy cannot be rejected in

the main bankruptcy on the sole ground that they arose after the opening of the latter bankruptcy.

2. Without prejudice to the provisions of Article 21, the claims mentioned in paragraph 1 may participate in a dividend only on assets remaining in the secondary bankruptcy transferred under the conditions laid out in Article 22.

Article 24: Equality of creditors

Creditors in the main bankruptcy who are entitled to receive a dividend from assets coming from the secondary bankruptcy shall be treated equally, regardless of any privileges or other exceptions to the principle of equality between creditors provided by the law of the main bankruptcy.

Article 25: Duty to communicate information

The liquidators in the main and secondary bankruptcies shall promptly communicate to each other any information which might be relevant to the other proceedings, in particular all measures aimed at terminating the procedure.

Article 26: End of the secondary bankruptcy

Proceedings in a secondary bankruptcy cannot be terminated before an opinion has been obtained from the liquidator of the main bankruptcy, provided that such opinion is furnished within a reasonable period of time.

Article 27: Composition in the secondary bankruptcy

A composition in the secondary bankruptcy, where such is provided for in the law applicable to that bankruptcy, cannot take place without the prior consent of the liquidator of the main bankruptcy. Such consent cannot be withheld if it is proved that the financial interests of the creditors of the main bankruptcy are not affected by that composition.

Article 28: Plurality of bankruptcies

1. Any bankruptcy opened after the opening of a bankruptcy by a court or other authority which is competent in accordance with Article 4, paragraph 1, shall be a secondary bankruptcy.
2. The liquidator of a bankruptcy opened by a court or other authority which is competent in accordance with Article 4, paragraph 1, may request that the assets remaining from a bankruptcy opened previously in another Party be transferred to him after the end of that bankruptcy.

He may also request to be notified of any information provided for in Article 25.

CHAPTER IV: INFORMATION OF THE CREDITORS AND LODGEMENT OF THEIR CLAIMS

Article 29: Scope of Chapter IV

In addition to the proceedings provided for in Article 1, paragraph 1, this chapter shall also apply to proceedings which do not entail the disinvestment of the debtor or which cannot entail the liquidation of assets, as well as to secondary bankruptcy proceedings.

Article 30: Duty to inform the creditors

1. As soon as proceedings mentioned in Appendix A or secondary bankruptcy proceedings are opened in a Party, the competent authority of that Party or the liquidator appointed in it shall inform, promptly and individually, the known creditors residing in the other Parties.
2. This information shall be given by a notice containing the appropriate details, in particular as to time-limits and measures to be taken. Such a notice shall also indicate whether creditors whose claims are preferential or secured need lodge their claims.

Article 31: Lodgement of claims

Any creditor residing in a Party other than that in which the proceedings have been opened may lodge his claim in writing to the competent authority or liquidator mentioned in Article 30. The creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose, its amount, as well as whether or not it is preferential and, if applicable, the assets affected by the preference.

Article 32: Languages

1. Subject to the provisions of Article 39, the notice mentioned in Article 30 may be drawn up in the official language of the authority which has opened the procedure. If this language is neither one of the official languages of the Council of Europe nor that of the creditor nor that of the Party where he resides, a translation into one of these languages shall be attached to the notice.
2. Subject to the provisions of Article 39, the written claim mentioned in Article 31 may be drawn up in the language of the creditor. If this language is not that of the authority which has opened the procedure, a translation in that language or one of the official languages of the Council of Europe shall be attached to it.

CHAPTER V: FINAL PROVISIONS

Article 33: Signature, ratification, acceptance or approval

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification,

acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 34: Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 33.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 35: Accession

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
2. When a non-member State of the Council requests to be invited to accede to this Convention, it shall submit to the Secretary General of the Council of Europe the list of proceedings to be included in Appendix A and the persons or bodies to be included in Appendix B.
3. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General.

Article 36: Appendices

1. Any Contracting State may when depositing its instrument of ratification, acceptance, approval or accession or at any time thereafter, address to the Secretary General of the Council of Europe a declaration containing any change it wishes to make to Appendix A or Appendix B.
2. The Secretary General shall communicate such declaration to the signatory States, the Contracting States and the other Parties. The change shall be considered to be adopted if no objection is made by any State, thus notified, before the expiry of a period of three months from the date of notification. The change shall enter into force on the first day of the following month.

Article 37: Territorial application

1. Any State may, at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of this declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in this declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of this notification by the Secretary General.

Article 38: International conventions and arrangements

1. This Convention shall not prejudice the application of international conventions to which a Party is, or becomes, a party.
2. In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall therefore not apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

Article 39: Declarations on the use of languages

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that the notice and written claim mentioned, respectively, in Articles 30 and 31 shall, by way of exception to the provisions of Article 32, be drawn up exclusively in its official language or one of its official languages.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that the written lodgement of claims mentioned in Article 31 may be drawn up in any language other than those mentioned in Article 32, paragraph 2.

Article 40: Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will not apply either Chapter II or Chapter III of the Convention.
2. A Party which has declared that it will not apply Chapter III shall nevertheless be bound, except where it has made an express declaration to the contrary, to apply Articles 20, paragraph 2, 23 and 24. Where a Party has made a declaration of non-application of these articles, the Party on whose territory a secondary bankruptcy is opened shall not be bound to apply Article 21 in its relations with the Party which made the said declaration.
3. No other reservation may be made in respect of the provisions of this Convention.

Article 41: Declaration on the information mentioned in Article 9

Any State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, designate the authority and the method of publication mentioned in Article 9 by a declaration addressed to the Secretary General of the Council of Europe.

Article 42: Implementation of the Convention

1. Following the entry into force of this Convention, a group of experts representing the Parties and the non-contracting member States of the Council of Europe shall meet at the request of at least two Parties or on the initiative of the Secretary General of the Council of Europe.
2. The terms of reference of this group will be to assess the implementation of the Convention and to make any relevant suggestions.

Article 43: Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 44: Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded or has been invited to accede to this Convention of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Convention in accordance with Articles 34, 35 and 36;
- (d) any other act, notification or communication relating to this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Istanbul, this 5th day of June 1990, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

[The two Appendices are not reproduced here.]

CHAPTER FIFTY-TWO

Treaty of Asunción or the Southern Common Market Agreement

Asuncion, 26 March 1991

INTRODUCTION

The 1991 Argentina-Brazil-Paraguay-Uruguay treaty establishing a common market was by far the most momentous of the steps towards Latin American integration that started with the 1960 Latin American Free Trade Association (LAFTA). The Treaty of Asuncion or Southern Common Market Agreement took inspiration from the European Community and similar efforts at regional integration, establishing a Common Market of the Southern Cone, or Southern Common Market—Mercosur or, in Portuguese, Mercosul (respectively, Mercado Común del Sur or Mercado Comum do Sul). The Ouro Preto Protocol of 17 December 1994 conferred on Mercosur an international legal identity, as well as detailing the institutional structure of the new organization (under article 18 of the Treaty).

The underlying principle of the Treaty of Asuncion is reciprocity of rights and obligations between the countries. Specifically, there must be free movement of goods, services and establishment between member states. This is to be achieved through the progressive removal of customs duties, tariffs and non-tariff barriers and through related, equivalent measures. A common external tariff and a common trade policy in regard to non-parties or groups of states must also be established. Furthermore, states parties are to co-ordinate their macro- and micro-economic policies in international trade, agriculture, transport, industry, fiscal and monetary affairs, etc. The nationality principle is to be applied in the formulation and implementation of taxes and other internal duties so that no taxes higher than that applied to the nationals of the particular state party are to be applied to non-nationals of the other states parties. A common measure that must be maintained against non-members is the application of countervailing measures to imports supported by subsidies or otherwise ‘dumped’ unto the respective national markets.

Mercosur is more than a free trade area and has its sights set on greater integration of the region. Structures have been set up to facilitate this. The Council of the Common Market and the Common Market Group managed the transition period from 1991 to 1994. The Council is the highest organ and is entrusted with political leadership and supervision for the attainment of the goals of the Common Market. It is made up of ministers of foreign affairs and of the economy, but with the participation of the heads of the states parties. It operates with a six-monthly rotational leadership and assumes the

legal personality of Mercosur. The Council also serves as arbiter of disputes within the grouping and its decisions are binding on the parties.

The Common Market Group is the next institution in the hierarchy. It consists of four representatives from each state party, holding positions in the foreign and economy ministries or in the central banks. The Group is the executive organ of the Common Market and is co-ordinated by the foreign ministries of the member states. It monitors implementation of the Treaty, enforces Council decisions and proposes measures for trade liberalization. It also co-ordinates macro-economic policies and negotiates agreements with nonstate parties.

The Common Market Group is assisted by the Trade Commission (established under the Ouro Preto Protocol) in the monitoring of agreed Mercosur policies. The Trade Commission also works on the issues of intraMercosur trade and trade with non-parties, particularly in the areas of tariff revision and new regulations. There is also the Joint Parliamentary Commission, made up of representatives from the legislatures of the member states. This Commission keeps the national parliaments apprised of the progress of the Common Market, making it easier for the passage of relevant legislation. Finally, there is an Economic and Social Consultative Forum (also set up under the Ouro Preto Protocol), representing the economic and social sectors. Its function is mainly advisory and it makes recommendations to the Common Market Group. The Mercosur Administrative Secretariat is based in Montevideo, Uruguay, and provides operational support services to all the institutions. It also publishes the official journal.

An interesting feature of the institutions of Mercosur is that they all take decisions by consensus and, with the exception of the Economic and Social Consultative Forum and of the Joint Parliamentary Commission, the decisions of the institutions are binding on all the states parties. There are clear issues of separation of powers and efficiency here. Beyond that, Mercosur can be easily crippled by the veto power assigned members. There are ongoing negotiations for a 'Free Trade Area of the Americas' and, if that takes off, it will eclipse the Southern Common Market, but such a bloc will not have the integrative ambitions of Mercosur.

The Treaty of Asuncion brought the concept of Mercosur into existence upon signature in March 1991, while the Ouro Preto Protocol in December 1994 effected its institutional existence and marked the end of the preparatory transition period. The customs union and common external tariff, a common market, formally came into effect on 1 January 1995.

TREATY OF ASUNCIÓN (AS AMENDED BY THE PROTOCOL OF OURO PRETO ON THE INSTITUTIONAL STRUCTURE OF MERCOSUR/MERCOSUL)*

PREAMBLE

*Treaty Establishing a Common Market between the Argentine Republic,
the Federative Republic of Brazil, the Republic of Paraguay and the
Eastern Republic of Uruguay*

THE ARGENTINE REPUBLIC, THE FEDERATIVE REPUBLIC OF BRAZIL, THE REPUBLIC OF PARAGUAY AND THE EASTERN REPUBLIC OF URUGUAY, hereinafter referred to as the “States Parties”,

CONSIDERING that the expansion of their domestic markets, through integration, is a vital prerequisite for accelerating their processes of economic development with social justice,

BELIEVING that this objective must be achieved by making optimum use of available resources, preserving the environment, improving physical links, coordinating macroeconomic policies and ensuring complementarity between the different sectors of the economy, based on the principles of gradualism, flexibility and balance,

BEARING IN MIND international trends, particularly the integration of large economic areas, and the importance of securing their countries a proper place in the international economy,

BELIEVING that this integration process is an appropriate response to such trends,

AWARE that this Treaty must be viewed as a further step in efforts gradually to bring about Latin American integration, in keeping with the objectives of the Treaty of Montevideo in 1980,

CONVINCED of the need to promote the scientific and technological development of the States Parties and to modernize their economies in order to expand the supply and improve the quality of available goods and services, with a view to enhancing the living conditions of their populations,

REAFFIRMING their political will to lay the bases for increasingly close ties between their peoples, with a view to achieving the abovementioned objectives,

HEREBY AGREE AS FOLLOWS:

CHAPTER I: PURPOSES, PRINCIPLES AND INSTRUMENTS

Article 1

The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the “Common Market of the Southern Cone” (Mercosur [or Mercosull]).

This Common Market shall involve:

The free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures;

The establishment of a common external tariff and the adoption of a common trade policy in relation to third States or groups of States, and the co-ordination of positions in regional and international economic and commercial forums;

The co-ordination of macroeconomic and sectoral policies between the States Parties in the areas of foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any other areas that may be agreed upon, in order to ensure proper competition between the States Parties;

The commitment by States Parties to harmonize their legislation in the relevant areas in order to strengthen the integration process.

Article 2

The Common Market shall be based on reciprocity of rights and obligations between the States Parties.

Article 3

During the transition period, which shall last from the entry into force of this Treaty until 31 December 1994, and in order to facilitate the formation of the Common Market, the States Parties shall adopt general rules of origin, a system for the settlement of disputes and safeguard clauses, as contained in Annexes II, III and IV respectively to this Treaty.

Article 4

The States Parties shall ensure equitable trade terms in their relations with third countries. To that end, they shall apply their domestic legislation to restrict imports whose prices are influenced by subsidies, dumping or any other unfair practice. At the same time, States Parties shall co-ordinate their respective domestic policies with a view to drafting common rules for trade competition.

Article 5

During the transition period, the main instruments for putting in place the Common Market shall be:

- (a) A trade liberalization programme, which shall consist of progressive, linear and automatic tariff reductions accompanied by the elimination of non-tariff restrictions or equivalent measures, as well as any other restrictions on trade between the States Parties, with a view to arriving at a zero tariff and no non-tariff restrictions for the entire tariff area by 31 December 1994 (Annex I);
- (b) The co-ordination of macroeconomic policies, which shall be carried out gradually and in parallel with the programmes for the reduction of tariffs and the elimination of non-tariff restrictions referred to in the preceding paragraph;
- (c) A common external tariff which encourages the foreign competitiveness of the States Parties;
- (d) The adoption of sectoral agreements in order to optimize the use and mobility of factors of production and to achieve efficient scales of operation.

Article 6

The States parties recognize certain differentials in the rate at which the Republic of Paraguay and the Eastern Republic of Uruguay will make the transition. These differentials are indicated in the trade liberalization programme (Annex 1).

Article 7

In the area of taxes, charges and other internal duties, products originating in the territory of one State Party shall enjoy, in the other States Parties, the same treatment as domestically produced products.

Article 8

The States Parties undertake to abide by commitments made prior to the date of signing of this Treaty, including agreements signed in the framework of the Latin American Integration Association (ALADI), and to co-ordinate their positions in any external trade negotiations they may undertake during the transitional period. To that end:

- (a) They shall avoid affecting the interests of the States Parties in any trade negotiations they may conduct among themselves up to 31 December 1994;
- (b) They shall avoid affecting the interests of the other States Parties or the aims of the Common Market in any agreements they may conclude with other countries members of the Latin American Integration Association during the transition period;
- (c) They shall consult among themselves whenever negotiating comprehensive tariff reduction schemes for the formation of free trade areas with other countries members of the Latin American Integration Association;
- (d) They shall extend automatically to the other States Parties any advantage, favour, exemption, immunity or privilege granted to a product originating in or destined for third countries which are not members of the Latin American Integration Association.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made via the website (Spanish and Portuguese only) of the Administrative Secretariat of Mercosur/Mercosul (<http://www.mercosur.org.uy/>).

CHAPTER II: ORGANIZATIONAL STRUCTURE

Article 9

The administration and implementation of this Treaty, and of any specific agreements or decisions adopted during the transition period within the legal framework established thereby, shall be entrusted to the following organs:

- (a) The Council of the Common Market
- (b) The Common Market Group

Article 10

The Council shall be the highest organ of the Common Market, with responsibility for its political leadership and for decision-making to ensure compliance with the objectives and time-limits set for the final establishment of the Common Market.

Article 11

The council shall consist of the Ministers for Foreign Affairs and the Ministers of the Economy of the States Parties.

It shall meet whenever its members deem appropriate, and at least once a year with the participation of the Presidents of the States Parties.

Article 12

The presidency of the Council shall rotate among the States Parties, in alphabetical order, for periods of six months.

Meetings of the Council shall be co-ordinated by the Minister for Foreign Affairs, and other ministers or ministerial authorities may be invited to participate in them.

Article 13

The Common Market Group shall be the executive organ of the Common Market and shall be co-ordinated by the Ministries of Foreign Affairs.

The Common Market Group shall have powers of initiative. Its duties shall be the following:

- to monitor compliance with the Treaty;

- to take the necessary steps to enforce decisions adopted by the Council;

- to propose specific measures for applying the trade liberalization programme, co-ordinating macroeconomic policies and negotiating agreements with third parties;

- to draw up programmes of work to ensure progress towards the formation of the Common Market.

The Common Market Group may set up whatever working groups are needed for it to perform its duties. To start with, it shall have the working groups mentioned in Annex V.

The Common Market Group shall draw up its own rules of procedure within 60 days of its establishment.

Article 14

The Common Market Group shall consist of four members and four alternates for each country, representing the following public bodies:

- Ministry of Foreign Affairs;

- Ministry of Economy or its equivalent (areas of industry, foreign trade and/or economic co-ordination); Central Bank.

In drafting and proposing specific measures as part of its work up to 31 December 1994, the Common Market Group may, whenever it deems appropriate, call on representatives of other government agencies or the private sector.

Article 15

The Common Market Group shall have an administrative secretariat whose main functions shall be to keep the Group's documents and report on its activities. It shall be headquartered in the city of Montevideo.

Article 16

During the transition period, decisions of the Council of the Common Market and the Common Market Group shall be taken by consensus, with all States Parties present.

Article 17

The official languages of the Common Market shall be Spanish and Portuguese, and the official version of its working documents shall be that drafted in the language of the country in which each meeting takes place.

Article 18

Prior to the establishment of the Common Market on 31 December 1994, the States Parties shall convene a special meeting to determine the final institutional structure of the administrative organs of the Common Market, as well as the specific powers of each organ and its decision-making procedures.

CHAPTER III: PERIOD OF APPLICATION

Article 19

This Treaty shall be of unlimited duration and shall enter into force 30 days after the date of deposit of the third instrument of ratification. The instruments of ratification shall be deposited with the Government of the Republic of Paraguay, which shall notify the Governments of the other States Parties of the date of deposit.

The Government of the Republic of Paraguay shall notify the Governments of each of the other States Parties of the date of entry into force of this Treaty.

CHAPTER IV: ACCESSION

Article 20

This Treaty shall be open to accession, through negotiation, by other countries members of the Latin American Integration Association; their applications may be considered by the States Parties once this Treaty has been in force for five years.

Notwithstanding the above, applications made by countries members of the Latin American Integration Association who do not belong to subregional integration schemes or an extraregional association may be considered before the date specified.

Approval of applications shall require the unanimous decision of the States Parties.

CHAPTER V: DENUNCIATION

Article 21

Any State Party wishing to withdraw from this Treaty shall inform the other States Parties of its intention expressly and formally and shall submit the document of denunciation within 60 days to the Ministry of Foreign Affairs of the Republic of Paraguay, which shall distribute it to the other States Parties.

Article 22

Once the denunciation has been formalized, those rights and obligations of the denouncing State deriving from its status as a State Party shall cease, while those relating to the liberalization programme under this Treaty and any other aspect to which the States Parties, together with the denouncing State, may agree within the 60 days following the formalization of the denunciation shall continue. The latter rights and obligations of the denouncing Party shall remain in force for a period of two years from the date of the above-mentioned formalization.

CHAPTER VI: GENERAL PROVISIONS

Article 23

This Treaty shall be called the ‘Treaty of Asuncion’.

Article 24

In order to facilitate progress towards the formation of the Common Market, a Joint Parliamentary Commission of Mercosur shall be established. The executive branches of the States Parties shall keep their respective legislative branches informed of the progress of the Common Market established by this Treaty.

DONE at the city of Asuncion, on 26 March 1991, in one original in the Spanish and Portuguese languages, both texts being equally authentic. The Government of the Republic of Paraguay shall be the depositary of this Treaty and shall send a duly authenticated copy thereof to the Governments of signatory and acceding States Parties.

[Neither the signatures nor the Annexes are reproduced here. The latter number five, and deal with: The Trade Liberalization Programme; General Rules of Origin (consisting of two chapters, on General Rules for Classification of Origin and on Declaration, Certification and Verification); Settlement of Disputes; Safeguard Clauses; and Working Groups of the Common Market Group.

CHAPTER FIFTY-THREE

UN Convention on the Liability of Operators of Transport Terminals in International Trade

Vienna, 17 April 1991

INTRODUCTION

This Convention seeks to fill the gap in the law regulating contract for and shipment of goods. The sale of the goods is governed by the law of contract and various international legal instruments, including, most significantly, the 1980 Vienna Convention on the Sale of Goods. The carriage of the goods is also governed by various international legal instruments, the most important one being the International Chamber of Commerce's Incoterms (an acronym for international commercial terms). The meeting point of the responsibilities and liabilities of the seller or his agents, or the buyer or his agents, and of the carrier and his agents is not always clear, especially at the ports of loading and ports of discharge. Some of the particular areas that are not covered by a clear, predictable and harmonized regime include loading, unloading, storage, warehousing, stowage, dunnaging and lashing. This unclear gap is what the Convention on the Liability of Operators of Transport Terminals in International Trade seeks to fill. It also seeks to harmonize law and practice in this area at the multilateral level.

The definition of an 'operator of a transport terminal' performing 'transport-related services' shows that only commercial services are covered, and that even processing activities, such as cleaning, repackaging and financial services, are excluded. To have a wider scope, the operator must have control of, access to or use of the area where he is operating the transport-related services. The rationale is to include stevedoring operations that were limited to loading and unloading, but without storage activities. The responsibilities of the operator begin as soon as he takes charge of the goods and terminate when he hands them over to or places them at the disposal of the consignee or his agents or of the person entitled to receive them. However, the operator need not have possession of the goods. It is enough that he has taken charge. That is, he ought to have physical contact with the goods. For example, he may perform services such as loading, unloading, stowage, trimming, dunnaging or lashing while the goods are in the responsibility of another entity (in this case, the carrier).

The basis of the possible liability of the operator is presumed fault, neglect or reliance on the *res ipsa loquitor* principle. It means that, once the claimant establishes that the loss or damage of the goods occurred at the time of the operator's responsibility, the presumption is that the loss or damage was owing to the operator's negligence. In other words, the matter speaks for itself. The operator does have defences. He can show that he and/or his servants and agents or other independent contractors whose services he relies on to operate the transport-related business took all reasonable measures to avoid the said loss or damage. There are limits to the liability of the operator. The limits are lower for

operations using sea or inland waterways compared to the use of other forms of transport. This differential is generally based on the view that the value of goods transported by sea or inland waterways tends to be lower than that by other modes of transport. The calculation of the limits of loss or damage to goods is based solely on the weight of the goods. This is to help reduce or avoid difficulties of interpreting limits based on the package or other shipping unit. The operator, however, loses the right to limit claims against him if it is established that he or his agents and servants acted recklessly in the circumstances. There is a two-year limitation period for the initiation of actions against the operator. Article 12(5) permits claims against the operator by the carrier even after the expiration of the two-year period, provided any such action is started within 90 days of the carrier being held liable in an action against the carrier itself or of the carrier settling a claim.

At the beginning of 2005 the Convention had not yet come into force, having had only three accessions (five needed) and a further five signatures.

UNITED NATIONS CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE*

PREAMBLE

THE CONTRACTING STATES:

REAFFIRMING THEIR CONVICTION that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples;

CONSIDERING the problems created by the uncertainties as to the legal regime applicable with regard to goods in international carriage when the goods are not in the charge of carriers nor in the charge of cargo-owning interests but while they are in the charge of operators of transport terminals in international trade;

INTENDING to facilitate the movement of goods by establishing uniform rules concerning liability for loss of, damage to or delay in handing over such goods while they are in the charge of operators of transport terminals and are not covered by the laws of carriage arising out of conventions applicable to the various modes of transport,

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

In this Convention:

- (a) “Operator of a transport terminal” (hereinafter referred to as “operator”) means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in

respect of which he has a right of access or use. However, a person is not considered an operator whenever he is a carrier under applicable rules of law governing carriage;

- (b) Where goods are consolidated in a container, pallet or similar Article of transport or where they are packed, “goods” includes such Article of transport or packaging if it was not supplied by the operator;
- (c) “International carriage” means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;
- (d) “Transport-related services” includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;
- (e) “Notice” means a notice given in a form which provides a record of the information contained therein;
- (f) “Request” means a request made in a form which provides a record of the information contained therein.

Article 2: Scope of application

1. This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:
 - (a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or
 - (b) When the transport-related services are performed in a State Party, or
 - (c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.
2. If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.
3. If the operator does not have a place of business, reference is to be made to the operator’s habitual residence.

Article 3: Period of responsibility

The operator is responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them.

Article 4: Issuance of document

1. The operator may, and at the customer’s request shall, within a reasonable period of time, at the option of the operator, either:
 - (a) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or
 - (b) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

2. If the operator does not act in accordance with either subparagraph (a) or (b) of paragraph (1), he is presumed to have received the goods in apparent good condition, unless he proves otherwise. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.
3. A document referred to in paragraph (1) may be issued in any form which preserves a record of the information contained therein. When the customer and the operator have agreed to communicate electronically, a document referred to in paragraph (1) may be replaced by an equivalent electronic data interchange message.
4. The signature referred to in paragraph (1) means a handwritten signature, its facsimile or an equivalent authentication effected by any other means.

Article 5: Basis of liability

1. The operator is liable for loss resulting from loss of or damage to the goods, as well as from delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in Article 3, unless he proves that he, his servants or agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.
2. Where a failure on the part of the operator, his servants or agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph (1) combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.
3. Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.
4. If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost.

Article 6: Limits of liability

1.
 - (a) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount not exceeding 8.33 units of account per kilogram of gross weight of the goods lost or damaged,
 - (b) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or

if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of Article 5 is limited to an amount not exceeding 2.75 units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

- (c) When the loss of or damage to a part of the goods affects the value of another part of the goods, the total weight of the lost or damaged goods and of the goods whose value is affected shall be taken into consideration in determining the limit of liability.
- 2. The liability of the operator for delay in handing over the goods according to the provisions of Article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.
- 3. In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established under paragraph (1) for total loss of the goods in respect of which such liability was incurred.
- 4. The operator may agree to limits of liability exceeding those provided for in paragraphs (1), (2) and (3).

Article 7: Application to non-contractual claims

- 1. The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.
- 2. If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.
- 3. Except as provided in Article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

Article 8: Loss of right to limit liability

1. The operator is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.
2. Notwithstanding the provision of paragraph (2) of Article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in Article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9: Special rules on dangerous goods

If dangerous goods are handed over to the operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are taken in charge by him, the operator does not otherwise know of their dangerous character, he is entitled:

- (a) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions, and
- (b) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods.

Article 10: Rights of security in goods

1. The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods both during the period of his responsibility for them and thereafter. However, nothing in this Convention affects the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.
2. The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

3. In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permitted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this Article. This right to sell does not apply to containers, pallets or similar Articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar Articles of transport or packaging.
4. Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other respects be exercised in accordance with the law of the State where the goods are located.

Article 11: Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is *prima facie* evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph (1)(b) of Article 4 or, if no such document was issued, in good condition.
2. Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.
3. If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.
4. In the case of any actual or apprehended loss of or damage to the goods, the operator, the carrier and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.
5. No compensation is payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

Article 12: Limitation of actions

1. Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.
2. The limitation period commences:

- (a) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or
 - (b) In cases of total loss of the goods, on the day the person entitled to make a claim receives notice from the operator that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of Article 5, whichever is earlier.
3. The day on which the limitation period commences is not included in the period.
 4. The operator may at any time during the running of the limitation period extend the period by a notice to the claimant. The period may be further extended by another notice or notices.
 5. A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator.

Article 13: Contractual stipulations

1. Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to Article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.
2. Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention.

Article 14: Interpretation of the Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 15: International transport conventions

This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to a convention relating to the international carriage of goods.

Article 16: Unit of account

1. The unit of account referred to in Article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 6 are to be expressed in the national currency of a State according to the value of such currency at

the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in Article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

FINAL CLAUSES

Article 17: Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 18: Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature at the concluding meeting of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade and will remain open for signature by all States at the Headquarters of the United Nations, New York, until 30 April 1992.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 19: Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this Article, this Convention extends to one or more but not all of the territorial units of a State Party, this Convention shall be applicable only if
 - (a) The transport-related services are performed by an operator whose place of business is located in a territorial unit to which the Convention extends, or
 - (b) The transport-related services are performed in a territorial unit to which the Convention extends, or
 - (c) According to the rules of private international law, the transport-related services are governed by the law in force in a territorial unit to which the Convention extends.
4. If a State makes no declaration under paragraph (1) of this Article, the Convention is to extend to all territorial units of that State.

Article 20: Effect of declaration

1. Declarations made under Article 19 at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.
4. Any State which makes a declaration under Article 19 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 21: Reservations

No reservations may be made to this Convention.

Article 22: Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.
2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State.

Article 23: Revision and amendment

1. At the request of not less than one third of the States Parties to Contracting States for revising or amending it, this Convention, the depositary shall convene a conference of the
2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 24: Revision of limitation amounts

1. At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in Article 6.
2. If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.
3. The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.
4. In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:
 - (a) The amount by which the limits of liability in any transport-related convention have been amended;
 - (b) The value of goods handled by operators;
 - (c) The cost of transport-related services;
 - (d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;
 - (e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and
 - (f) The costs of electricity, fuel and other utilities.
5. Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.
6. No amendment of the limits of liability under this Article may be considered less than five years from the date on which this Convention was opened for signature.
7. Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in

accordance with this paragraph enters into force for all States Parties 18 months after its acceptance.

8. A State Party which has not accepted an amendment is nevertheless bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.
9. When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period is bound by the amendment if it enters into force. A State which becomes a State Party after that period is bound by any amendment which has been accepted in accordance with paragraph (7).
10. The applicable limit of liability is that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay.

Article 25: Denunciation

1. A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.
2. Subject to paragraph (8) of Article 24, the denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this nineteenth day of April one thousand nine hundred and ninety-one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

CHAPTER FIFTY-FOUR

Treaty of the Southern African Development Community

Windhoek, 17 August 1992

INTRODUCTION

This Treaty had its origins in the now defunct Southern African Development Co-ordination Conference (SADCC), which was formed (by nine countries, at Lusaka, Zambia, on 1 April 1980) as a way of co-ordinating the fight against apartheid in South Africa in the 1980s. It was also designed to reduce dependence of the frontline states on the racist regime's trade and transport routes. This thinking was not completely absent from the new Southern African Development Community (SADC), which replaced the more informal Conference group in 1992 (with the addition of Namibia, where the Treaty was signed). For one thing, most of the members are still the original SADCC members, and only included South Africa once it achieved majority rule. The principles that underpin the organization also reflect its history. These are: the sovereign equality of all member states; solidarity; peace and security; respect for human rights, democracy and rule of law; equity balance and mutual benefit; and the peaceful resolution of disputes.

The SADC seeks to achieve economic development, common political values and institutions, peace and regional security, the mobilization of resources from in and outside the region and the efficient utilization of natural and human resources. The members pledge themselves to achieve self-sustaining development and to complement each other's economic efforts. They also aim at strengthening the cultural, historical and social relations and links among their peoples. To achieve these goals, obstacles to free movement of capital, people, goods and services are to be eliminated, and institutions and mechanisms to implement the organization's aims and policies are to be created to promote the harmonization of the international relations of the member states. It is difficult to classify the SADC as a free-trade area or a customs union. It is an admixture of both, and perhaps more. References to non-discrimination in free-trade areas or in customs unions can at best be deduced from general provisions, such as 'SADC shall not discriminate against any Member' and 'Member States shall take all steps necessary to ensure the uniform application of this Treaty' (article 6). The references to harmonization of political systems and the co-ordination of international relations indicate that political union or alliance is not far fetched.

Among the institutions established for the working of the Treaty is the Summit of Heads of State or Government. It is responsible for the overall policy direction and control over the activities of the SADC. It meets annually to decide on membership, create specialized commissions and other organs and to adopt legal instruments that implement the provisions of the Treaty. Its decisions are taken by consensus. This means that all members have veto powers. Next in importance is the Council. It is made up of, usually, economy ministers from the member states. The Council oversees the functioning of the SADC, defines specific areas of co-operation and allocates responsibilities in that direction. It also co-ordinates and supervises the work of the institutions established by the SADC. It meets annually and its decisions are also taken by consensus. There are Commissions that are established to guide and co-ordinate integration policies and programmes in specific sectors. They report to the Council. There is also the Standing Committee of senior officials from economy ministries of member states, which serves as technical advisory committee to the Council. The Community and its institutions are serviced by an administrative Secretariat, headed by the Executive Secretary, who is appointed by the Summit on the recommendation of the Council.

The SADC Treaty is tame in its aspirations and in concrete activities. The provisions are general and do not set targets or dates for realizing specific goals. The conferring of veto power on all members could easily stultify its work. The creation of the Tribunal of the Community could be expected to help, except that it adjudicates only on matters referred to it, so, where a member objects to a referral, the jurisdiction of the Tribunal would be in abeyance. Since the end of the apartheid regime in South Africa, the SADC has not been very vocal or active in the affairs of the region, although the reforms introduced in 2001 have helped to reinvigorate the Community. However, even if not overtaken by the wider and more cosmopolitan COMESA (Common Market for Eastern and Southern Africa), the SADC is certainly challenged by that and other regional organizations.

The Treaty entered into force on 30 September 1993. An amendment to the Treaty was signed at Blantyre in Malawi on 14 August 2001 (the consolidated text is reproduced below).

TREATY OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (AS AMENDED BY AGREEMENT AT BLANTYRE IN 2001)*

[The Table of Contents is omitted.]

PREAMBLE

WE, the Heads of State or Government of:

- The Republic of Angola
- The Republic of Botswana
- The Democratic Republic of Congo
- The Kingdom of Lesotho
- The Republic of Malawi

The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

HAVING REGARD to the objectives set forth in “Southern Africa: Toward Economic Liberation—A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1st April, 1980”;

IN PURSUANCE of the principles of “Towards a Southern African Development Community—A Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in August, 1992,” which affirms our commitment to establish a Development Community in the Region;

DETERMINED to ensure, through common action, the progress and well-being of the people of Southern Africa;

CONSCIOUS of our duty to promote the interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

CONVINCED of the need to mobilise our own and international resources to promote the implementation of national, interstate and regional policies, programmes and projects within the framework for economic integration;

DEDICATED to secure, by concerted action, international understanding, support and co-operation;

MINDFUL of the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law;

RECOGNISING that, in an increasingly interdependent world, mutual understanding, good neighbourliness, and meaningful cooperation among the countries of the Region are indispensable to the realisation of these ideals;

DETERMINED to alleviate poverty, with the ultimate objective of its eradication, through deeper regional integration and sustainable economic growth and development;

FURTHER DETERMINED to meet the challenges of globalization;

TAKING INTO ACCOUNT the Lagos Plan of Action and the Final Act of Lagos of April 1980, the Treaty establishing the African Economic Community and the Constitutive Act of the African Union;

BEARING IN MIND the principles of international law governing relations between States;

Have decided to establish an international organisation to be known as the Southern African Development Community (SADC), and hereby agree as follows:

CHAPTER ONE

Article 1 Definitions

In this Treaty, unless the context otherwise requires:

“Community” means the organisation for economic integration established by Article 2 of this Treaty;

“Council” means the Council of Ministers of SADC established by Article 9 of this Treaty;

“Executive Secretary” means the Chief Executive Officer of SADC appointed under Article 10(7) of this Treaty;

“Funds” means resources available at any given time for application to programmes, projects and activities of SADC as provided by Article 26 of this Treaty;

“High Contracting Parties” means States, herein represented by Heads of State or Government or their duly authorised representatives for purposes of the establishment of the Community;

“Integrated Committee of Ministers” means the Integrated Committee of Ministers established by Article 9A of this Treaty;

“Member State” means a member of SADC;

“Organ” means the Organ on Politics, Defence and Security Cooperation established by Article 9 of this Treaty;

“Protocol” means an instrument of implementation of this Treaty and includes any amendment thereto;

“Region” means the geographical area of the Member States of SADC;

“Regional Development Fund” means the Regional Development Fund established by Article 26A of this Treaty;

“Regional Indicative Strategic Development Plan” means a plan, based on the strategic priorities and SADC Common Agenda, designed to provide strategic direction with respect to SADC projects and activities;

“SADC” means the Southern African Development Community;

“SADC Common Agenda” means the set of fundamental principles and values, referred to in Article 5A of this Treaty, that will guide the integration agenda of SADC;

“SADC National Committee” means a SADC National Committee established by Article 9 of this Treaty;

“Secretariat” means the Secretariat of SADC established by Article 9 of this Treaty;

“Sectoral Committee” means a committee referred to in Article 38 of this Treaty;

“Sector Coordinating Unit” means a unit referred to in Article 38 of this Treaty;

“Standing Committee” means a Standing Committee of Officials established by Article 9 of this Treaty;

“Summit” means the Summit of the Heads of State or Government of SADC established by Article 9 of this Treaty;

“Treaty” means this Treaty establishing SADC and includes any amendment hereto;

“Tribunal” means the Tribunal of the Community established by Article 9 of this Treaty;

“Troika” means the system referred to in Article 9A of this Treaty.

CHAPTER TWO: ESTABLISHMENT AND LEGAL STATUS

Article 2 Establishment

1. By this Treaty, the High Contracting Parties establish the Southern African Development Community (hereinafter referred to as SADC).
2. The Headquarters of SADC shall be at Gaborone, Republic of Botswana.

Article 3 Legal Status

1. SADC shall be an international organisation, and shall have legal personality with capacity and power to enter into contract,

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of the Southern African Development Community (<http://www.sadc.int/>).

acquire, own or dispose of movable or immovable property and to sue and be sued.

2. In the territory of each Member State, SADC shall, pursuant to paragraph 1 of this Article, have such legal capacity as is necessary for the proper exercise of its functions.

CHAPTER THREE: PRINCIPLES, OBJECTIVES, SADC COMMON AGENDA AND GENERAL UNDERTAKINGS

Article 4 Principles

SADC and its Member States shall act in accordance with the following principles:

- (a) sovereign equality of all Member States;
- (b) solidarity, peace and security;
- (c) human rights, democracy and the rule of law;
- (d) equity, balance and mutual benefit; and
- (e) peaceful settlement of disputes.

Article 5 Objectives

1. The objectives of SADC shall be to:

- (a) promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;

- (b) promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective;
- (c) consolidate, defend and maintain democracy, peace, security and stability;
- (d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- (e) achieve complementarity between national and regional strategies and programmes;
- (f) promote and maximise productive employment and utilisation of resources of the Region;
- (g) achieve sustainable utilisation of natural resources and effective protection of the environment;
- (h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region;
- (i) combat HIV/AIDS or other deadly and communicable diseases;
- (j) ensure that poverty eradication is addressed in all SADC activities and programmes; and
- (k) mainstream gender in the process of community building.

2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

- (a) harmonise political and socio-economic policies and plans of Member States;
- (b) encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
- (c) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its institutions;
- (d) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;
- (e) promote the development of human resources;
- (f) promote the development, transfer and mastery of technology;
- (g) improve economic management and performance through regional co-operation;
- (h) promote the coordination and harmonisation of the international relations of Member States;
- (i) secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region; and
- (j) develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

Article 5A SADC Common Agenda

1. The SADC Common Agenda shall be as reflected in Article 5 of this Treaty.
2. Without prejudice to paragraph 1 of this Article, the Council shall develop and implement the SADC Common Agenda.

Article 6 General Undertakings

1. Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC, and shall refrain from taking any measure likely to jeopardise the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty.
2. SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other ground as may be determined by the Summit.
3. SADC shall not discriminate against any Member State.
4. Member States shall take all steps necessary to ensure the uniform application of this Treaty.
5. Member States shall take all necessary steps to accord this Treaty the force of national law.
6. Member States shall co-operate with and assist institutions of SADC in the performance of their duties.

CHAPTER FOUR: MEMBERSHIP

Article 7 Membership

States listed in the Preamble hereto shall, upon signature and ratification of this Treaty, be members of SADC.

Article 8 Admission of New Members

1. Any State not listed in the Preamble to this Treaty may become a member of SADC upon being admitted by the existing members and acceding to this Treaty.
2. The Summit shall determine the procedures for the admission of new members and for accession to this Treaty by such members.
3. The Council shall consider and recommend to the Summit any application for membership of SADC.
4. The admission of any State to membership of SADC shall be effected by a unanimous decision of the Summit.
5. Membership of SADC shall not be subject to any reservations.

CHAPTER FIVE: INSTITUTIONS

Article 9 Establishment Of Institutions

1. The following institutions are hereby established:
 - (a) the Summit of Heads of State or Government;
 - (b) the Organ on Politics, Defence and Security Co-operation;
 - (c) the Council of Ministers;

- (d) the Integrated Committee of Ministers;
- (e) the Standing Committee of Officials;
- (f) the Secretariat;
- (g) the Tribunal; and
- (h) SADC National Committees.

2. Other institutions may be established as necessary.

Article 9A Troika

1. The Troika shall apply with respect to the following institutions:

- (a) the Summit;
- (b) the Organ;
- (c) the Council;
- (d) the Integrated Committee of Ministers; and
- (e) the Standing Committee of Officials.

2. The Troika of the Summit shall consist of:

- (a) the Chairperson of SADC;
- (b) the Incoming Chairperson of SADC who shall be the Deputy Chairperson of SADC; and
- (c) the Outgoing Chairperson of SADC.

3. The respective offices of the Troika of the Summit shall be held for a period of one year.

4. The membership and term of office of the Troika of the Council, the Integrated Committee of Ministers and the Standing Committee of Officials shall correspond to the membership and term of office of the Troika of the Summit.

5. The Troika of the Organ shall consist of:

- (a) the Chairperson of the Organ;
- (b) the Incoming Chairperson of the Organ who shall be the Deputy Chairperson of the Organ; and
- (c) the Outgoing Chairperson of the Organ.

6. The Troika of each institution shall function as a steering committee of the institution and shall, in between the meetings of the institution, be responsible for:

- (a) decision-making;
- (b) facilitating the implementation of decisions; and
- (c) providing policy directions.

7. The Troika of each institution shall have power to create committees on an ad hoc basis.

8. The Troika of each institution shall determine its own rules of procedure.

9. The Troika of each institution may co-opt other members as and when required.

Article 10 The Summit

1. The Summit shall consist of the Heads of State or Government of all Member States, and shall be the supreme policy-making Institution of SADC.
2. The Summit shall be responsible for the overall policy direction and control of the functions of SADC.
3. Subject to Article 22 of this Treaty, the Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; provided that the Summit may delegate this authority to the Council or any other institution of SADC as the Summit may deem appropriate.
4. The Summit shall elect a Chairperson and a Deputy Chairperson of SADC from among its members for one year on the basis of rotation.
5. The Summit shall meet at least twice a year.
6. The Summit may create committees, other institutions and organs as it may consider necessary.
7. The Summit shall appoint the Executive Secretary and the Deputy Executive Secretary, on the recommendation of the Council.
8. Subject to Article 8 of this Treaty, the Summit shall decide on the admission of new members to SADC.
9. Unless otherwise provided in this Treaty, the decisions of the Summit shall be taken by consensus and shall be binding.

Article 10A Organ on Politics, Defence and Security Co-operation

1. The Summit shall select a Chairperson and a Deputy Chairperson of the Organ on the basis of rotation from among the members of the Summit except that the Chairperson of the Summit shall not simultaneously be the chairperson of the Organ.
2. The term of office of the Chairperson, Incoming Chairperson and the Outgoing Chairperson of the Organ shall be one year respectively.
3. The Chairperson of the Organ shall consult with the Troika of the Summit and report to the Summit.
4. There shall be a Ministerial Committee of the Organ, consisting of the Ministers responsible for:
 - (a) foreign affairs;
 - (b) defence;
 - (c) public security; or
 - (d) state security,from each of the Member States, which shall be responsible for the coordination of the work of the Organ and its structures.
5. The structure, functions, powers and procedures of the Organ and other related matters shall be prescribed in a Protocol.
6. The Secretariat shall provide Secretariat services to the Organ.
7. Decisions of the Organ shall be taken by consensus.

Article 11 The Council

1. The Council shall consist of one Minister from each Member State, preferably a Minister responsible for Foreign or External Affairs.
2. It shall be the responsibility of the Council to:
 - (a) oversee the functioning and development of SADC;
 - (b) oversee the implementation of the policies of SADC and the proper execution of its programmes;
 - (c) advise the Summit on matters of overall policy and efficient and harmonious functioning and development of SADC;
 - (d) approve policies, strategies and work programmes of SADC;
 - (e) direct, coordinate and supervise the operations of the institutions of SADC subordinate to it;
 - (f) recommend, for approval to the Summit, the establishment of directorates, committees, other institutions and organs;
 - (g) create its own committees as necessary;
 - (h) recommend to the Summit persons for appointment to the posts of Executive Secretary and Deputy Executive Secretary;
 - (i) determine the Terms and Conditions of Service of the staff of the institutions of SADC;
 - (j) develop and implement the SADC Common Agenda and strategic priorities;
 - (k) convene conferences and other meetings as appropriate, for purposes of promoting the objectives and programmes of SADC; and
 - (l) perform such other duties as may be assigned to it by the Summit or this Treaty.
3. The Chairperson and Deputy Chairperson of the Council shall be appointed by the Member States holding the Chairpersonship and Deputy Chairpersonship of SADC respectively.
4. The Council shall meet at least four times a year.
5. The Council shall report and be responsible to the Summit.
6. Decisions of the Council shall be taken by consensus.
7. The Council shall consider and recommend to the Summit any application for membership to SADC.

Article 12 Integrated Committee of Ministers

1. The Integrated Committee of Ministers shall consist of at least two ministers from each Member State.
2. It shall be the responsibility of the Integrated Committee of Ministers to:
 - (a) oversee the activities of the core areas of integration which include:
 - i. trade, industry, finance and investment;
 - ii. infrastructure and services;
 - iii. food, agriculture and natural resources; and
 - iv. social and human development and special programmes;
 - (b) monitor and control the implementation of the Regional Indicative Strategic Development Plan in its area of competence;

- (c) provide policy guidance to the Secretariat;
 - (d) make decisions on matters pertaining to the directorates;
 - (e) monitor and evaluate the work of the directorates; and
 - (f) create such permanent or ad hoc subcommittees as may be necessary to cater for cross-cutting sectors.
3. The Integrated Committee of Ministers shall, with respect to its responsibilities under paragraph 2 of this Article, have decision making powers to ensure rapid implementation of programmes that would otherwise wait for a formal meeting of the Council.
 4. The Chairperson and Deputy Chairperson of the Integrated Committee of Ministers shall be appointed from the Member States holding the Chairpersonship and Deputy Chairpersonship, respectively, of the Council.
 5. The Integrated Committee of Ministers shall meet at least once a year.
 6. The Integrated Committee of Ministers shall report and be responsible to the Council.
 7. Decisions of the Integrated Committee of Ministers shall be taken by consensus.

Article 13 The Standing Committee of Officials

1. The Standing Committee shall consist of one permanent secretary or an official of equivalent rank from each Member State, from the Ministry that is the SADC National Contact Point
2. The Standing Committee shall be a technical advisory committee to the Council.
3. The Standing Committee shall process documentation from the Integrated Committee of Ministers to the Council.
4. The Standing Committee shall report and be responsible to the Council.
5. The Chairperson and Deputy Chairperson of the Standing Committee shall be appointed from the Member States holding the Chairpersonship and the Deputy Chairpersonship, respectively, of the Council.
6. The Standing Committee shall meet at least four times a year.
7. Decisions of the Standing Committee shall be taken by consensus.

Article 14 The Secretariat

1. The Secretariat shall be the principal executive institution of SADC, and shall be responsible for:
 - (a) strategic planning and management of the programmes of SADC;
 - (b) implementation of decisions of the Summit, Troika of the Summit, Organ on Politics, Defence and Security Co-operation, Troika of the Organ on Politics, Defence and Security Co-operation, Council, Troika of the Council, Integrated Committee of Ministers and Troika of the Integrated Committee of Ministers;
 - (c) organisation and management of SADC meetings;
 - (d) financial and general administration;
 - (e) representation and promotion of SADC;
 - (f) coordination and harmonisation of the policies and strategies of Member States;
 - (g) gender mainstreaming in all SADC programmes and activities;

- (h) submission of harmonized policies and programmes to the Council for consideration and approval;
 - (i) monitoring and evaluating the implementation of regional policies and programmes;
 - (j) collation and dissemination of information on the Community and maintenance of a reliable database;
 - (k) development of capacity, infrastructure and maintenance of intra-regional information communication technology;
 - (l) mobilization of resources, co-ordination and harmonization of programmes and projects with cooperating partners;
 - (m) devising appropriate strategies for self financing and income generating activities and investment;
 - (n) management of special programmes and projects;
 - (o) undertaking research on Community building and the integration process; and
 - (p) preparation and submission to the Council, for approval, administrative regulations, standing orders and rules for management of the affairs of SADC.
2. The Secretariat shall be headed by the Executive Secretary.
 3. The Deputy Executive Secretary shall have delegated powers and assist the Executive Secretary in the execution of his or her functions.
 4. The Secretariat shall have such other staff as may be determined by the Council from time to time.
 5. Except as otherwise provided in this Treaty, the structures of the Secretariat and specifications, descriptions and grading of jobs of the staff of the Secretariat shall be as determined from time to time by the Council.

Article 15 The Executive Secretary

1. The Executive Secretary shall be responsible to the Council for the following:
 - (a) consultation and coordination with the Governments and other institutions of Member States;
 - (b) pursuant to the direction of Council, Summit or on his or her own initiative, undertaking measures aimed at promoting the objectives of SADC and enhancing its performance;
 - (c) promotion of co-operation with other organisations for the furtherance of the objectives of SADC;
 - (d) organising and servicing meetings of the Summit, the Council, the Standing Committee and any other meetings convened on the direction of the Summit or the Council;
 - (e) custodianship of the property of SADC;
 - (f) appointment of the staff of the Secretariat, in accordance with procedures, and under Terms and Conditions of Service determined by the Council;
 - (g) administration and finances of the Secretariat;
 - (h) preparation of Annual Reports on the activities of SADC and its institutions;
 - (i) preparation of the Budget and Audited Accounts of SADC for submission to the Council;

- (j) diplomatic and other representations of SADC;
 - (k) public relations and promotion of SADC; and
 - (l) such other functions as may, from time to time, be determined by the Summit and Council.
2. The Executive Secretary shall liaise closely with other institutions, guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.
 3. The Executive Secretary and the Deputy Executive Secretary shall be appointed for four years, and be eligible for appointment for another period not exceeding four years.

Article 16 The Tribunal

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit.
3. Members of the Tribunal shall be appointed for a specified period.
4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
5. The decisions of the Tribunal shall be final and binding.

Article 16A SADC National Committees

1. Each Member State shall create a SADC National Committee.
2. Each SADC National Committee shall consist of key stakeholders.
3. Each SADC National Committee shall, in its composition, reflect the core areas of integration and coordination referred to in paragraph 2 of Article 12 of this Treaty.
4. It shall be the responsibility of each SADC National Committee to:
 - (a) provide input at the national level in the formulation of SADC policies, strategies and programmes of action;
 - (b) coordinate and oversee, at the national level, implementation of SADC programmes of action;
 - (c) initiate projects and issue papers as an input to the preparation of the Regional Indicative Strategic Development Plan, in accordance with the priority areas set out in the SADC Common Agenda; and
 - (d) create a national steering committee, sub-committees and technical committees.
5. Each national steering committee shall consist of the chairperson of the SADC National Committee and the chairpersons of subcommittees.
6. Sub-committees and technical committees of the SADC National Committee shall operate at ministerial and official levels.

7. A national steering committee shall be responsible for ensuring rapid implementation of programmes that would otherwise wait for a formal meeting of the SADC National Committee.
8. Sub-committees and technical committees shall endeavour to involve key stakeholders in their operations.
9. Each Member State shall create a national secretariat to facilitate the operation of the SADC National Committee.
10. Each national secretariat of a SADC National Committee shall produce and submit reports to the Secretariat at specified intervals.
11. Each Member State shall provide funds for the operation of its national secretariat which shall be structured according to the core areas of integration referred to in paragraph 2 of Article 12 of this Treaty.
12. Each SADC National Committee shall meet at least four times a year.
13. For purposes of this Article, key stakeholders include:
 - (a) government;
 - (b) private sector;
 - (c) civil society;
 - (d) non-governmental organizations; and
 - (e) workers and employers organizations.

Article 17 Specific Undertakings

1. Member States shall respect the international character and responsibilities of SADC, the Executive Secretary and other staff of SADC, and shall not seek to influence them in the discharge of their functions.
2. In the performance of their duties, the members of the Tribunal, the Executive Secretary and the other staff of SADC shall be committed to the international character of SADC, and shall not seek or receive instructions from any Member States, or from any authority external to SADC. They shall refrain from any action incompatible with their positions as international staff responsible only to SADC.

CHAPTER SIX: MEETINGS

Article 18 Quorum

The quorum for all meetings of the institutions of SADC shall be two-thirds of its Members.

Article 19 Decisions

Except as otherwise provided in this Treaty, decisions of the institutions of SADC shall be taken by consensus.

Article 20 Procedure

Except as otherwise provided in this Treaty, the institutions of SADC shall determine their own rules of procedure.

CHAPTER SEVEN: CO-OPERATION

Article 21 Areas of Co-operation

1. Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.
2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic policies and strategies, programmes and projects in the areas of co-operation.
3. In accordance with the provisions of this Treaty, Member States agree to co-operate in the areas of:
 - (a) food security, land and agriculture;
 - (b) infrastructure and services;
 - (c) trade, industry, finance, investment and mining;
 - (d) social and human development and special programmes;
 - (e) science and technology.
 - (f) natural resources and environment;
 - (g) social welfare, information and culture; and
 - (h) politics, diplomacy, international relations, peace and security.
4. Additional areas of co-operation may be decided upon by the Council.

Article 22 Protocols

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council.
3. Each Protocol shall be open to signature and ratification.
4. Each Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.
5. Once a Protocol has entered into force, a Member State may only become a party thereto by accession.
6. Each Protocol shall remain open for accession by any State subject to Article 8 of this Treaty.
7. The original texts of each Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary who shall transmit certified copies thereof to all Member States.
8. The Executive Secretary shall register each Protocol with the Secretariat of the United Nations Organization and the Commission of the African Union.
9. Each Protocol shall be binding only on the Member States that are party to the Protocol in question.

10. Decisions concerning any Protocol that has entered into force shall be taken by the parties to the protocol in question.
11. No reservation shall be made to any Protocol.

Article 23 Stakeholders

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully, the people of the Region and key stakeholders in the process of regional integration.
2. SADC shall co-operate with, and support the initiatives of the peoples of the Region and key stakeholders, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the Region.
3. for the purposes of this article, key stakeholders include:
 - (a) private sector;
 - (b) civil society
 - (c) non-governmental organisations; and
 - (d) workers and employers organisations.

CHAPTER EIGHT: RELATIONS WITH OTHER STATES, REGIONAL AND INTERNATIONAL ORGANISATIONS

Article 24

1. Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of co-operation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.
2. Conferences and other meetings may be held between Member States and other Governments and organisations associated with the development efforts of SADC to review policies and strategies, and evaluate the performance of SADC in the implementation of its programmes and projects, identify and agree on future plans of co-operation.

CHAPTER NINE: RESOURCES, FUNDS AND ASSETS

Article 25 Resources

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.
3. Resources acquired by SADC by way of contributions, loans, grants or gifts, shall be the property of SADC.

4. The resources of SADC may be made available to Member States in pursuance of the objectives of this Treaty, on terms and conditions mutually agreed between SADC and the Member States involved.
5. Resources of SADC shall be utilised in the most efficient and equitable manner.

Article 26 Funds

The funds of SADC shall consist of contributions of Member States, income from SADC enterprises and receipts from regional and non regional sources.

Article 26A Regional Development Fund

1. There is hereby established a special fund of SADC to be known as the Regional Development Fund in which shall be accounted receipts and expenditure of SADC relating to the development of SADC.
2. The Regional Development Fund shall, subject to this Treaty, consist of contributions of Member States and receipts from regional and non-regional sources, including the private sector, civil society, non-governmental organisations and workers and employers organisations.
3. The Council shall determine the modalities for the institutionalization, operation and management of the Regional Development Fund.
4. The Regional Development Fund shall be governed in terms of financial regulations made in accordance with Article 30 of this Treaty.

Article 27 Assets

1. Property, both movable and immovable, acquired by or on behalf of SADC shall constitute the assets of SADC, irrespective of their location.
2. Property acquired by Member States, under the auspices of SADC, shall belong to the Member States concerned, subject to provisions of paragraph 3 of this Article, and Articles 25 and 34 of this Treaty.
3. Assets acquired by Member States under the auspices of SADC shall be accessible to all Member States on an equitable basis.

CHAPTER TEN: FINANCIAL PROVISIONS

Article 28 The Budget

1. The budget of SADC shall be funded by financial contributions made by Member States, and such other sources as may be determined by the Council.
2. Member States shall contribute to the budget of SADC based upon a formula agreed upon by the Summit.
3. The Executive Secretary shall cause to be prepared, estimates of revenue and expenditure for the Secretariat, and submit them to the Council, not less than three months before the beginning of the financial year.

4. The Council shall approve the estimates of revenue and expenditure before the beginning of the financial year.
5. The financial year of SADC shall be determined by the Council.

Article 29 External Audit

1. The Council shall appoint external auditors and shall fix their fees and remuneration at the beginning of each financial year.
2. The Executive Secretary shall cause to be prepared and audited annual statements of accounts for the Secretariat and submit them to the Council for approval.

Article 30 Financial Regulations

The Executive Secretary shall prepare and submit to the Council for approval financial regulations, standing orders and rules for the management of the affairs of SADC.

CHAPTER ELEVEN: IMMUNITIES AND PRIVILEGES

Article 31

1. SADC, its institutions and staff shall, in the territory of each Member State, have such immunities and privileges as are necessary for the proper performance of their functions under this Treaty, and which shall be similar to those accorded to comparable international organisations.
2. The immunities and privileges conferred by this Article shall be prescribed in a Protocol.

CHAPTER TWELVE: SETTLEMENT OF DISPUTES

Article 32

Any dispute arising from the interpretation or application of this Treaty, the interpretation, application or validity of Protocols or other subsidiary instruments made under this Treaty, which cannot be settled amicably, shall be referred to the Tribunal.

CHAPTER THIRTEEN: SANCTIONS, WITHDRAWAL AND DISSOLUTION

Article 33 Sanctions

1. Sanctions may be imposed against any Member State that:
 - (a) persistently fails, without good reason, to fulfill obligations assumed under this Treaty;

- (b) implements policies which undermine the principles and objectives of SADC; or
 - (c) is in arrears in the payment of contributions to SADC, for reasons other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit.
2. The Summit shall determine on a case-by-case basis sanctions to be imposed under subparagraphs (a) and (b) of paragraph 1 of this Article.
 3. Subject to subparagraph (c) of paragraph 1 of this Article, sanctions against a Member State which is in arrears shall be imposed as follow:
 - (a) when in arrears for one year, suspension of the Member State's right to speak and receive documentation at meetings of SADC;
 - (b) when in arrears for two years, suspension:
 - i. of the Member State's right to speak and receive documentation at meetings of SADC; and
 - ii. by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State;
 - (c) when in arrears for three years, suspension:
 - i. of the Member State's right to speak and receive documentation at meetings of SADC;
 - ii. by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State; and
 - iii. of provision by SADC of funds for new projects in the Member State; and
 - (d) when in arrears for four or more years, suspension:
 - i. of the Member State's right to speak and receive documentation at meetings of SADC;
 - ii. by SADC of recruitment, and renewal of contracts of employment, of personnel from the Member State; and
 - iii. of provision by SADC of funds for new projects in the Member State; and
 - iv. of cooperation, between SADC and the Member State, in the areas of cooperation spelt out in Article 21 of this Treaty.
 4. The sanctions referred to in paragraph 3 of this Article shall be applied by the Secretariat without reference to the Summit or Council except that the application of the sanctions shall be subject to the Secretariat notifying:
 - (a) prior to any meeting of SADC, Member States in default; and
 - (b) Member States at the beginning of any meeting of SADC.

Article 34 Withdrawal

1. A Member State wishing to withdraw from SADC shall serve notice of its intention in writing, a year in advance, to the Chairperson of SADC, who shall inform other Member States accordingly.
2. At the expiration of the period of notice, the Member State shall, unless the notice is withdrawn, cease to be a member of SADC.
3. During the one year period of notice referred to in paragraph 1 of this Article, the Member State wishing to withdraw from SADC shall comply with the provisions of this Treaty, and shall continue to be bound by its obligations under this Treaty up to the date of its withdrawal.
4. A Member State which has withdrawn shall not be entitled to claim any property or rights until the dissolution of SADC.
5. Assets of SADC situated in the territory of a Member State which has withdrawn, shall continue to be the property of SADC and be available for its use.

Article 35 Dissolution

1. The Summit may decide by a resolution supported by threequarters of all members to dissolve SADC or any of its institutions, and determine the terms and conditions of dealing with its liabilities and disposal of its assets.
2. A proposal for the dissolution of SADC may be made to the Council by any Member State, for preliminary consideration, provided, however, that such a proposal shall not be submitted for the decision of the Summit until all Member States have been duly notified of it and a period of twelve months has elapsed after the submission to the Council.

CHAPTER FOURTEEN: AMENDMENT OF THE TREATY

Article 36

1. An amendment of this Treaty shall be adopted by a decision of three-quarters of all the Members of the Summit.
2. A proposal for the amendment of this Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

CHAPTER FIFTEEN: LANGUAGE

Article 37

The working languages of SADC shall be English, French and Portuguese and such other languages as the Council may determine.

CHAPTER SIXTEEN: SAVING PROVISIONS AND TRANSITIONAL PROVISIONS

Article 38 Saving Provisions

A Sectoral Committee, Sector Coordinating Unit or any other institution, obligation or arrangement of the Southern African Development Coordination Conference which exists immediately before the coming into force of this Treaty, shall to the extent that it is not inconsistent with the provisions of this Treaty, continue to subsist, operate or bind Member States or SADC as if it were established or undertaken under this Treaty, until the Council or Summit determines otherwise.

Article 39 Transitional Provisions

1. The Sectoral Committees, Sector Coordinating Units and Commissions shall be phased out within a period of two (2) years from 9th March 2001 according to the programme adopted by the Summit at its Extraordinary Summit meeting held at Windhoek, Namibia on 9th March 2001.
2. The directorates shall be phased in at the Secretariat within a period of two (2) years from 9th March, 2001.

CHAPTER SEVENTEEN: SIGNATURE, RATIFICATION, ENTRY INTO FORCE, ACCESSION AND DEPOSITARY

Article 40 Signature

This Treaty shall be signed by the High Contracting Parties.

Article 41 Ratification

This Treaty shall be ratified by the Signatory States in accordance with their constitutional procedures.

Article 42 Entry Into Force

This Treaty shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the States listed in the Preamble.

Article 43 Accession

This Treaty shall remain open for accession by any State subject to Article 8 of this Treaty.

Article 44 Depositary

1. The original texts of this Treaty and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Treaty with the Secretariat of the United Nations Organisation and the Commission of the African Union.

CHAPTER EIGHTEEN: TERMINATION OF THE MEMORANDUM OF UNDERSTANDING

Article 45

This Treaty replaces the Memorandum of Understanding on the Institutions of the Southern African Development Coordination Conference dated 20th July, 1981.

IN WITNESS WHEREOF, WE, the Heads of State or Government have signed this Treaty [signatories not reproduced here].

DONE AT Windhoek, on the 17th day of August, 1992 in two (2) original texts in the English, and Portuguese languages, both texts being equally authentic [as amended at Blantyre, on 14th day of August, 2001 in three (3) original texts in English, French and Portuguese languages, all texts being equally authentic].

CHAPTER FIFTY-FIVE

North American Free Trade Agreement

Mexico City, DF, Ottawa, ON, Washington, DC, 17
December 1992

INTRODUCTION

The North American Free Trade Area, created by the North American Free Trade Agreement (both known by the acronym of NAFTA), is a gigantic monument to the continuing growth of regional economic co-operation. It is perhaps inevitable to draw comparison with similar processes, particularly that of the European Union (EU). The main difference between NAFTA and the EU, as well as other regional economic blocs (such as Mercosur or the African Union), is that NAFTA does not, directly or indirectly, seek integration of the economies or political institutions of the participants—Canada, Mexico and the USA. NAFTA was envisaged as, and remains, purely a free-trade area. The objectives are to create and to expand access to their respective markets, to reduce trade distortions, to promote competition between businesses and in the global market and to boost employment opportunities. All of these are to be done with great care to environmental protection and labour and welfare imperatives. It is also important to note that this huge Agreement is under the auspices of the General Agreement on Tariffs and Trade (GATT—see below) and its provisions must be consistent with the principles of the GATT and the World Trade Organization (WTO). However, in the case of any inconsistency between the two sets of accords, NAFTA is to prevail, unless it is otherwise specified.

The key principles of NAFTA (similar to those of the GATT/WTO) include most-favoured-nation (MFN) treatment, national treatment, transparency, etc. As would be expected of an Agreement that promotes both trade and investment, specific provisions are made for sectors considered crucial for fair play, prevention of abuse and protection of respective strategic national interests. One such issue is in respect of the origin of goods and services, which is covered by Chapter Four. Goods are considered to have originated in the territory of a party where the goods in question are wholly obtained or produced completely in the territory of one or more of the parties. The basis of assessment of customs duties, where required, should either be the regional value content or the net cost method. To simplify the administration of these rules, each party is to provide a certificate indicating that the goods being exported from its territory to that of a

state party indeed originated from its territory. Customs officials of the importing country may require the completion of a written questionnaire or document and/or visit the premises of the exporter in the territory of the exporting country, with prior notification or agreement. Goods the value of which is less than US \$1,000.00 are exempted. Likewise, goods needed for professional business activity may be granted temporary admission without duties. The same goes for commercial samples and advertising materials. Goods imported for repairs, or re-entering the territory of a member state after such repairs or alteration, must not be charged custom duties.

Another sector singled out for coverage in the Agreement is that of energy and petrochemicals. This is an interesting subject in view of the differing ideological positions on state involvement in resource exploitation in the different countries. Canada, but more so Mexico, provide for the direct involvement of state agencies in natural-resource exploitation and management, which appears to be at odds with the USA's ethic of private, capitalist or market-controlled business in all economic sectors. To accommodate this differing ethos, article 601(1) confirms the parties' respect for their national constitutions. However, clause 2 expresses a desire for sustained and gradual liberalization. The rest of Chapter Six goes on to curtail restrictions on the trade in energy and petrochemical products, mainly using the GATT route. Further emergency national-security measures are permitted by article 607. All the same, Mexico has entered a reservation that allows it to pursue activities consistent with article 27 of its Constitution, on state ownership of resources.

Another subject that received considerable attention in the Agreement is investment. Significant strides were made in reformulating or consolidating US positions, as in the Hull formula, on the treatment of foreign investment. At the same time, care is taken to accommodate the views of the other parties regarding the role of the state in their economies. The entire chapter on investment covers investors of a party and their investments elsewhere in the NAFTA territory. The investor and not just investments are, therefore, secured or guaranteed rights under Chapter Eleven. This follows in the spirit of the Energy Charter Treaty (see above), which secured the legal standing and rights of investors against states parties. Nationality and MFN criteria are the immutable principles of law applicable to investments under NAFTA. This extends to provincial or state policies regarding investors and investments. In case treatment under MFN and the nationality principles varies, the better of the two is the applicable standard. These principles are reinforced by international law on the treatment of aliens and their property. Apart from general governance or service sectors such as prisons, social security, public education, public training, and health and child-care, many other economic sectors are exempted from coverage of the Chapter on investment. The field of financial services is the most prominent of the exemptions. It is not clear why. All the same, special provisions are made for financial services in Chapter Fourteen.

Other sectors covered include: competition; monopolies; state enterprises; intellectual property; administrative and institutional arrangements for monitoring and enforcement; and dispute resolution. Owing to pressures from environmentalist and trade-union groups, two side agreements were reached on the environment and on labour issues. This was to address concerns that the three countries would take advantage of relatively lax environment and labour conditions in Mexico and race to the minimum of environmental conditions. Although NAFTA was negotiated under President George Bush (1989–93),

his successor, Bill Clinton (1993–2001), made US ratification of the treaty conditional upon the side agreements on environment and labour. The parties agreed to promote sustainable development through co-operation and mutually supportive environmental and economic policies, to promote pollution-prevention policies and to enhance enforcement and compliance with environmental regulations. What worried environmentalists somewhat was the goal of promoting economically efficient and effective environmental measures and the avoidance of trade distortions or new trade barriers. This appeared to give priority to economic costs and benefits, over pure environmental objectives even if economically costly. In practice, each party is to report on the state of the environment and on measures, including impact assessments, that it has put in place in order to protect the environment. Private individuals are given rights to seek remedies where laws or treaty provisions on the environment are threatened or violated. The biggest enforcement agency is the Commission for Environmental Co-operation, established under Part Three of the relevant side agreement. The structure and procedures adopted for the side agreement on labour are broadly similar to those of the environment one.

Hitherto, NAFTA appears to have worked well for the three states parties. One indication of that success is the interest expressed by countries in South and Central America in joining, as well as the wider discussions going on about the possible Free Trade Area of the Americas.

The Agreement entered into force, creating the North American Free Trade Area, on 1 January 1994. Many of the detailed annexes and schedules on the implementation and progress of NAFTA are not reproduced in the text below.

NORTH AMERICAN FREE TRADE AGREEMENT*

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

[The Table of Contents is omitted.]

PART ONE: GENERAL PART

Chapter One: Objectives

Article 101: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade, hereby establish a free trade area.

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:
 - (a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
 - (b) promote conditions of fair competition in the free trade area;
 - (c) increase substantially investment opportunities in the territories of the Parties;
 - (d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
 - (e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
 - (f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.
2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 103: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made via the website of the NAFTA Secretariat (<http://www.nafta-secretariat.org/>).

2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 104: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

- (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended June 22, 1979,
- (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990,
- (c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or
- (d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

Annex 104.1: Bilateral and Other Environmental and Conservation Agreements

1. The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, signed at Ottawa, October 28, 1986.
2. The Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed at La Paz, Baja California Sur, August 14, 1983.

Chapter Two: General Definitions

Article 201: Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

COMMISSION means the Free Trade Commission established under Article 2001(1) (The Free Trade Commission);

CUSTOMS VALUATION CODE means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes;

DAYS means calendar days, including weekends and holidays;

ENTERPRISE means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

ENTERPRISE OF A PARTY means an enterprise constituted or organized under the law of a Party;

EXISTING means in effect on the date of entry into force of this Agreement;

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements.

These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

GOODS OF A PARTY means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;

HARMONIZED SYSTEM (HS) means the Harmonized Commodity Description and Coding System, and its legal notes and rules, as adopted and implemented by the Parties in their respective tariff laws;

MEASURE includes any law, regulation, procedure, requirement or practice;

NATIONAL means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;

ORIGINATING means qualifying under the rules of origin set out in Chapter Four (Rules of Origin);

PERSON means a natural person or an enterprise;

PERSON OF A PARTY means a national, or an enterprise of a Party;

SECRETARIAT means the Secretariat established under Article 2002(1) (The Secretariat);

STATE ENTERPRISE means an enterprise that is owned, or controlled through ownership interests, by a Party; and

TERRITORY means for a Party the territory of that Party as set out in Annex 201.1.

2. For purposes of this Agreement, unless otherwise specified, a reference to a state or province includes local governments of that state or province.

Annex 201.1: Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

NATIONAL also includes:

- (a) with respect to Mexico, a national or a citizen according to Articles 30 and 34, respectively, of the Mexican Constitution; and
- (b) with respect to the United States, “national of the United States” as defined in the existing provisions of the Immigration and Nationality Act;

TERRITORY means:

- (a) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
- (b) with respect to Mexico,
 - i. the states of the Federation and the Federal District,
 - ii. the islands, including the reefs and keys, in adjacent seas,
 - iii. the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,
 - iv. the continental shelf and the submarine shelf of such islands, keys and reefs,
 - v. the waters of the territorial seas, in accordance with international law, and its interior maritime waters,
 - vi. the space located above the national territory, in accordance with international law, and
 - vii. any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and
- (c) with respect to the United States,
 - i. the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,
 - ii. the foreign trade zones located in the United States and Puerto Rico, and
 - iii. any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

PART TWO: TRADE IN GOODS

Chapter Three: National Treatment and Market Access for Goods

Article 300: Scope and Coverage

This Chapter applies to trade in goods of a Party, including:

- (a) goods covered by Annex 300-A (Trade and Investment in the Automotive Sector),
- (b) goods covered by Annex 300-B (Textile and Apparel Goods), and
- (c) goods covered by another Chapter in this Part, except as provided in such Annex or Chapter.

SECTION A: NATIONAL TREATMENT

Article 301: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.
2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.
3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 301.3.

SECTION B: TARIFFS

Article 302: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 302.2.
3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.
4. Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 302.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.
5. On written request of any Party, a Party applying or intending to apply measures pursuant to paragraph 4 shall consult to review the administration of those measures.

Article 303: Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:
 - (a) subsequently exported to the territory of another Party,
 - (b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or
 - (c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party,

in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.
2. No Party may, on condition of export, refund, waive or reduce:
 - (a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);
 - (b) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;
 - (c) a fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures); or
 - (d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.
3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:
 - (a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and
 - (b) may waive or reduce such customs duties to the extent permitted under paragraph 1.
4. In determining the amount of customs duties that may be refunded, waived or reduced pursuant to paragraph 1 on a good imported into its territory, each Party shall require presentation of satisfactory evidence of the amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

5. Where satisfactory evidence of the customs duties paid to the Party to which a good is subsequently exported under a duty deferral program described in paragraph 3 is not presented within 60 days after the date of exportation, the Party from whose territory the good was exported:

- (a) shall collect customs duties as if the exported good had been withdrawn for domestic consumption; and
- (b) may refund such customs duties to the extent permitted under paragraph 1 on the timely presentation of such evidence under its laws and regulations.

6. This Article does not apply to:

- (a) a good entered under bond for transportation and exportation to the territory of another Party;
- (b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition). Except as provided in Annex 703.2, Section A, paragraph 12, where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of the inventory methods provided for in the Uniform Regulations established under Article 511 (Uniform Regulations);
- (c) a good imported into the territory of a Party that is deemed to be exported from its territory, or used as a material in the production of another good that is deemed to be exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of another Party, by reason of
 - i. delivery to a duty free shop,
 - ii. delivery for ship's stores or supplies for ships or aircraft, or
 - iii. delivery for use in joint undertakings of two or more of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;
- (d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of another Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee;
- (e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of another Party, or used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party; or
- (f) a good set out in Annex 303.6.

7. Except for paragraph 2(d), this Article shall apply as of the date set out in each Party's Section of Annex 303.7.
8. Notwithstanding any other provision of this Article and except as specifically provided in Annex 303.8, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a non-originating good provided for in item 8540.11.aa (color cathode-ray television picture tubes, including video monitor tubes, with a diagonal exceeding 14 inches) or 8540.11.cc (color cathode-ray television picture tubes for high definition television, with a diagonal exceeding 14 inches) that is imported into the Party's territory and subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party.
9. For purposes of this Article:

CUSTOMS DUTIES are the customs duties that would be applicable to a good entered for consumption in the customs territory of a Party if the good were not exported to the territory of another party;
IDENTICAL OR SIMILAR GOODS means "identical or similar goods" as defined in Article 415 (Rules of Origin—Definitions);
MATERIAL means "material" as defined in Article 415; and
USED means "used" as defined in Article 415.
10. For purposes of this Article:

Where a good referred to by a tariff item number in this Article is described in parentheses following the tariff item number, the description is provided for purposes of reference only.

Article 304: Waiver of Customs Duties

1. Except as set out in Annex 304.1, no Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.
2. Except as set out in Annex 304.2, no Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.
3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person can be shown by another Party to have an adverse impact on the commercial interests of a person of that Party, or of a person owned or controlled by a person of that Party that is located in the territory of the Party granting the waiver, or on the other Party's economy, the Party granting the waiver shall either cease to grant it or make it generally available to any importer.
4. This Article shall not apply to measures subject to Article 303.

Article 305: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:
 - (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter Sixteen (Temporary Entry for Business Persons),
 - (b) equipment for the press or for sound or television broadcasting and cinematographic equipment,
 - (c) goods imported for sports purposes and goods intended for display or demonstration, and
 - (d) commercial samples and advertising films,

imported from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.
2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:
 - (a) be imported by a national or resident of another Party who seeks temporary entry;
 - (b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;
 - (c) not be sold or leased while in its territory;
 - (d) be accompanied by a bond in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;
 - (e) be capable of identification when exported;
 - (f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and
 - (g) be imported in no greater quantity than is reasonable for its intended use.
3. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:
 - (a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or nonParty;
 - (b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;
 - (c) be capable of identification when exported;
 - (d) be exported within such period as is reasonably related to the purpose of the temporary admission; and
 - (e) be imported in no greater quantity than is reasonable for its intended use.
4. A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free under paragraph 1 that would be owed on entry or final importation

of such good if any condition that the Party imposes under paragraph 2 or 3 has not been fulfilled.

5. Subject to Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services):

- (a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;
- (b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
- (c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and
- (d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

6. For purposes of paragraph 5, “vehicle” means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of another Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Article 307: Goods Re-Entered after Repair or Alteration

- 1. Except as set out in Annex 307.1, no Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.
- 2. Notwithstanding Article 303, no Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of another Party for repair or alteration.
- 3. Annex 307.3 applies to the Parties specified in that Annex respecting the repair and rebuilding of vessels.

Article 308: Most-Favored-Nation Rates of Duty on Certain Goods

1. Annex 308.1 applies to certain automatic data processing goods and their parts.
2. Annex 308.2 applies to certain color television tubes.
3. Each Party shall accord most-favored-nation duty-free treatment to any local area network apparatus imported into its territory, and shall consult in accordance with Annex 308.3.

SECTION C: NON-TARIFF MEASURES

Article 309: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made a part of this Agreement.
2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.
3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
 - (a) limiting or prohibiting the importation from the territory of another Party of such good of that non-Party; or
 - (b) requiring as a condition of export of such good of the Party to the territory of another Party, that the good not be reexported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.
4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.
5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 301.3.

Article 310: Customs User Fees

1. No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods.
2. The Parties specified in Annex 310.1 may maintain existing such fees in accordance with that Annex.

Article 311: Country of Origin Marking

Annex 311 applies to measures relating to country of origin marking.

Article 312: Wine and Distilled Spirits

1. No Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of another Party for bottling be blended with any distilled spirits of the Party.
2. Annex 312.2 applies to other measures relating to wine and distilled spirits.

Article 313: Distinctive Products

Annex 313 applies to standards and labelling of the distinctive products set out in that Annex.

Article 314: Export Taxes

Except as set out in Annex 314, no Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

- (a) exports of any such good to the territory of all other Parties; and
- (b) any such good when destined for domestic consumption.

Article 315: Other Export Measures

1. Except as set out in Annex 315, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of a good of the Party to the territory of another Party, only if:
 - (a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;
 - (b) the Party does not impose a higher price for exports of a good to that other Party than the price charged for such good when consumed domestically, by means of any measure, such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and
 - (c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific goods or categories of goods supplied to that other Party.
2. The Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to a nonParty in implementing this Article.

SECTION D: CONSULTATIONS

Article 316: Consultations and Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.
2. The Committee shall meet on the request of any Party or the Commission to consider any matter arising under this Chapter.
3. The Parties shall convene at least once each year a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

Article 317: Third-Country Dumping

1. The Parties affirm the importance of cooperation with respect to actions under Article 12 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.
2. Where a Party presents an application to another Party requesting antidumping action on its behalf, those Parties shall consult within 30 days respecting the factual basis of the request, and the requested Party shall give full consideration to the request.

SECTION E: DEFINITIONS

Article 318: Definitions

For purposes of this Chapter:

ADVERTISING FILMS means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;

COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of another Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

CONSUMED means:

- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

CUSTOMS DUTY includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article 111:2 of the GATT, or any equivalent provision of a successor agreement to which all Parties are party, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) antidumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered;
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and
- (e) fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);

DISTILLED SPIRITS include distilled spirits and distilled spiritcontaining beverages;

DUTY DEFERRAL PROGRAM includes measures such as those governing foreign-trade zones, temporary importations under bond, bonded warehouses, "maquiladoras" and inward processing programs;

DUTY-FREE means free of customs duty;

GOODS IMPORTED FOR SPORTS PURPOSES means sports requisites for use in sports contests, demonstrations or training in the territory of the Party into whose territory such goods are imported;

GOODS INTENDED FOR DISPLAY OR DEMONSTRATION includes their component parts, ancillary apparatus and accessories;

ITEM means a tariff classification item at the eight- or 10-digit level set out in a Party's tariff schedule;

LOCAL AREA NETWORK APPARATUS means a good dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units, including in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof suitable for use solely or principally with a private network, and providing for the transmission, receipt, error-checking, control, signal conversion or correction functions for non-voice data to move through a local area network;

PERFORMANCE REQUIREMENT means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties be substituted for imported goods or services;

- (c) a person benefitting from a waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver or accord a preference to domestically produced goods or services;
- (d) a person benefitting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, with a given level or percentage of domestic content; or
- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

PRINTED ADVERTISING MATERIALS means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicize or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

REPAIR OR ALTERATION does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good;

SATISFACTORY EVIDENCE means:

- (a) a receipt, or a copy of a receipt, evidencing payment of customs duties on a particular entry;
- (b) a copy of the entry document with evidence that it was received by a customs administration;
- (c) a copy of a final customs duty determination by a customs administration respecting the relevant entry; or
- (d) any other evidence of payment of customs duties acceptable under the Uniform Regulations established in accordance with Chapter Five (Customs Procedures);

TOTAL EXPORT SHIPMENTS means all shipments from total supply to users located in the territory of another Party;

TOTAL SUPPLY means all shipments, whether intended for domestic or foreign users, from:

- (a) domestic production;
- (b) domestic inventory; and
- (c) other imports as appropriate; and

WAIVER OF CUSTOMS DUTIES means a measure that waives otherwise applicable customs duties on any good imported from any country, including the territory of another Party.

[Eighteen annexes on detailed implementation are not reproduced here, nor are Annexes 300-A, on Trade and Investment in the Automotive Sector, and 300-B, on Textile and Apparel Goods.]

Chapter Four: Rules of Origin

Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

- (a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;
- (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;
- (c) the good is produced entirely in the territory of one or more of the Parties exclusively from originating materials; or
- (d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the Parties but one or more of the nonoriginating materials provided for as parts under the Harmonized System that are used in the production of the good does not undergo a change in tariff classification because
 - i. the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2 (a) of the Harmonized System, or
 - ii. (i) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter.

Article 402: Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.
2. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:

$$RVC = ((TV - VNM) / TV) \times 100$$

where

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted to a F.O.B. basis; and
 VNM is the value of non-originating materials used by the producer in the
 production of the good.

3. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following net cost method:

$$RVC = ((NC - VNM) / NC) \times 100$$

where

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the
 producer in the production of the good.

4. Except as provided in Article 403(1) and for a motor vehicle identified in Article 403(2) or a component identified in Annex 403.2, the value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.
5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 3 where:
- (a) there is no transaction value for the good;
 - (b) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;
 - (c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;
 - (d) the good is
 - i. a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,
 - ii. identified in Annex 403.1 or 403.2 and is for use in a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,
 - iii. provided for in subheading 6401.10 through 6406.10, or
 - iv. provided for in tariff item 8469.10.aa (word processing machines);
 - (e) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 404; or
 - (f) the good is designated as an intermediate material under paragraph 10 and is subject to a regional value-content requirement.
6. If an exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party

subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter Five (Customs Procedures), that the transaction value of the good, or the value of any material used in the production of the good, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 3.

7. Nothing in paragraph 6 shall be construed to prevent any review or appeal available under Article 510 (Review and Appeal) of an adjustment to or a rejection of:

- (a) the transaction value of a good; or
- (b) the value of any material used in the production of a good.

8. For purposes of calculating the net cost of a good under paragraph 3, the producer of the good may:

- (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocate the resulting net cost of those goods to the good,
- (b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good, or
- (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations, established under Article 511 (Customs Procedures—Uniform Regulations).

9. Except as provided in paragraph 11, the value of a material used in the production of a good shall:

- (a) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or
- (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and
- (c) where not included under subparagraph (a) or (b), include

- i. freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer,
- ii. duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, and

- iii. the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
10. Except as provided in Article 403(1), any self-produced material, other than a component identified in Annex 403.2, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under paragraph 2 or 3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.
 11. The value of an intermediate material shall be:
 - (a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or
 - (b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.
 12. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 403: Automotive Goods

1. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for:
 - (a) a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, or
 - (b) a good provided for in the tariff provisions listed in Annex 403.1 where the good is subject to a regional value-content requirement and is for use as original equipment in the production of a good provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of non-originating materials, determined in accordance with Article 402(9) at the time the non-originating materials are received by the first person in the territory of a Party who takes title to them, that are imported from outside the territories of the Parties under the tariff provisions listed in Annex 403.1 and that are used in the production of the good or that are used in the production of any material used in the production of the good.
2. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for a good that is a motor vehicle provided for in heading 87.01, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or

87.06, or for a component identified in Annex 403.2 for use as original equipment in the production of the motor vehicle, the value of non-originating materials used by the producer in the production of the good shall be the sum of:

- (a) for each material used by the producer listed in Annex 403.2, whether or not produced by the producer, at the choice of the producer and determined in accordance with Article 402, either
 - i. the value of such material that is non-originating, or
 - ii. the value of non-originating materials used in the production of such material; and
- (b) the value of any other non-originating material used by the producer that is not listed in Annex 403.2, determined in accordance with Article 402.

3. For purposes of calculating the regional value content of a motor vehicle identified in paragraph 1 or 2, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

- (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
- (b) the same class of motor vehicles produced in the same plant in the territory of a Party;
- (c) the same model line of motor vehicles produced in the territory of a Party; or
- (d) if applicable, the basis set out in Annex 403.3.

4. For purposes of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 403.1, or a component or material identified in Annex 403.2, produced in the same plant, the producer of the good may:

- (a) average its calculation
 - i. over the fiscal year of the motor vehicle producer to whom the good is sold,
 - ii. over any quarter or month, or
 - iii. over its fiscal year, if the good is sold as an aftermarket part;
- (b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or
- (c) with respect to any calculation under this paragraph, calculate separately for those goods that are exported to the territory of one or more of the Parties.

5. Notwithstanding Annex 401, and except as provided in paragraph 6, the regional value-content requirement shall be:

- (a) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 56 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 62.5 percent under the net cost method, for

- i. a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, and
 - ii. a good provided for in heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle identified in subparagraph (a)(i); and
- (b) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 55 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 60 percent under the net cost method, for
- i. a good that is a motor vehicle provided for in heading 87.01, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06,
 - ii. a good provided for in heading 84.07 or 84.08 or subheading 8708.40 that is for use in a motor vehicle identified in subparagraph (b)(i), and
 - iii. except for a good identified in subparagraph (a)(ii) or provided for in subheading 8482.10 through 8482.80, 8483.20 or 8483.30, a good identified in Annex 403.1 that is subject to a regional value content requirement and that is for use in a motor vehicle identified in subparagraph (a)(i) or (b)(i).
6. The regional value-content requirement for a motor vehicle identified in Article 403(1) or (2) shall be:
- (a) 50 percent for five years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if
 - i. it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the Parties,
 - ii. the plant consists of a new building in which the motor vehicle is assembled, and
 - iii. the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or
 - (b) 50 percent for two years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a different motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, than was assembled by the motor vehicle assembler in the plant before the refit.

Article 404: Accumulation

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of any of the Parties by that exporter or producer, provided that:

- (a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401, and the good satisfies any applicable regional value-content requirement, entirely in the territory of one or more of the Parties; and
 - (b) the good satisfies all other applicable requirements of this Chapter.
2. For purposes of Article 402(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph 1 shall be considered to be the production of a single producer.

Article 405: De Minimis

1. Except as provided in paragraphs 3 through 6, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 401 is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such non-originating materials is not more than seven percent of the total cost of the good, provided that:
 - (a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and
 - (b) the good satisfies all other applicable requirements of this Chapter.
2. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than seven percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.
3. Paragraph 1 does not apply to:
 - (a) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4 of the Harmonized System;
 - (b) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in tariff item 1901.10.aa (infant preparations containing over 10 percent by weight of milk solids), 1901.20.aa (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids), heading 21.05, or tariff item 2106.90.dd (preparations containing over 10 percent by weight of milk solids), 2202.90.cc (beverages containing milk) or 2309.90.aa (animal feeds containing over 10 percent by weight of milk solids);

- (c) a non-originating material provided for in heading 08.05 or subheading 2009.11 through 2009.30 that is used in the production of a good provided for in subheading 2009.11 through 2009.30 or tariff item 2106.90.bb (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) or 2202.90.aa (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);
 - (d) a non-originating material provided for in Chapter 9 of the Harmonized System that is used in the production of a good provided for in tariff item 2101.10.aa (instant coffee, not flavored);
 - (e) a non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in heading 15.01 through 15.08, 15.12, 15.14 or 15.15;
 - (f) a non-originating material provided for in heading 17.01 that is used in the production of a good provided for in heading 17.01 through 17.03;
 - (g) a non-originating material provided for in Chapter 17 of the Harmonized System or heading 18.05 that is used in the production of a good provided for in subheading 1806.10;
 - (h) a non-originating material provided for in heading 22.03 through 22.08 that is used in the production of a good provided for in heading 22.07 through 22.08;
 - (i) a non-originating material used in the production of a good provided for in tariff item 7321.11.aa (gas stove or range), subheading 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 or 8451.21 through 8451.29, Mexican tariff item 8479.82.aa (trash compactors) or Canadian or U.S. tariff item 8479.89.aa (trash compactors), or tariff item 8516.60.aa (electric stove or range); and
 - (j) a printed circuit assembly that is a non-originating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401, places restrictions on the use of such non-originating material.
4. Paragraph 1 does not apply to a non-originating single juice ingredient provided for in heading 20.09 that is used in the production of a good provided for in subheading 2009.90, or tariff item 2106.90.cc (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) or 2202.90.bb (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).
 5. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapter 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.
 6. A good provided for in Chapter 50 through 63 of the Harmonized System that does not originate because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 401, shall nonetheless be considered to originate if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component.

Article 406: Fungible Goods and Materials

For purposes of determining whether a good is an originating good:

- (a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and
- (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in the Uniform Regulations.

Article 407: Accessories, Spare Parts and Tools

Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools, shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 401, provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good;
- (b) the quantities and value of the accessories, spare parts or tools are customary for the good; and
- (c) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 408: Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

Article 409: Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 401, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 410: Packing Materials and Containers for Shipment

Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

- (a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401; and
- (b) the good satisfies a regional value-content requirement.

Article 411: Transshipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 401 if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Article 412: Non-Qualifying Operations

A good shall not be considered to be an originating good merely by reason of:

- (a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or
- (b) any production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

Article 413: Interpretation and Application

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;
- (b) where a good referred to by a tariff item number is described in parentheses following the tariff item number, the description is provided for purposes of reference only;
- (c) where applying Article 401 (d), the determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, or the General Rules of Interpretation, the Chapter Notes or the Section Notes of the Harmonized System;
- (d) in applying the Customs Valuation Code under this Chapter,
 - i. the principles of the Customs Valuation Code shall apply to required by the circumstances, as would apply to interna- domestic transactions, with such modifications as may be tional transactions,
 - ii. the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference, and
 - iii. the definitions in Article 415 shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference; and

- (e) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 414: Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter Five.
2. Any Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration and any appropriate action under Chapter Five.

Article 415: Definitions

For purposes of this Chapter:

CLASS OF MOTOR VEHICLES means any one of the following categories of motor vehicles:

- (a) motor vehicles provided for in subheading 8701.20, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;
- (b) motor vehicles provided for in subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8704.21 or 8704.31; or
- (d) motor vehicles provided for in subheading 8703.21 through 8703.90;

F.O.B. means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

FUNGIBLE GOODS or **FUNGIBLE MATERIALS** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF ONE OR MORE OF THE PARTIES means:

- (a) mineral goods extracted in the territory of one or more of the Parties;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or more of the Parties;
- (c) live animals born and raised in the territory of one or more of the Parties;
- (d) goods obtained from hunting, trapping or fishing in the territory of one or more of the Parties;
- (e) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with that Party and fly its flag;

- (g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (h) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a nonParty;
- (i) waste and scrap derived from
 - i. production in the territory of one or more of the Parties, or
 - ii. used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials; and
- (j) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

IDENTICAL OR SIMILAR GOODS means “identical goods” and “similar goods”, respectively, as defined in the Customs Valuation Code;

INDIRECT MATERIAL means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;
- (b) tools, dies and molds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

INTERMEDIATE MATERIAL means a material that is self-produced and used in the production of a good, and designated pursuant to Article 402(10);

MARQUE means the trade name used by a separate marketing division of a motor vehicle assembler;

MATERIAL means a good that is used in the production of another good, and includes a part or an ingredient;

MODEL LINE means a group of motor vehicles having the same platform or model name;

MOTOR VEHICLE ASSEMBLER means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

NEW BUILDING means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical and other utilities to house a complete vehicle assembly process;

NET COST means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

NET COST OF A GOOD means the net cost that can be reasonably allocated to a good using one of the methods set out in Article 402(8);

NON-ALLOWABLE INTEREST COSTS means interest costs incurred by a producer that exceed 700 basis points above the applicable federal government interest rate identified in the Uniform Regulations for comparable maturities;

NON-ORIGINATING GOOD or NON-ORIGINATING MATERIAL means a good or material that does not qualify as originating under this Chapter;

PRODUCER means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

PRODUCTION means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

REASONABLY ALLOCATE means to apportion in a manner appropriate to the circumstances;

REFIT means a plant closure, for purposes of plant conversion or retooling, that lasts at least three months;

RELATED PERSON means a person related to another person on the basis that:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person; or
- (g) they are members of the same family (members of the same family are natural or adoptive children, brothers, sisters, parents, grandparents, or spouses);

ROYALTIES means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

- (a) personnel training, without regard to where performed; and
- (b) if performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

SALES PROMOTION, MARKETING AND AFTER-SALES SERVICE COSTS means the following costs related to sales promotion, marketing and after-sales service:

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and
- (j) payments by the producer to other persons for warranty repairs;

SELF-PRODUCED MATERIAL means a material that is produced by the producer of a good and used in the production of that good;

SHIPPING AND PACKING COSTS means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

SIZE CATEGORY means for a motor vehicle identified in Article 403(1)(a):

- (a) 85 or less cubic feet of passenger and luggage interior volume,
- (b) between 85 and 100 cubic feet of passenger and luggage interior volume,
- (c) 100 to 110 cubic feet of passenger and luggage interior volume,
- (d) between 110 and 120 cubic feet of passenger and luggage interior volume, and
- (e) 120 and more cubic feet of passenger and luggage interior volume;

TOTAL COST means all product costs, period costs and other costs incurred in the territory of one or more of the Parties;

TRANSACTION VALUE means the price actually paid or payable for a good or material with respect to a transaction of, except for the application of Article 403(1) or 403(2)(a), the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good or material is sold for export;

USED means used or consumed in the production of goods; and

UNDERBODY means the floor pan of a motor vehicle.

[Four annexes are not reproduced here.]

Chapter Five: Customs Procedures

SECTION A: CERTIFICATION OF ORIGIN

Article 501 Certificate of Origin

1. The Parties shall establish by January 1, 1994 a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.
2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed in a language required under its law.
3. Each Party shall:
 - (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of another Party; and
 - (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate on the basis of
 - i. its knowledge of whether the good qualifies as an originating good,
 - ii. its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or
 - iii. a completed and signed Certificate for the good voluntarily provided to the exporter by the producer.
4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.
5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of another Party that is applicable to:
 - (a) a single importation of a good into the Party's territory, or
 - (b) multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer,

shall be accepted by its customs administration for four years after the date on which the Certificate was signed.

Article 502: Obligations Regarding Importations

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of another Party to:
 - (a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

- (b) have the Certificate in its possession at the time the declaration is made;
 - (c) provide, on the request of that Party's customs administration, a copy of the Certificate; and
 - (d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.
2. Each Party shall provide that, where an importer in its territory claims preferential tariff treatment for a good imported into its territory from the territory of another Party:
- (a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
 - (b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to paragraph 1(d).
3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:
- (a) a written declaration that the good qualified as an originating good at the time of importation;
 - (b) a copy of the Certificate of Origin; and
 - (c) such other documentation relating to the importation of the good as that Party may require.

Article 503: Exceptions

Each Party shall provide that a Certificate of Origin shall not be required for:

- (a) a commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good,
- (b) a non-commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, or
- (c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin,
 - provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 501 and 502.

Article 504: Obligations Regarding Exportations

1. Each Party shall provide that:

- (a) an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article 501(3)(b)(iii), shall provide a copy of the Certificate to its customs administration on request; and
- (b) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

2. Each Party:

- (a) shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation; and
- (b) may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

3. No Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) with respect to the making of an incorrect certification.

SECTION B: ADMINISTRATION AND ENFORCEMENT

Article 505: Records

Each Party shall provide that:

- (a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for five years after the date on which the Certificate was signed or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of another Party, including records associated with
 - i. the purchase of, cost of, value of, and payment for, the good that is exported from its territory,
 - ii. the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and
 - iii. the production of the good in the form in which the good is exported from its territory; and
- (b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for five years after the date of importation of

the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate, as the Party may require relating to the importation of the good.

Article 506: Origin Verifications

1. For purposes of determining whether a good imported into its territory from the territory of another Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:
 - (a) written questionnaires to an exporter or a producer in the territory of another Party;
 - (b) visits to the premises of an exporter or a producer in the territory of another Party to review the records referred to in Article 505(a) and observe the facilities used in the production of the good; or
 - (c) such other procedure as the Parties may agree.
2. Prior to conducting a verification visit pursuant to paragraph (1)(b), a Party shall, through its customs administration:
 - (a) deliver a written notification of its intention to conduct the visit to
 - i. the exporter or producer whose premises are to be visited,
 - ii. the customs administration of the Party in whose territory the visit is to occur, and
 - iii. if requested by the Party in whose territory the visit is to occur, the embassy of that Party in the territory of the Party proposing to conduct the visit; and
 - (b) obtain the written consent of the exporter or producer whose premises are to be visited.
3. The notification referred to in paragraph 2 shall include:
 - (a) the identity of the customs administration issuing the notification;
 - (b) the name of the exporter or producer whose premises are to be visited;
 - (c) the date and place of the proposed verification visit;
 - (d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
 - (e) the names and titles of the officials performing the verification visit; and
 - (f) the legal authority for the verification visit.
4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.
5. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 2, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree.

6. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.
7. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another Party to designate two observers to be present during the visit, provided that:
 - (a) the observers do not participate in a manner other than as observers; and
 - (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.
8. Each Party shall, through its customs administration, conduct a verification of a regional value-content requirement in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.
9. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.
10. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter Four (Rules of Origin).
11. Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.
12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination where:
 - (a) the customs administration of the Party from whose territory the good was exported has issued an advance ruling under Article 509 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and
 - (b) the advance ruling, other ruling or consistent treatment was given prior to notification of the determination.
13. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials

by the customs administration of the Party from whose territory the good was exported.

Article 507: Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.
2. The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

Article 508: Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.
2. Nothing in Article 502(2), 504(3) or 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

SECTION C: ADVANCE RULINGS

Article 509: Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:
 - (a) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties;
 - (b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four (Rules of Origin);
 - (c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;
 - (d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material;

- (e) whether a good qualifies as an originating good under Chapter Four;
 - (f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 307 (Goods Re-Entered after Repair or Alteration);
 - (g) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 311 (Country of Origin Marking);
 - (h) whether an originating good qualifies as a good of a Party under Annex 300-B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination) or Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);
 - (i) whether a good is a qualifying good under Chapter Seven; or
 - (j) such other matters as the Parties may agree.
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.
 3. Each Party shall provide that its customs administration:
 - (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
 - (b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within the periods specified in the Uniform Regulations; and
 - (c) shall, where the advance ruling is unfavorable to the person requesting it, provide to that person a full explanation of the reasons for the ruling.
 4. Subject to paragraph 6, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.
 5. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter Four regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.
 6. The issuing Party may modify or revoke an advance ruling:
 - (a) if the ruling is based on an error
 - i. of fact,
 - ii. in the tariff classification of a good or a material that is the subject of the ruling,
 - iii. in the application of a regional value-content requirement under Chapter Four,
 - iv. in the application of the rules for determining whether a good qualifies as a good of a Party under Annex 300-B, Annex 302.2 or Chapter Seven,
 - v. in the application of the rules for determining whether a good is a qualifying good under Chapter Seven, or

vi. in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment under Article 307;

- (b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter Three (National Treatment and Market Access for Goods) or Chapter Four;
- (c) if there is a change in the material facts or circumstances on which the ruling is based;
- (d) to conform with a modification of Chapter Three, Chapter Four, this Chapter, Chapter Seven, the Marking Rules or the Uniform Regulations; or
- (e) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.
8. Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.
9. Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling pursuant to subparagraph 1(c), (d) or (f), it shall evaluate whether:
 - (a) the exporter or producer has complied with the terms and conditions of the advance ruling;
 - (b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and
 - (c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.
10. Each Party shall provide that where its customs administration determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.
11. Each Party shall provide that, where the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.
12. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

SECTION D: REVIEW AND APPEAL OF ORIGIN DETERMINATIONS AND ADVANCE RULINGS

Article 510: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of marking determinations of origin, country of origin determinations and advance rulings by its customs administration as it provides to importers in its territory to any person:
 - (a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin;
 - (b) whose good has been the subject of a country of origin marking determination pursuant to Article 311 (Country of Origin Marking); or
 - (c) who has received an advance ruling pursuant to Article 509(1).
2. Further to Articles 1804 (Administrative Proceedings) and 1805 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:
 - (a) at least one level of administrative review independent of the official or office responsible for the determination under review; and
 - (b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

SECTION E: UNIFORM REGULATIONS

Article 511: Uniform Regulations

1. The Parties shall establish, and implement through their respective laws or regulations by January 1, 1994, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, this Chapter and other matters as may be agreed by the Parties.
2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

SECTION F: COOPERATION

Article 512: Cooperation

1. Each Party shall notify the other Parties of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:
 - (a) a determination of origin issued as the result of a verification conducted pursuant to Article 506(1);
 - (b) a determination of origin that the Party is aware is contrary to
 - i. a ruling issued by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or
 - ii. consistent treatment given by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;
 - (c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and
 - (d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article 509.
2. The Parties shall cooperate:
 - (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;
 - (b) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of a non-Party, in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of another Party, provided that the customs administration of the Party proposing to conduct the verification, prior to conducting the verification
 - i. obtains the consent of the Party in whose territory the verification is to occur, and
 - ii. provides notification to the exporter or producer whose premises are to be visited,

except that procedures for notifying the exporter or producer whose premises are to be visited shall be in accordance with such other procedures as the Parties may agree;
 - (c) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics

- regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information; and
- (d) to the extent practicable, in the storage and transmission of customs-related documentation.

Article 513: Working Group and Customs Subgroup

1. The Parties hereby establish a Working Group on Rules of Origin, comprising representatives of each Party, to ensure:
 - (a) the effective implementation and administration of Articles 303 (Restriction on Drawback and Duty Deferral Programs), 308 (Most-Favored-Nation Rates of Duty on Certain Goods) and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations; and
 - (b) the effective administration of the customs-related aspects of Chapter Three.
2. The Working Group shall meet at least four times each year and on the request of any Party.
3. The Working Group shall:
 - (a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;
 - (b) endeavor to agree, on the request of any Party, on any proposed modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules or the Uniform Regulations;
 - (c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;
 - (d) propose to the Commission any modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and
 - (e) consider any other matter referred to it by a Party or by the Customs Subgroup established under paragraph 6.
4. Each Party shall, to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days of the date on which the Commission agrees on the modification or addition.
5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 3(e) within 30 days of such referral, any Party may request a meeting of the Commission under Article 2007 (Commission—Good Offices, Conciliation and Mediation).
6. The Working Group shall establish, and monitor the work of, a Customs Subgroup, comprising representatives of each Party. The Subgroup shall meet at least four times each year and on the request of any Party and shall:
 - (a) endeavor to agree on

- i. the uniform interpretation, application and administration of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations,
- ii. tariff classification and valuation matters relating to determinations of origin,
- iii. equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,
- iv. revisions to the Certificate of Origin,
- v. any other matter referred to it by a Party, the Working Group or the Committee on Trade in Goods established under Article 316, and
- vi. any other customs-related matter arising under this Agreement;

(b) consider

- i. the harmonization of customs-related automation requirements and documentation, and
- ii. proposed customs-related administrative and operational changes that may affect the flow of trade between the Parties' territories;

(c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and

(d) refer to the Working Group any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).

7. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Working Group or the Customs Subgroup or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

Article 514: Definitions

For purposes of this Chapter:

COMMERCIAL IMPORTATION means the importation of a good into the territory of any Party for the purpose of sale, or any commercial, industrial or other like use;

CUSTOMS ADMINISTRATION means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

DETERMINATION OF ORIGIN means a determination as to whether a good qualifies as an originating good in accordance with Chapter Four;

EXPORTER IN THE TERRITORY OF A PARTY means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

IDENTICAL GOODS means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Four;

IMPORTER IN THE TERRITORY OF A PARTY means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

INTERMEDIATE MATERIAL means “intermediate material” as defined in Article 415;

MARKING RULES means “Marking Rules” established under Annex 311;

MATERIAL means “material” as defined in Article 415;

NET COST OF A GOOD means “net cost of a good” as defined in Article 415;

PREFERENTIAL TARIFF TREATMENT means the duty rate applicable to an originating good;

PRODUCER means “producer” as defined in Article 415; PRODUCTION means “production” as defined in Article 415;

TRANSACTION VALUE means “transaction value” as defined in Article 415;

UNIFORM REGULATIONS means “Uniform Regulations” established under Article 511;

USED means “used” as defined in Article 415; and

VALUE means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter Four.

Chapter Six: Energy and Basic Petrochemicals

Article 601: Principles

1. The Parties confirm their full respect for their Constitutions.
2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization.
3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

Article 602: Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and to the cross-border trade in services associated with such goods, as set forth in this Chapter.
2. For purposes of this Chapter, energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:
 - (a) subheading 2612.10;
 - (b) headings 27.01 through 27.06;
 - (c) subheading 2707.50;
 - (d) subheading 2707.99 (only with respect to solvent naphtha, rubber extender oils and carbon black feedstocks);
 - (e) headings 27.08 and 27.09;
 - (f) heading 27.10 (except for normal paraffin mixtures in the range of C9 to C15);
 - (g) heading 27.11 (except for ethylene, propylene, butylene and butadiene in purities over 50 percent);
 - (h) headings 27.12 through 27.16;

- (i) subheadings 2844.10 through 2844.50 (only with respect to uranium compounds classified under those subheadings);
 - (j) subheading 2845.10; and
 - (k) subheading 2901.10 (only with respect to ethane, butanes, pentanes, hexanes, and heptanes).
3. Except as specified in Annex 602.3, energy and petrochemical goods and activities shall be governed by the provisions of this Agreement.

Article 603: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the General Agreement on Tariffs and Trade (GATT), with respect to prohibitions or restrictions on trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.
2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import price requirements.
3. In circumstances where a Party adopts or maintains a restriction on importation from or exportation to a non Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:
 - (a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the non Party; or
 - (b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.
4. In the event that a Party adopts or maintains a restriction on imports of an energy or basic petrochemical good from non Party countries, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.
5. Each Party may administer a system of import and export licensing for energy or basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).
6. This Article is subject to the reservations set out in Annex 603.6.

Article 604: Export Taxes

No Party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

- (a) exports of any such good to the territory of all other Parties; and
- (b) any such good when destined for domestic consumption.

Article 605: Other Export Measures

Subject to Annex 605, a Party may adopt or maintain a restriction otherwise justified under Article XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

- (a) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;
- (b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to that other Party than the price charged for such good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and
- (c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific energy or basic petrochemical goods supplied to that other Party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

Article 606: Energy Regulatory Measures

1. The Parties recognize that energy regulatory measures are subject to the disciplines of:
 - (a) national treatment, as provided in Article 301;
 - (b) import and export restrictions, as provided in Article 603; and
 - (c) export taxes, as provided in Article 604.
2. Each Party shall seek to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory avoid disruption of contractual relationships to the maximum extent practicable, and provide for orderly and equitable implementation appropriate to such measures.

Article 607: National Security Measures

Subject to Annex 607, no Party may adopt or maintain a measure restricting imports of an energy or basic petrochemical good from, or exports of an energy or basic petrochemical good to, another Party under Article XXI of the GATT or under Article 2102 (National Security), except to the extent necessary to:

- (a) supply a military establishment of a Party or enable fulfillment of a critical defense contract of a Party;
- (b) respond to a situation of armed conflict involving the Party taking the measure;
- (c) implement national policies or international agreements relating to the non proliferation of nuclear weapons or other nuclear explosive devices; or
- (d) respond to direct threats of disruption in the supply of nuclear materials for defense purposes.

Article 608: Miscellaneous Provisions

- 1. The Parties agree to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.
- 2. Annex 608.2 applies only to the Parties specified in that Annex with respect to other agreements relating to trade in energy goods.

Article 609: Definitions

For purposes of this Chapter:

CONSUMED means transformed so as to qualify under the rules of origin set out in Chapter Four (Rules of Origin), or actually consumed;

CROSS-BORDER TRADE IN SERVICES means “cross-border trade in services” as defined in Article 1213 (Cross-Border Trade in Services—Definitions);

ENERGY REGULATORY MEASURE means any measure by federal or sub-federal entities that directly affects the transportation, transmission or distribution, purchase or sale, of an energy or basic petrochemical good;

ENTERPRISE means “enterprise” as defined in Article 1139 (Investment—Definitions);

ENTERPRISE OF A PARTY means “enterprise of a Party” as defined in Article 1139;

FACILITY FOR INDEPENDENT POWER PRODUCTION means a facility that is used for the generation of electric energy exclusively for sale to an electric utility for further resale;

FIRST HAND SALE refers to the first commercial transaction affecting the good in question;

INVESTMENT means investment as defined in Article 1139;

RESTRICTION means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

TOTAL EXPORT SHIPMENTS means the total shipments from total supply to users located in the territory of the other Party; and

TOTAL SUPPLY means shipments to domestic users and foreign users from:

- (a) domestic production;
- (b) domestic inventory; and
- (c) other imports, as appropriate.

[Five annexes—various reservations, special provisions and exceptions, and also mentioning national security and other agreements—are not reproduced here.]

Chapter Seven: Agriculture and Sanitary and Phytosanitary Measures

SECTION A: AGRICULTURE

Article 701: Scope and Coverage

1. This Section applies to measures adopted or maintained by a Party relating to agricultural trade.
2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

Article 702: International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.
2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.
3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

Article 703: Market Access

1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.

Special Safeguard Provisions

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302(2), a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:
 - (a) the most-favored-nation (MFN) rate as of July 1, 1991; and
 - (b) the prevailing MFN rate.
4. No Party may, with respect to the same good and the same country, at the same time:
 - (a) apply an over-quota tariff rate under paragraph 3; and
 - (b) take an emergency action covered by Chapter Eight (Emergency Action).

Article 704: Domestic Support

The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects and that domestic support reduction commitments may result from agricultural multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). Accordingly, where a Party supports its agricultural producers, that Party should endeavor to work toward domestic support measures that:

- (a) have minimal or no trade distorting or production effects; or
- (b) are exempt from any applicable domestic support reduction commitments that may be negotiated under the GATT.

The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, at the Party's discretion, subject to its rights and obligations under the GATT.

Article 705: Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve an agreement under the GATT to eliminate those subsidies.
2. The Parties recognize that export subsidies for agricultural goods may prejudice the interests of importing and exporting Parties and, in particular, may disrupt the markets of importing Parties. Accordingly, in addition to the rights and obligations of the Parties specified in Annex 702.1, the Parties affirm that it is inappropriate for a Party to provide an export subsidy for an agricultural good exported to the territory of another Party where there are no other subsidized imports of that good into the territory of that other Party.
3. Except as provided in Annex 702.1, where an exporting Party considers that a non Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party

shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

4. Except as provided in Annex 702.1, an exporting Party shall deliver written notice to the importing Party at least three days, excluding weekends, prior to adopting an export subsidy measure on an agricultural good exported to the territory of another Party. The exporting Party shall consult with the importing Party within 72 hours of receipt of the importing Party's written request, with a view to eliminating the subsidy or minimizing any adverse impact on the market of the importing Party for that good. The importing Party shall, when requesting consultations with the exporting Party, at the same time, deliver written notice to a third Party of the request. A third Party may request to participate in such consultations.
5. Each Party shall take into account the interests of the other Parties in the use of any export subsidy on an agricultural good, recognizing that such subsidies may have prejudicial effects on the interests of the other Parties.
6. The Parties hereby establish a Working Group on Agricultural Subsidies, comprising representatives of each Party, which shall meet at least semi annually or as the Parties may otherwise agree, to work toward elimination of all export subsidies affecting agricultural trade between the Parties. The functions of the Working Group shall include:
 - (a) monitoring the volume and price of imports into the territory of any Party of agricultural goods that have benefitted from export subsidies;
 - (b) providing a forum for the Parties to develop mutually acceptable criteria and procedures for reaching agreement on the limitation or elimination of export subsidies for imports of agricultural goods into the territories of the Parties; and
 - (c) reporting annually to the Committee on Agricultural Trade, established under Article 706, on the implementation of this Article.
7. Notwithstanding any other provision of this Article:
 - (a) if the importing and exporting Parties agree to an export subsidy for an agricultural good exported to the territory of the importing Party, the exporting Party or Parties may adopt or maintain such subsidy; and
 - (b) each Party retains its rights to apply countervailing duties to subsidized imports of agricultural goods from the territory of a Party or non-Party.

Article 706: Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade, comprising representatives of each Party.
2. The Committee's functions shall include:
 - (a) monitoring and promoting cooperation on the implementation and administration of this Section;
 - (b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and
 - (c) reporting annually to the Commission on the implementation of this Section.

Article 707: Advisory Committee on Private Commercial Disputes regarding Agricultural Goods

The Committee shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.

Article 708: Definitions

For purposes of this Section:

AGRICULTURAL GOOD means a good provided for in any of the following:

[Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.]

- (a) Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product); or
- (b) HS subheading 2905.43 manitol

HS subheading 2905.44 sorbitol

HS heading 33.01 essential oils

HS headings 35.01 to 35.05 albuminoidal substances, modified starches, glues

HS subheading 3809.10 finishing agents

HS subheading 3823.60 sorbitol n.e.p.

HS headings 41.01 to 41.03 hides and skins

HS heading 43.01 raw furskins

HS headings 50.01 to 50.03 raw silk and silk waste

HS headings 51.01 to 51.03 wool and animal hair

HS headings 52.01 to 52.03 raw cotton, cotton waste and cotton carded or combed

HS heading 53.01 raw flax

HS heading 53.02 raw hemp

CUSTOMS DUTY means “customs duty” as defined in Article 318 (National Treatment and Market Access for Goods—Definitions);

DUTY-FREE means “duty-free” as defined in Article 318;

FISH OR FISH PRODUCT means a fish or crustacean, mollusc or other aquatic invertebrate, marine mammal, or a product thereof provided for in any of the following:

[Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.]

HS Chapter 03 fish and crustaceans, molluscs and other aquatic invertebrates

HS heading 05.07 tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading

HS heading 05.08 coral and similar materials

HS heading 05.09 natural sponges of animal origin

HS heading 05.11 products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3

HS heading 15.04 fats and oils and their fractions, of fish or marine mammals

HS heading 16.03 “non-meat” extracts and juices

HS heading 16.04 prepared or preserved fish

HS heading 16.05 prepared preserved crustaceans, molluscs and other aquatic invertebrates; HS subheading 2301.20 flours, meals, pellets of fish

MATERIAL means “material” as defined in Article 415 (Rules of

Origin—Definitions);

OVER-QUOTA TARIFF RATE means the rate of customs duty to be applied to quantities in excess of the quantity specified under a tariff rate quota;

SUGAR OR SYRUP GOOD means “sugar or syrup good” as defined in Annex 703.2;

TARIFF ITEM means a “tariff item” as defined in Annex 401; and

TARIFF RATE QUOTA means a mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specified quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

[Four annexes are not reproduced here.]

SECTION B: SANITARY AND PHYTOSANITARY MEASURES

Article 709: Scope and Coverage

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Section applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

Article 710: Relation to Other Chapters

Articles 301 (National Treatment) and 309 (Import and Export Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1) (General Exceptions), do not apply to any sanitary or phytosanitary measure.

Article 711: Reliance on Non Governmental Entities

Each Party shall ensure that any non governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Section.

Article 712: Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 715.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:
 - (a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;
 - (b) not maintained where there is no longer a scientific basis for it; and
 - (c) based on a risk assessment, as appropriate to the circumstances.

Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.
2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 712. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Section.
3. Nothing in Paragraph 1 shall be construed to prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of this Section, a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.
4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for the measure.
5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, and the North American Plant Protection Organization, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 714: Equivalence

1. Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.
2. Each importing Party:
 - (a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed on by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;
 - (b) may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and
 - (c) shall provide to the exporting Party, on request, its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalence, each exporting Party shall, on the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing and other relevant procedures.
4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

Article 715: Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:
 - (a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;
 - (b) relevant scientific evidence;
 - (c) relevant processes and production methods;
 - (d) relevant inspection, sampling and testing methods;
 - (e) the prevalence of relevant diseases or pests, including the existence of pest free or disease free areas or areas of low pest or disease prevalence;
 - (f) relevant ecological and other environmental conditions; and
 - (g) relevant treatments, such as quarantines.
2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing the risk, also take into account the following economic factors, where relevant:
 - (a) loss of production or sales that may result from the pest or disease;
 - (b) costs of control or eradication of the pest or disease in its territory; and
 - (c) the relative cost effectiveness of alternative approaches to limiting risks.
3. Each Party, in establishing its appropriate level of protection:
 - (a) should take into account the objective of minimizing negative trade effects; and
 - (b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.
4. Notwithstanding paragraphs (1) through (3) and Article 712(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. The Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and, where appropriate, revise the provisional measure in the light of the assessment.
5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, on the request of another

Party and in accordance with this Section, allow for such a phased application, or grant specified exceptions for limited periods from the measure, taking into account the requesting Party's export interests.

Article 716: Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such a measure is produced and the area in its territory to which the good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between those areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest free or disease free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:
 - (a) the prevalence of relevant pests or diseases in that area;
 - (b) the existence of eradication or control programs in that area; and
 - (c) any relevant international standard, guideline or recommendation.
2. Further to paragraph 1, each Party shall, in determining whether an area is a pest free or disease free area or an area of low pest or disease prevalence, base its determination on factors such as geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in that area.
3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest free or disease free area or an area of low pest or disease prevalence, where the exporting Party provides to the importing Party scientific evidence or other information sufficient to so demonstrate to the satisfaction of the importing Party. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing and other relevant procedures.
4. Each Party may, in accordance with this Section:
 - (a) adopt, maintain or apply a different risk assessment procedure for a pest free or disease free area than for an area of low pest or disease prevalence, or
 - (b) make a different final determination for the disposition of a good produced in a pest free or disease free area than for a good produced in an area of low pest or disease prevalence, taking into account any relevant conditions, including those relating to transportation and handling.
5. Each Party shall, in adopting, maintaining or applying a sanitary or phytosanitary measure relating to the introduction, establishment or spread of an animal or plant pest or disease, accord a good produced in a pest free or disease free area in the territory of another Party no less favorable treatment than it accords a good produced in a pest free or disease free area, in another country, that poses the same level of risk. The Party shall use equivalent risk assessment techniques to evaluate relevant conditions and controls in the pest free or disease free area and in the area surrounding that area and

take into account any relevant conditions, including those relating to transportation and handling.

6. Each importing Party shall pursue an agreement with an exporting Party, on request, on specific requirements the fulfillment of which allows a good produced in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party and achieves the importing Party's appropriate level of protection.

Article 717: Control, Inspection and Approval Procedures

1. Each Party, with respect to any control or inspection procedure that it conducts:
 - (a) shall initiate and complete the procedure as expeditiously as possible and in no less favorable manner for a good of another Party than for a like good of the Party or of any other country;
 - (b) shall publish the normal processing period for the procedure or communicate the anticipated processing period to the applicant on request;
 - (c) shall ensure that the competent body
 - i. on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,
 - ii. transmits to the applicant as soon as possible the results of the procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,
 - iii. where the application is deficient, proceeds as far as practicable with the procedure if the applicant so requests, and
 - iv. informs the applicant, on request, of the status of the application and the reasons for any delay;
 - (d) shall limit the information the applicant is required to supply to that necessary for conducting the procedure;
 - (e) shall accord confidential or proprietary information arising from, or supplied in connection with, the procedure conducted for a good of another Party
 - i. treatment no less favorable than for a good of the Party, and
 - ii. in any event, treatment that protects the applicant's legitimate commercial interests, to the extent provided under the Party's law;
 - (f) shall limit any requirement regarding individual specimens or samples of a good to that which is reasonable and necessary;
 - (g) should not impose a fee for conducting the procedure that is higher for a good of another Party than is equitable in relation to any such fee it imposes for its like goods or for like goods of any other country, taking into account communication, transportation and other related costs;
 - (h) should use criteria for selecting the location of facilities at which the procedure is conducted that do not cause unnecessary inconvenience to an applicant or its agent;

- (i) shall provide a mechanism to review complaints concerning the operation of the procedure and to take corrective action when a complaint is justified;
 - (j) should use criteria for selecting samples of goods that do not cause unnecessary inconvenience to an applicant or its agent; and
 - (k) shall limit the procedure, for a good modified subsequent to a determination that the good fulfills the requirements of the applicable sanitary or phytosanitary measure, to that necessary to determine that the good continues to fulfill the requirements of that measure.
2. Each Party shall apply, with such modifications as may be necessary, paragraphs 1(a) through (i) to its approval procedures.
 3. Where an importing Party's sanitary or phytosanitary measure requires the conduct of a control or inspection procedure at the level of production, an exporting Party shall, on the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the conduct of the importing Party's control or inspection procedure.
 4. A Party maintaining an approval procedure may require its approval for the use of an additive, or its establishment of a tolerance for a contaminant, in a food, beverage or feedstuff, under that procedure prior to granting access to its domestic market for a food, beverage or feedstuff containing that additive or contaminant. Where such Party so requires, it shall consider using a relevant international standard, guideline or recommendation as the basis for granting access until it completes the procedure.

Article 718: Notification, Publication and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a sanitary or phytosanitary measure of general application at the federal level shall:
 - (a) at least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure and provide to the other Parties and publish the full text of the proposed measure, in such a manner as to enable interested persons to become acquainted with the proposed measure;
 - (b) identify in the notice and notification the good to which the measure would apply, and provide a brief description of the objective and reasons for the measure;
 - (c) provide a copy of the proposed measure to any Party or interested person that so requests and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations; and
 - (d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.
2. Each Party shall seek, through appropriate measures, to ensure, with respect to a sanitary or phytosanitary measure of a state or provincial government:
 - (a) that, at an early appropriate stage, a notice and notification of the type referred to in paragraph 1(a) and (b) are made prior to their adoption; and

- (b) observance of paragraph 1(c) and (d).
3. Where a Party considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection, it may omit any step set out in paragraph 1 or 2, provided that, on adoption of a sanitary or phytosanitary measure, it shall:
 - (a) immediately provide to the other Parties a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem;
 - (b) provide a copy of the measure to any Party or interested person that so requests; and
 - (c) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.
 4. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 3, allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date that it becomes effective to allow time for interested persons to adapt to the measure.
 5. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for this purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.
 6. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a sanitary or phytosanitary measure, the importing Party shall provide a written explanation to the exporting Party, on request, that identifies the applicable measure and the reasons that the good is not in compliance.

Article 719: Inquiry Points

1. Each Party shall ensure that there is one inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents, regarding:
 - (a) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure, proposed, adopted or maintained in its territory at the federal, state or provincial government level;
 - (b) the Party's risk assessment procedures and factors it considers in conducting the assessment and in establishing its appropriate levels of protection;
 - (c) the membership and participation of the Party, or its relevant federal, state or provincial government authorities in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Section, and the provisions of those systems and arrangements; and
 - (d) the location of notices published pursuant to this Section or where such information can be obtained.

2. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Section, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 720: Technical Cooperation

1. Each Party shall, on the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants for the acquisition of technical expertise, training and equipment that will facilitate the Party's adjustment to and compliance with a Party's sanitary or phytosanitary measure.
2. Each Party shall, on the request of another Party:
 - (a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and
 - (b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

Article 721: Limitations on the Provision of Information

Nothing in this Section shall be construed to require a Party to:

- (a) communicate, publish texts or provide particulars or copies of documents other than in an official language of the Party; or
- (b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article 722: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.
2. The Committee should facilitate:
 - (a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;
 - (b) activities of the Parties pursuant to Articles 713 and 714;
 - (c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and
 - (d) consultations on specific matters relating to sanitary or phytosanitary measures.
3. The Committee:

- (a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort;
- (b) may draw on such experts and expert bodies as it considers appropriate;
- (c) shall report annually to the Commission on the implementation of this Section;
- (d) shall meet on the request of any Party and, unless the Parties otherwise agree, at least once each year; and
- (e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

Article 723: Technical Consultations

1. A Party may request consultations with another Party on any matter covered by this Section.
2. Each Party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 713(5), for advice and assistance on sanitary and phytosanitary matters within their respective mandates.
3. Where a Party requests consultations regarding the application of this Section to a Party's sanitary or phytosanitary measure, and so notifies the Committee, the Committee may facilitate the consultations, if it does not consider the matter itself, by referring the matter for non binding technical advice or recommendations to a working group, including an ad hoc working group, or to another forum.
4. The Committee should consider any matter referred to it under paragraph 3 as expeditiously as possible, particularly regarding perishable goods, and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. Each Party involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.
5. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 3, the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 2006 (Consultations).
6. The Parties confirm that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with this Section shall have the burden of establishing the inconsistency.

Article 724: Definitions

For purposes of this Section:

ANIMAL includes fish and wild fauna;

APPROPRIATE LEVEL OF PROTECTION means the level of protection of human, animal or plant life or health in the territory of a Party that the Party considers appropriate;

APPROVAL PROCEDURE means any registration, notification or other mandatory administrative procedure for:

- (a) approving the use of an additive for a stated purpose or under stated conditions, or

(b) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage or feedstuff containing the additive or contaminant;

AREA means a country, part of a country or all or parts of several countries;

AREA OF LOW PEST OR DISEASE PREVALENCE means an area in which a specific pest or disease occurs at low levels;

CONTAMINANT includes pesticide and veterinary drug residues and extraneous matter;

CONTROL OR INSPECTION PROCEDURE means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

INTERNATIONAL STANDARD, GUIDELINE OR RECOMMENDATION means a standard, guideline or recommendation:

(a) regarding food safety, adopted by the Codex Alimentarius Commission, including one regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(b) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(c) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization; or

(d) established by or developed under any other international organization agreed on by the Parties;

PEST includes a weed;

PEST-FREE or DISEASE-FREE AREA means an area in which a specific pest or disease does not occur;

PLANT includes wild flora;

RISK ASSESSMENT means an evaluation of:

(a) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff;

SANITARY or PHYTOSANITARY MEASURE means a measure that a Party adopts, maintains or applies to:

(a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,

- (b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,
- (c) protect human life or health in its territory from risks arising from a disease causing organism or pest carried by an animal or plant, or a product thereof, or
- (d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest,

including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation; and

SCIENTIFIC BASIS means a reason based on data or information derived using scientific methods.

Chapter Eight: Emergency Action

Article 801: Bilateral Actions

1. Subject to paragraphs 2 through 4 and Annex 801.1, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:
 - (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;
 - (b) increase the rate of duty on the good to a level not to exceed the lesser of
 - i. the most favored nation (MFN) applied rate of duty in effect at the time the action is taken, and
 - ii. the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
 - (c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement.
2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

- (a) a Party shall, without delay, deliver to any Party that may be affected written notice of, and a request for consultations regarding, the institution of a proceeding that could result in emergency action against a good originating in the territory of a Party;
 - (b) any such action shall be initiated no later than one year after the date of institution of the proceeding;
 - (c) no action may be maintained
 - i. for a period exceeding three years, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 of the Party taking the action and that Party determines that the affected industry has undertaken adjustment and requires an extension of the period of relief, in which case the period of relief may be extended for one year provided that the duty applied during the initial period of relief is substantially reduced at the beginning of the extension period, or
 - ii. beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;
 - (d) no action may be taken by a Party against any particular good originating in the territory of another Party more than once during the transition period; and
 - (e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex 302.2 for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action
 - i. the rate of duty shall conform to the applicable rate set out in its Schedule to Annex 302.2, or
 - ii. the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex 302.2 for the elimination of the tariff.
3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the Party against whose good the action would be taken.
 4. The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.
 5. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

Article 802: Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from the action unless:
 - (a) imports from a Party, considered individually, account for a substantial share of total imports; and
 - (b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.
2. In determining whether:
 - (a) imports from a Party, considered individually, account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and
 - (b) imports from a Party or Parties contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of each Party, and the level and change in the level of imports of each Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.
3. A Party taking such action, from which a good from another Party or Parties is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party or Parties in the action in the event that the competent investigating authority determines that a surge in imports of such good from the other Party or Parties undermines the effectiveness of the action.
4. A Party shall, without delay, deliver written notice to the other Parties of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.
5. No Party may impose restrictions on a good in an action under paragraph 1 or 3:
 - (a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the Party or Parties against whose good the action is proposed to be taken, as far in advance of taking the action as practicable; and
 - (b) that would have the effect of reducing imports of such good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth.
6. The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing

compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 803: Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.
3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 803.3.
4. This Article does not apply to emergency actions taken under Annex 300-B (Textile and Apparel Goods).

Article 804: Dispute Settlement in Emergency Action Matters

No Party may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel) regarding any proposed emergency action.

Article 805: Definitions

For purposes of this Chapter:

COMPETENT INVESTIGATING AUTHORITY means the “competent investigating authority” of a Party as defined in Annex 805;

CONTRIBUTE IMPORTANTLY means an important cause, but not necessarily the most important cause;

CRITICAL CIRCUMSTANCES means circumstances where delay would cause damage that would be difficult to repair;

DOMESTIC INDUSTRY means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

EMERGENCY ACTION does not include any emergency action pursuant to a proceeding instituted prior to January 1, 1994;

GOOD ORIGINATING IN THE TERRITORY OF A PARTY means an originating good, except that in determining the Party in whose territory that good originates, the relevant rules of Annex 302.2 shall apply;

SERIOUS INJURY means a significant overall impairment of a domestic industry;

SURGE means a significant increase in imports over the trend for a recent representative base period;

THREAT OF SERIOUS INJURY means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

TRANSITION PERIOD means the 10-year period beginning on January 1, 1994, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 of the Party taking the action, in which case the transition period shall be the period of staged tariff elimination for that good.

[Three annexes are omitted here.]

PART THREE: TECHNICAL BARRIERS TO TRADE

Chapter Nine: Standards-Related Measures

Article 901: Scope and Coverage

1. This Chapter applies to standards-related measures of a Party, other than those covered by Section B of Chapter Seven (Sanitary and Phytosanitary Measures), that may, directly or indirectly, affect trade in goods or services between the Parties, and to measures of the Parties relating to such measures.
2. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies shall be governed exclusively by Chapter Ten (Government Procurement).

Article 902: Extent of Obligations

1. Article 105 (Extent of Obligations) does not apply to this Chapter.
2. Each Party shall seek, through appropriate measures, to ensure observance of Articles 904 through 908 by state or provincial governments and by non-governmental standardizing bodies in its territory.

Article 903: Affirmation of Agreement on Technical Barriers to Trade and Other Agreements

Further to Article 103 (Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the GATT Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which those Parties are party.

Article 904: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation. Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(2).

Non-Discriminatory Treatment

3. Each Party shall, in respect of its standards-related measures, accord to goods and service providers of another Party:
 - (a) national treatment in accordance with Article 301 (Market Access) or Article 1202 (Cross-Border Trade in Services); and
 - (b) treatment no less favorable than that it accords to like goods, or in like circumstances to service providers, of any other country.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade shall not be deemed to be created where:
 - (a) the demonstrable purpose of the measure is to achieve a legitimate objective; and
 - (b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Article 905: Use of International Standards

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical,

technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate.

2. A Party's standards-related measure that conforms to an international standard shall be presumed to be consistent with Article 904(3) and (4).
3. Nothing in paragraph 1 shall be construed to prevent a Party, in pursuing its legitimate objectives, from adopting, maintaining or applying any standards related measure that results in a higher level of protection than would be achieved if the measure were based on the relevant international standard.

Article 906: Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.
2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.
3. Further to Articles 902 and 905, a Party shall, on request of another Party, seek, through appropriate measures, to promote the compatibility of a specific standard or conformity assessment procedure that is maintained in its territory with the standards or conformity assessment procedures maintained in the territory of the other Party.
4. Each importing Party shall treat a technical regulation adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the importing Party's legitimate objectives.
5. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 4.
6. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of another Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good or service complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.
7. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 6, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through such means as accreditation.

Article 907: Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting an assessment, a Party may take into account, among other factors relating to a good or service:
 - (a) available scientific evidence or technical information;
 - (b) intended end uses;
 - (c) processes or production, operating, inspection, sampling or testing methods; or
 - (d) environmental conditions.
2. Where pursuant to Article 904(2) a Party establishes a level of protection that it considers appropriate and conducts an assessment of risk, it should avoid arbitrary or unjustifiable distinctions between similar goods or services in the level of protection it considers appropriate, where the distinctions:
 - (a) result in arbitrary or unjustifiable discrimination against goods or service providers of another Party;
 - (b) constitute a disguised restriction on trade between the Parties; or
 - (c) discriminate between similar goods or services for the same use under the same conditions that pose the same level of risk and provide similar benefits.
3. Where a Party conducting an assessment of risk determines that available scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information. The Party shall, within a reasonable period after information sufficient to complete the assessment of risk is presented to it, complete its assessment, review and, where appropriate, revise the provisional technical regulation in the light of that assessment.

Article 908: Conformity Assessment

1. The Parties shall, further to Article 906 and recognizing the existence of substantial differences in the structure, organization and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.
2. Recognizing that it should be to the mutual advantage of the Parties concerned and except as set out in Annex 908.2, each Party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those accorded to conformity assessment bodies in its territory.
3. Each Party shall, with respect to its conformity assessment procedures:
 - (a) not adopt or maintain any such procedure that is stricter, nor apply the procedure more strictly, than necessary to give it confidence that a good or a service conforms with an applicable technical regulation or standard, taking into account the risks that non-conformity would create;
 - (b) initiate and complete the procedure as expeditiously as possible;

- (c) in accordance with Article 904(3), undertake processing of applications in non-discriminatory order;
- (d) publish the normal processing period for each such procedure or communicate the anticipated processing period to an applicant on request;
- (e) ensure that the competent body
 - i. on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,
 - ii. transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,
 - iii. where the application is deficient, proceeds as far as practicable with the procedure where the applicant so requests, and
 - iv. informs the applicant, on request, of the status of the application and the reasons for any delay;
- (f) limit the information the applicant is required to supply to that necessary to conduct the procedure and to determine appropriate fees;
- (g) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good of another Party or for a service provided by a person of another Party
 - i. the same treatment as that for a good of the Party or a service provided by a person of the Party, and
 - ii. in any event, treatment that protects an applicant's legitimate commercial interests to the extent provided under the Party's law;
- (h) ensure that any fee it imposes for conducting the procedure is no higher for a good of another Party or a service provider of another Party than is equitable in relation to any such fee imposed for its like goods or service providers or for like goods or service providers of any other country, taking into account communication, transportation and other related costs;
- (i) ensure that the location of facilities at which a conformity assessment procedure is conducted does not cause unnecessary inconvenience to an applicant or its agent;
- (j) limit the procedure, for a good or service modified subsequent to a determination that the good or service conforms to the applicable technical regulation or standard, to that necessary to determine that the good or service continues to conform to the technical regulation or standard; and
- (k) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples does not cause unnecessary inconvenience to an applicant or its agent.

4. Each Party shall apply, with such modifications as may be necessary, the relevant provisions of paragraph 3 to its approval procedures.

5. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment activities.

6. Each Party shall give sympathetic consideration to a request by another Party to negotiate agreements for the mutual recognition of the results of that other Party's conformity assessment procedures.

Article 909: Notification, Publication, and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a technical regulation shall:
 - (a) at least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure in such a manner as to enable interested persons to become acquainted with the proposed measure, except that in the case of any such measure relating to perishable goods, each Party shall, to the greatest extent practicable, publish the notice and provide the notification at least 30 days prior to the adoption or modification of the measure, but no later than when notification is provided to domestic producers;
 - (b) identify in the notice and notification the good or service to which the measure would apply, and shall provide a brief description of the objective of, and reasons for the measure;
 - (c) provide a copy of the proposed measure to any Party or interested person that so requests, and shall, wherever possible, identify any provision that deviates in substance from relevant international standards; and
 - (d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.
2. Each Party proposing to adopt or modify a standard or any conformity assessment procedure not otherwise considered to be a technical regulation shall, where an international standard relevant to the proposed measure does not exist or such measure is not substantially the same as an international standard, and where the measure may have a significant effect on the trade of the other Parties:
 - (a) at an early appropriate stage, publish a notice and provide a notification of the type required in paragraph 1(a) and (b); and
 - (b) observe paragraph 1(c) and (d).
3. Each Party shall seek, through appropriate measures, to ensure, with respect to a technical regulation of a state or provincial government other than a local government:
 - (a) that, at an early appropriate stage, a notice and notification of the type required under paragraph 1(a) and (b) are made prior to their adoption; and
 - (b) observance of paragraph 1(c) and (d).
4. Where a Party considers it necessary to address an urgent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers, it may omit any step set out in paragraph 1 or 3, provided that on adoption of a standards-related measure it shall:

- (a) immediately provide to the other Parties a notification of the type required under paragraph 1(b), including a brief description of the urgent problem;
 - (b) provide a copy of the measure to any Party or interested person that so requests; and
 - (c) without discrimination, allow other Parties and interested persons to make comments in writing, and shall, on request, discuss the comments and take the comments and the results of the discussions into account.
5. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 4, allow a reasonable period between the publication of a standards-related measure and the date that it becomes effective to allow time for interested persons to adapt to the measure.
 6. Where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non-governmental persons from the territories of the other Parties to be present.
 7. Each Party shall notify the other Parties of the development of, amendment to, or change in the application of its standards-related measures no later than the time at which it notifies nongovernmental persons in general or the relevant sector in its territory.
 8. Each Party shall seek, through appropriate measures, to ensure the observance of paragraphs 6 and 7 by a state or provincial government, and by non-governmental standardizing bodies in its territory.
 9. Each Party shall designate by January 1, 1994 a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for that purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

Article 910: Inquiry Points

1. Each Party shall ensure that there is an inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents regarding:
 - (a) any standards-related measure proposed, adopted or maintained in its territory at the federal, state or provincial government level;
 - (b) the membership and participation of the Party, or its relevant federal, state or provincial government authorities, in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;
 - (c) the location of notices published pursuant to Article 909, or where the information can be obtained;
 - (d) the location of the inquiry points referred to in paragraph 3; and
 - (e) the Party's procedures for assessment of risk, and factors it considers in conducting the assessment and in establishing, pursuant to Article 904(2), the levels of protection that it considers appropriate.

2. Where a Party designates more than one inquiry point, it shall:
 - (a) provide to the other Parties complete and unambiguous information on the scope of responsibility of each inquiry point; and
 - (b) ensure that any inquiry addressed to an incorrect inquiry point is promptly conveyed to the correct inquiry point.
3. Each Party shall take such reasonable measures as may be available to it to ensure that there is at least one inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons and to provide relevant documents or information as to where they can be obtained regarding:
 - (a) any standard or conformity assessment procedure proposed, adopted or maintained by non-governmental standardizing bodies in its territory; and
 - (b) the membership and participation of relevant non-governmental bodies in its territory in international and regional standardizing bodies and conformity assessment systems.
4. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Chapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 911: Technical Cooperation

1. Each Party shall, on request of another Party:
 - (a) provide to that Party technical advice, information and assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes and systems;
 - (b) provide to that Party information on its technical cooperation programs regarding standards-related measures relating to specific areas of interest; and
 - (c) consult with that Party during the development of, or prior to the adoption or change in the application of, any standards-related measure.
2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Parties in their participation, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

Article 912: Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to:

- (a) communicate, publish texts, or provide particulars or copies of documents other than in an official language of the Party; or
- (b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

Article 913: Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards-Related Measures, comprising representatives of each Party.
2. The Committee's functions shall include:
 - (a) monitoring the implementation and administration of this Chapter, including the progress of the subcommittees and working groups established under paragraph 4, and the operation of the inquiry points established under Article 910;
 - (b) facilitating the process by which the Parties make compatible their standards-related measures;
 - (c) providing a forum for the Parties to consult on issues relating to standards related measures, including the provision of technical advice and recommendations under Article 914;
 - (d) enhancing cooperation on the development, application and enforcement of standards-related measures; and
 - (e) considering non-governmental, regional and multilateral developments regarding standards-related measures, including under the GATT.
3. The Committee shall:
 - (a) meet on request of any Party and, unless the Parties otherwise agree, at least once each year; and
 - (b) report annually to the Commission on the implementation of this Chapter.
4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of subcommittees or working groups, comprising representatives of each Party. Each subcommittee or working group may:
 - (a) as it considers necessary or desirable, include or consult with
 - i. representatives of non-governmental bodies, including standardizing bodies,
 - ii. scientists, and
 - iii. technical experts; and
 - (b) determine its work program, taking into account relevant international activities.
5. Further to paragraph 4, the Committee shall establish:
 - (a) the following subcommittees
 - i. Land Transportation Standards Subcommittee, in accordance with Annex 913.5.a-1,
 - ii. Telecommunications Standards Subcommittee, in accordance with Annex 913.5.a-2,
 - iii. Automotive Standards Council, in accordance with Annex 913.5.a-3, and
 - iv. Subcommittee on Labelling of Textile and Apparel Goods, in accordance with Annex 913.5.a-4; and
 - (b) such other subcommittees or working groups as it considers appropriate to address any topic, including

- i. identification and nomenclature for goods subject to standards related measures,
- ii. quality and identity standards and technical regulations,
- iii. packaging, labelling and presentation of consumer information, including languages, measurement systems, ingredients, sizes, terminology, symbols and related matters,
- iv. product approval and post-market surveillance programs,
- v. principles for the accreditation and recognition of conformity assessment bodies, procedures and systems,
- vi. development and implementation of a uniform chemical hazard classification and communication system,
- vii. enforcement programs, including training and inspections by regulatory, analytical and enforcement personnel,
- viii. promotion and implementation of good laboratory practices,
- ix. promotion and implementation of good manufacturing practices,
- x. criteria for assessment of potential environmental hazards of goods,
- xi. methodologies for assessment of risk,
- xii. guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals,
- xiii. methods by which consumer protection, including matters relating to consumer redress, can be facilitated, and
- xiv. extension of the application of this Chapter to other services.

6. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to provide for the participation in the activities of the Committee, where and as appropriate, of representatives of state or provincial governments.
7. A Party requesting technical advice, information or assistance pursuant to Article 911 shall notify the Committee which shall facilitate any such request.

Article 914: Technical Consultations

1. Where a Party requests consultations regarding the application of this Chapter to a standards-related measure, and so notifies the Committee, the Committee may facilitate the consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a subcommittee or working group, including an ad hoc subcommittee or working group, or to another forum.
2. The Committee should consider any matter referred to it under paragraph 1 as expeditiously as possible and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.
3. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 1, the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 2006 (Consultations).

4. The Parties confirm that a Party asserting that a standards-related measure of another Party is inconsistent with this Chapter shall have the burden of establishing the inconsistency.

Article 915: Definitions

1. For purposes of this Chapter:

APPROVAL PROCEDURE means any registration, notification or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed or used for a stated purpose or under stated conditions; **ASSESSMENT OF RISK** means evaluation of the potential for adverse effects; **CONFORMITY ASSESSMENT PROCEDURE** means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose, but does not mean an approval procedure; **INTERNATIONAL STANDARD** means a standards-related measure, or other guide or recommendation, adopted by an international standardizing body and made available to the public;

INTERNATIONAL STANDARDIZING BODY means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the GATT Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), Codex Alimentarius Commission, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Telecommunication Union (ITU); or any other body that the Parties designate;

LAND TRANSPORTATION SERVICE means a transportation service provided by means of motor carrier or rail;

LEGITIMATE OBJECTIVE includes an objective such as:

- (a) safety,
- (b) protection of human, animal or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and
- (c) sustainable development,

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification but does not include the protection of domestic production;

MAKE COMPATIBLE means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfill the same purpose;

SERVICES means land transportation services and telecommunications services;

STANDARD means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating

methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; STANDARDIZING BODY means a body having recognized activities in standardization;

STANDARDS-RELATED MEASURE means a standard, technical regulation or conformity assessment procedure;

TECHNICAL REGULATION means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; and

TELECOMMUNICATIONS SERVICE means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally.

2. Except as they are otherwise defined in this Agreement, other terms in this Chapter shall be interpreted in accordance with their ordinary meaning in context and in the light of the objectives of this Agreement, and where appropriate by reference to the terms presented in the sixth edition of the ISO/IEC Guide 2:1991, General Terms and Their Definitions Concerning Standardization and Related Activities.

[Again, there are subsidiary annexes, but we do not reproduce the five of them here.]

PART FOUR: GOVERNMENT PROCUREMENT

Chapter Ten: Government Procurement

SECTION A: SCOPE AND COVERAGE AND NATIONAL TREATMENT

Article 1001: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement:
 - (a) by a federal government entity set out in Annex 1001.1a-1, a government enterprise set out in Annex 1001.1a-2, or a state or provincial government entity set out in Annex 1001.1a-3 in accordance with Article 1024;
 - (b) of goods in accordance with Annex 1001.1b-1, services in accordance with Annex 1001.1b-2, or construction services in accordance with Annex 1001.1b-3; and

(c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold, calculated and adjusted according to the U.S. inflation rate as set out in Annex 1001.1c, of

- i. for federal government entities, US\$50,000 for contracts for goods, services or any combination thereof, and US\$6.5 million for contracts for construction services,
- ii. for government enterprises, US\$250,000 for contracts for goods, services or any combination thereof, and US\$8.0 million for contracts for construction services, and
- iii. for state and provincial government entities, the applicable threshold, as set out in Annex 1001.1a-3 in accordance with Article 1024.

2. Paragraph 1 is subject to:

- (a) the transitional provisions set out in Annex 1001.2a;
- (b) the General Notes set out in Annex 1001.2b; and
- (c) Annex 1001.2c, for the Parties specified therein.

3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.

5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy. Procurement does not include:

- (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or state, provincial and regional governments; and
- (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

Article 1002: Valuation of Contracts

- 1. Each Party shall ensure that its entities, in determining whether a contract is covered by this Chapter, apply paragraphs 2 through 7 in calculating the value of that contract.
- 2. The value of a contract shall be estimated as at the time of publication of a notice in accordance with Article 1010.
- 3. In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions and interest.
- 4. Further to Article 1001(4), an entity may not select a valuation method, or divide procurement requirements into separate contracts, to avoid the obligations of this Chapter.

5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
 - (a) the actual value of similar recurring contracts concluded over the prior fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
 - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.
6. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:
 - (a) in the case of a fixed term contract, where the term is 12 months or less, the total contract value, for its duration or, where the term exceeds 12 months, the total contract value, including the estimated residual value; or
 - (b) in the case of a contract for an indefinite period, the estimated monthly installment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set out in subparagraph (b).
7. Where tender documentation requires option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, including all possible optional purchases.

Article 1003: National Treatment and Non-Discrimination

1. With respect to measures covered by this Chapter, each Party shall accord to goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to:
 - (a) its own goods and suppliers; and
 - (b) goods and suppliers of another Party.
2. With respect to measures covered by this Chapter, no Party may:
 - (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
 - (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for the particular procurement are goods or services of another Party.
3. Paragraph 1 does not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges or other import regulations, including restrictions and formalities.

Article 1004: Rules of Origin

No Party may apply rules of origin to goods imported from another Party for purposes of government procurement covered by this Chapter that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which may be the Marking Rules established under Annex 311 if they become the rules of origin applied by that Party in the normal course of its trade.

Article 1005: Denial of Benefits

1. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.
2. A Party may deny to an enterprise of another Party the benefits of this Chapter if nationals of a non-Party own or control the enterprise and:
 - (a) the circumstance set out in Article 1113(1)(a) (Denial of Benefits) is met; or
 - (b) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

Article 1006: Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter trade or similar requirements.

Article 1007: Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.
2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:
 - (a) specified in terms of performance criteria rather than design or descriptive characteristics; and
 - (b) based on international standards, national technical regulations, recognized national standards, or building codes.
3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific

origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

SECTION B: TENDERING PROCEDURES

Article 1008: Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are:
 - (a) applied in a non discriminatory manner; and
 - (b) consistent with this Article and Articles 1009 through 1016.
2. In this regard, each Party shall ensure that its entities:
 - (a) do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition; and
 - (b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

Article 1009: Qualification of Suppliers

1. Further to Article 1003, no entity of a Party may, in the process of qualifying suppliers in a tendering procedure, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.
2. The qualification procedures followed by an entity shall be consistent with the following:
 - (a) conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;
 - (b) conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;
 - (c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier’s global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity;

- (d) an entity shall not misuse the process of, including the time required for, qualification in order to exclude suppliers of another Party from a suppliers' list or from being considered for a particular procurement;
- (e) an entity shall recognize as qualified suppliers those suppliers of another Party that meet the conditions for participation in a particular procurement;
- (f) an entity shall consider for a particular procurement those suppliers of another Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;
- (g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;
- (h) where, after publication of a notice in accordance with Article 1010, a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;
- (i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and
- (j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, on request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

- (a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, on request of another Party, to demonstrate that need; and
- (b) endeavor to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or false declarations.

Article 1010: Invitation to Participate

1. Except as otherwise provided in Article 1016, an entity shall publish an invitation to participate for all procurements in accordance with paragraphs 2, 3 and 5, in the appropriate publication referred to in Annex 1010.1.
2. The invitation to participate shall take the form of a notice of proposed procurement that shall contain the following information:
 - (a) a description of the nature and quantity of the goods or services to be procured, including any options for further procurement and, if possible,
 - i. an estimate of when such options may be exercised, and
 - ii. in the case of recurring contracts, an estimate of when the subsequent notices will be issued;

- (b) a statement as to whether the procedure is open or selective and whether it will involve negotiation;
 - (c) any date for starting or completion of delivery of the goods or services to be procured;
 - (d) the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, the final date for receiving the application and the language or languages in which it may be submitted;
 - (e) the address to which tenders must be submitted, the final date for receiving tenders and the language or languages in which tenders may be submitted;
 - (f) the address of the entity that will award the contract and that will provide any information necessary for obtaining specifications and other documents;
 - (g) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
 - (h) the amount and terms of payment of any sum payable for the tender documentation; and
 - (i) a statement as to whether the entity is inviting offers for purchase, lease or rental, with or without an option to buy.
3. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice of planned procurement that shall contain as much of the information referred to in paragraph 2 as is available to the entity, but that shall include, at a minimum, the following information:
- (a) a description of the subject matter of the procurement;
 - (b) the time limits set for the receipt of tenders or applications to be invited to tender;
 - (c) the address to which requests for documents relating to the procurement should be submitted;
 - (d) a statement that interested suppliers should express their interest in the procurement to the entity; and
 - (e) the identification of a contact point within the entity from which further information may be obtained.
4. An entity that uses a notice of planned procurement as an invitation to participate shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest on the basis of information provided by the entity, which shall include at least the information referred to in paragraph 2.
5. Notwithstanding paragraph 2, an entity listed in Annex 1001.1a-2 or 1001.1a-3 may use as an invitation to participate a notice regarding a qualification system. An entity that uses such a notice shall, subject to the considerations referred to Article 1015(8), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally include the information required for notices referred to in paragraph 2. Information provided to any interested supplier shall be provided in a non-discriminatory manner to all other interested suppliers.
6. In the case of selective tendering procedures, an entity that maintains a permanent list of qualified suppliers shall publish annually in the appropriate publication referred to in Annex 1010.1 a notice containing the following information:

- (a) an enumeration of any such lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;
 - (b) the conditions to be fulfilled by suppliers in view of their inscription on the lists and the methods according to which each of those conditions will be verified by the entity concerned; and
 - (c) the period of validity of the lists and the formalities for their renewal.
7. Where, after publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, an entity finds that it has become necessary to amend or reissue the notice or tender documentation, the entity shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by an entity to a supplier with respect to a particular procurement shall be given simultaneously to all other interested suppliers and sufficiently in advance so as to provide all suppliers concerned adequate time to consider the information and to respond.
8. An entity shall indicate in the notices referred to in this Article that the procurement is covered by this Chapter.

Article 1011: Selective Tendering Procedures

- 1. To ensure optimum effective competition between the suppliers of the Parties under selective tendering procedures, an entity shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Parties, consistent with the efficient operation of the procurement system.
- 2. Subject to paragraph 3, an entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making a selection, the entity shall provide for equitable opportunities for suppliers on the list.
- 3. Subject to Article 1009(2)(f), an entity shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
- 4. Where an entity does not invite or admit a supplier to tender, the entity shall, on request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 1012: Time Limits for Tendering and Delivery

- 1. An entity shall:
 - (a) in prescribing a time limit, provide adequate time to allow suppliers of another Party to prepare and submit tenders before the closing of the tendering procedures;
 - (b) in determining a time limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of

subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and

- (c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

2. Subject to paragraph 3, an entity shall provide that:

- (a) in open tendering procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of a notice in accordance with Article 1010;
- (b) in selective tendering procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of a notice in accordance with Article 1010, and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and
- (c) in selective tendering procedures involving the use of a permanent list of qualified-suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender, but where the date of initial issuance of invitations to tender does not coincide with the date of publication of a notice in accordance with Article 1010, there shall not be less than 40 days between those two dates.

3. An entity may reduce the periods referred to in paragraph 2 in accordance with the following:

- (a) where a notice referred to in Article 1010(3) or (5) has been published for a period of no less than 40 days and no more than 12 months, the 40-day limit for receipt of tenders may be reduced to no less than 24 days;
- (b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 1010(2)(a), the 40-day limit for receipt of tenders may be reduced to no less than 24 days;
- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods may be reduced to no less than 10 days from the date of publication of a notice in accordance with Article 1010; or
- (d) where an entity listed in Annex 1001.1a-2 or 1001.1a-3 is using as an invitation to participate a notice referred to in Article 1010(5), the periods may be fixed by mutual agreement between the entity and all selected suppliers but, in the absence of agreement, the entity may fix periods that shall be sufficiently long to allow for responsive bidding and in any event shall be no less than 10 days.

4. An entity shall, in establishing a delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.

Article 1013: Tender Documentation

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders,

including information required to be published in the notice referred to in Article 1010(2), except for the information required under Article 1010(2)(h). The documentation shall also include:

- (a) the address of the entity to which tenders should be submitted;
- (b) the address to which requests for supplementary information should be submitted;
- (c) the language or languages in which tenders and tendering documents may be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which tenders should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
- (f) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
- (g) a complete description of the goods or services to be procured and any other requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transportation, insurance and inspection costs, and in the case of goods or services of another Party, customs duties and other import charges, taxes and the currency of payment;
- (i) the terms of payment; and
- (j) any other terms or conditions.

2. An entity shall:

- (a) forward tender documentation on the request of a supplier that is participating in open tendering procedures or has requested to participate in selective tendering procedures, and reply promptly to any reasonable request for explanations relating thereto; and
- (b) reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Article 1014: Negotiation Disciplines

1. An entity may conduct negotiations only:

- (a) in the context of procurement in which the entity has, in a notice published in accordance with Article 1010, indicated its intent to negotiate; or
- (b) where it appears to the entity from the evaluation of the tenders that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation.

2. An entity shall use negotiations primarily to identify the strengths and weaknesses in the tenders.

3. An entity shall treat all tenders in confidence. In particular, no entity may provide to any person information intended to assist any supplier to bring its tender up to the level of any other tender.
4. No entity may, in the course of negotiations, discriminate between suppliers. In particular, an entity shall:
 - (a) carry out any elimination of suppliers in accordance with the criteria set out in the notices and tender documentation;
 - (b) provide in writing all modifications to the criteria or technical requirements to all suppliers remaining in the negotiations;
 - (c) permit all remaining suppliers to submit new or amended tenders on the basis of the modified criteria or requirements; and
 - (d) when negotiations are concluded, permit all remaining suppliers to submit final tenders in accordance with a common deadline.

Article 1015: Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:
 - (a) tenders shall normally be submitted in writing directly or by mail;
 - (b) where tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;
 - (c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;
 - (d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;
 - (e) tenders presented by telephone shall not be permitted;
 - (f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and
 - (g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be administered in a manner that would result in discrimination between suppliers.

In this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

2. No entity may penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in

exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.

3. All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on the opening of tenders. The information shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).
4. An entity shall award contracts in accordance with the following:
 - (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;
 - (b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;
 - (c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation;
 - (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and
 - (e) option clauses shall not be used in a manner that circumvents this Chapter.
5. No entity of a Party may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.
6. An entity shall:
 - (a) on request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and
 - (b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.
7. No later than 72 days after the award of a contract, an entity shall publish a notice in the appropriate publication referred to in Annex 1010.1 that shall contain the following information:
 - (a) a description of the nature and quantity of goods or services included in the contract;
 - (b) the name and address of the entity awarding the contract;
 - (c) the date of the award;
 - (d) the name and address of each winning supplier;

- (e) the value of the contract, or the highest-priced and lowest-priced tenders considered in the process of awarding the contract; and
- (f) the tendering procedure used.

8. Notwithstanding paragraphs 1 through 7, an entity may withhold certain information on the award of a contract where disclosure of the information:

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the legitimate commercial interest of a particular person; or
- (c) might prejudice fair competition between suppliers.

Article 1016: Limited Tendering Procedures

1. An entity of a Party may, in the circumstances and subject to the conditions set out in paragraph 2, use limited tendering procedures and thus derogate from Articles 1008 through 1015, provided that such limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.
2. An entity may use limited tendering procedures in the following circumstances and subject to the following conditions, as applicable:
 - (a) in the absence of tenders in response to an open or selective call for tenders, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
 - (b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;
 - (d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;
 - (e) where an entity procures a prototype or a first good or service that is developed at its request in the course of and for a particular contract for research, experiment, study or original development. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 1008

through 1015. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs;

- (f) for goods purchased on a commodity market;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;
- (h) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is
 - i. organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,
 - ii. organized with a view to awarding the design contract to the winner, and
 - iii. to be judged by an independent jury; and
- (i) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.

3. An entity shall prepare a report in writing on each contract awarded by it under paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. The entity shall retain each report. They shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

SECTION C: BID CHALLENGE

Article 1017: Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurement covered by this Chapter in accordance with the following:
 - (a) each Party shall allow suppliers to submit bid challenges concerning any aspect of the procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through the contract award;
 - (b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;

- (c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;
- (d) whether or not a supplier has attempted to resolve its complaint with the entity, or following an unsuccessful attempt at such a resolution, no Party may prevent the supplier from initiating a bid challenge or seeking any other relief;
- (e) a Party may require a supplier to notify the entity on initiation of a bid challenge;
- (f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- (g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;
- (h) on receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge;
- (i) a Party may require its reviewing authority to limit its considerations to the challenge itself;
- (j) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where the delay would be contrary to the public interest;
- (k) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question;
- (l) entities normally shall follow the recommendations of the reviewing authority;
- (m) each Party should authorize its reviewing authority, following the conclusion of a bid challenge procedure, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with this Chapter;
- (n) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and interested persons;
- (o) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and
- (p) each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-working day period described in paragraph 1(f) shall begin no earlier than the date that the notice is published or the tender documentation is made available.

SECTION D: GENERAL PROVISIONS

Article 1018: Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.
2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures:
 - (a) necessary to protect public morals, order or safety;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to protect intellectual property; or
 - (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

Article 1019: Provision of Information

1. Further to Article 1802(1) (Publication), each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex 1010.1.
2. Each Party shall:
 - (a) on request, explain to another Party its government procurement procedures;
 - (b) ensure that its entities, on request from a supplier, promptly explain their procurement practices and procedures; and
 - (c) designate by January 1, 1994 one or more contact points to
 - i. facilitate communication between the Parties, and
 - ii. answer all reasonable inquiries from other Parties to provide relevant information on matters covered by this Chapter.
3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party except after consultation with and agreement of the Party that provided the information.

4. On request, each Party shall provide to another Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.
5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.
6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.
7. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect statistics and provide to the other Parties an annual report in accordance with the following reporting requirements, unless the Parties otherwise agree:
 - (a) statistics on the estimated value of all contracts awarded, both above and below the applicable threshold values, broken down by entities;
 - (b) statistics on the number and total value of contracts above the applicable threshold values, broken down by entities, by categories of goods and services established in accordance with classification systems developed under this Chapter and by the country of origin of the goods and services procured;
 - (c) statistics on the number and total value of contracts awarded under each use of the procedures referred to in Article 1016, broken down by entities, by categories of goods and services, and by country of origin of the goods and services procured; and
 - (d) statistics on the number and total value of contracts awarded under derogations to this Chapter set out in Annexes 1001.2a and 1001.2b, broken down by entities.
8. Each Party may organize by state or province any portion of a report referred to in paragraph 7 that pertains to entities listed in Annex 1001.1a-3.

Article 1020: Technical Cooperation

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for the suppliers of all Parties.
2. Each Party shall provide to the other Parties and to the suppliers of such Parties, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system, and access on a non discriminatory basis to any program it conducts.
3. The training and orientation programs referred to in paragraph 2 include:
 - (a) training of government personnel directly involved in government procurement procedures;
 - (b) training of suppliers interested in pursuing government procurement opportunities;
 - (c) an explanation and description of specific elements of each Party's government procurement system, such as its bid challenge mechanism; and

(d) information about government procurement market opportunities.

4. Each Party shall establish by January 1, 1994 at least one contact point to provide information on the training and orientation programs referred to in this Article.

Article 1021: Joint Programs for Small Business

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business, comprising representatives of the Parties. The Committee shall meet as mutually agreed, but not less than once each year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.
2. The Committee shall work to facilitate the following activities of the Parties:
 - (a) identification of available opportunities for the training of small business personnel in government procurement procedures;
 - (b) identification of small businesses interested in becoming trading partners of small businesses in the territory of another Party;
 - (c) development of data bases of small businesses in the territory of each Party for use by entities of another Party wishing to procure from small businesses;
 - (d) consultations regarding the factors that each Party uses in establishing its criteria for eligibility for any small business programs; and
 - (e) activities to address any related matter.

Article 1022: Rectifications or Modifications

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.
2. Where a Party modifies its coverage under this Chapter, the Party shall:
 - (a) notify the other Parties and its Section of the Secretariat of the modification;
 - (b) reflect the change in the appropriate Annex; and
 - (c) propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Schedules to Annexes 1001.1a-1 through 1001.1b-3 and Annexes 1001.2a and 1001.2b, provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and another Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.
4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In such cases, compensation need not be

proposed. No Party may undertake such reorganizations or programs to avoid the obligations of this Chapter.

5. Where a Party considers that:

- (a) an adjustment proposed under paragraph (2)(c) is not adequate to maintain a comparable level of mutually agreed coverage, or
- (b) a rectification or a minor amendment under paragraph 3 or a reorganization under paragraph 4 does not meet the applicable requirements of those paragraphs and should require compensation,

the Party may have recourse to dispute settlement procedures under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Article 1023: Divestiture of Entities

1. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter.
2. If, on the public offering of shares of an entity listed in Annex 1001.1a-2, or through other methods, the entity is no longer subject to federal government control, the Party may delete the entity from its Schedule to that Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Parties and its Section of the Secretariat.
3. Where a Party objects to the withdrawal on the grounds that the entity remains subject to federal government control, that Party may have recourse to dispute settlement procedures under Chapter Twenty.

Article 1024: Further Negotiations

1. The Parties shall commence further negotiations no later than December 31, 1998, with a view to the further liberalization of their respective government procurement markets.
2. In such negotiations, the Parties shall review all aspects of their government procurement practices for purposes of:
 - (a) assessing the functioning of their government procurement systems;
 - (b) seeking to expand the coverage of this Chapter, including by adding
 - i. other government enterprises, and
 - ii. procurement otherwise subject to legislated or administrative exceptions; and
 - (c) reviewing thresholds.
3. Prior to such review, the Parties shall endeavor to consult with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises.
4. If the negotiations pursuant to Article IX:6(b) of the GATT Agreement on Government Procurement ("the Code") are completed prior to such review, the Parties shall:

- (a) immediately begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises; and
- (b) increase the obligations and coverage of this Chapter to a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations, to commence no later than one year after the date of entry into force of this Agreement, on the subject of electronic transmission.

Article 1025: Definitions

For purposes of this Chapter:

CONSTRUCTION SERVICES CONTRACT means a contract for the realization by any means of civil or building works listed in Appendix 1001.1b-3-A;

ENTITY means an entity listed in Annex 1001.1a-1, 1001.1a-2 or 1001.1a-3;

GOODS OF ANOTHER PARTY means goods originating in the territory of another Party, determined in accordance with Article 1004;

INTERNATIONAL STANDARD means “international standard”, as defined in Article 915 (Standards-Related Measures—Definitions);

LIMITED TENDERING PROCEDURES means procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 1016;

LOCALLY ESTABLISHED SUPPLIER includes a natural person resident in the territory of the Party, an enterprise organized or established under the Party’s law, and a branch or representative office located in the Party’s territory;

OPEN TENDERING PROCEDURES means those procedures under which all interested suppliers may submit a tender;

SELECTIVE TENDERING PROCEDURES means procedures under which, consistent with Article 1011, those suppliers invited to do so by an entity may submit a tender;

SERVICES includes construction services contracts, unless otherwise specified;

STANDARD means “standard”, as defined in Article 915;

SUPPLIER means a person that has provided or could provide goods or services in response to an entity’s call for tender;

TECHNICAL REGULATION means “technical regulation”, as defined in Article 915;

TECHNICAL SPECIFICATION means a specification which lays down goods characteristics or their related processes and production methods, or services characteristics or their related operating methods, including the applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method; and

TENDERING PROCEDURES means open tendering procedures, selective tendering procedures and limited tendering procedures.

[Eleven annexes appended to this Chapter are not reproduced here.]

PART FIVE: INVESTMENT, SERVICES AND RELATED MATTERS

Chapter Eleven: Investment

SECTION A: INVESTMENT

Article 1101: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of another Party;
 - (b) investments of investors of another Party in the territory of the Party; and
 - (c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.
2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).
4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
 - (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
 - (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most Favored Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non Party in its territory:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

- (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
 - (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.
2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.
 3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
 - (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
 4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
 5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.
 6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:
 - (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
 - (b) necessary to protect human, animal or plant life or health; or
 - (c) necessary for the conservation of living or non-living exhaustible natural resources.

Article 1107: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of another Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 1108: Reservations and Exceptions

1. Articles 1102, 1103, 1106 and 1107 do not apply to:
 - (a) any existing non conforming measure that is maintained by
 - i. a Party at the federal level, as set out in its Schedule to Annex I or III,
 - ii. a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or
 - iii. a local government;
 - (b) the continuation or prompt renewal of any non conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106 and 1107.
2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or province, not including a local government.
3. Articles 1102, 1103, 1106 and 1107 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.
4. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
5. Articles 1102 and 1103 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 1703 (Intellectual Property—National Treatment) as specifically provided for in that Article.
6. Article 1103 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex IV.
7. Articles 1102, 1103 and 1107 do not apply to:
 - (a) procurement by a Party or a state enterprise; or
 - (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
8. The provisions of:

- (a) Article 1106(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) Article 1106(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a state enterprise; and
- (c) Article 1106(3)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 1109: Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:
 - (a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
 - (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
 - (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
 - (d) payments made pursuant to Article 1110; and
 - (e) payments arising under Section B.
2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.
3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.
4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non discriminatory and good faith application of its laws relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities;
 - (c) criminal or penal offenses;
 - (d) reports of transfers of currency or other monetary instruments; or
 - (e) ensuring the satisfaction of judgments in adjudicatory proceedings.
5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.
6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except:
 - (a) for a public purpose;
 - (b) on a non discriminatory basis;
 - (c) in accordance with due process of law and Article 1105(1); and
 - (d) on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.
4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.
5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.
6. On payment, compensation shall be freely transferable as provided in Article 1109.
7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).
8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

Article 1111: Special Formalities and Information Requirements

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and investments of investors of another Party pursuant to this Chapter.

2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 1112: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 1113: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non Party own or control the enterprise and the denying Party:
 - (a) does not maintain diplomatic relations with the non-Party; or
 - (b) adopts or maintains measures with respect to the non Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 1114: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.
2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that

another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

SECTION B: SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF ANOTHER PARTY

Article 1115: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:
 - (a) Section A or Article 1503(2) (State Enterprises), or
 - (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:
 - (a) Section A or Article 1503(2) (State Enterprises), or
 - (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the

Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first

acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.
4. An investment may not make a claim under this Section.

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the issues and the factual basis for the claim; and
- (d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:
 - (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
 - (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
 - (c) the UNCITRAL Arbitration Rules.
2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:
 - (a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and
 - (b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:
 - (a) consent to arbitration in accordance with the procedures set out in this Agreement; and
 - (b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.
4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:
 - (a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and
 - (b) Annex 1120.1(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;
 - (b) Article II of the New York Convention for an agreement in writing; and
 - (c) Article I of the Inter-American Convention for an agreement.

Article 1123: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

**Article 1124: Constitution of a Tribunal When a Party Fails to
Appoint an Arbitrator or the Disputing Parties Are Unable to Agree
on a Presiding Arbitrator**

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
2. If a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.
3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties.
4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 45 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 1120 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.

Article 1125: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 1124(3) or on a ground other than nationality:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and
- (c) a disputing investor referred to in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 1126: Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.
2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
 - (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.
3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:
 - (a) the name of the disputing Party or disputing investors against which the order is sought;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.
5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 1124(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary-General shall appoint the two other members from the roster referred to in Article 1124(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of a Party of the disputing investors.
6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 1116 or 1117 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:
 - (a) the name and address of the disputing investor;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.
9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 1120 be stayed, unless the latter Tribunal has already adjourned its proceedings.
10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:
 - (a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;
 - (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or
 - (c) a notice of arbitration given under the UNCITRAL Arbitration Rules.
11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:
 - (a) within 15 days of receipt of the request, in the case of a request made by a disputing investor;
 - (b) within 15 days of making the request, in the case of a request made by the disputing Party.
12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within 15 days of receipt of the request.
13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

Article 1127: Notice

A disputing Party shall deliver to the other Parties:

- (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and
- (b) copies of all pleadings filed in the arbitration.

Article 1128: Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 1126: Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party a copy of:
 - (a) the evidence that has been tendered to the Tribunal; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 1127: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 1128: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 1129: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.
2. Further to Article 1131(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 1130: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 1131: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective,

including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.

Article 1132: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest;
 - (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs in accordance with the applicable arbitration rules.
2. Subject to paragraph 1, where a claim is made under Article 1117(1):
 - (a) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. A Tribunal may not order a Party to pay punitive damages.

Article 22: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention
 - i. 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
 - ii. revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules
 - i. three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
 - ii. a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.
5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 2008 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:
 - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) a recommendation that the Party abide by or comply with the final award.
6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.
7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 23: General

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
 - (a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;
 - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or
 - (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 1137.2.

Receipts Under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex 1137.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article 1138: Exclusions

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article 2102 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of another Party, or its investment, pursuant to that Article shall not be subject to such provisions.
2. The dispute settlement provisions of this Section and of Chapter Twenty shall not apply to the matters referred to in Annex 1138.2.

SECTION C: DEFINITIONS

Article 1139: Definitions

For purposes of this Chapter:

DISPUTING INVESTOR means an investor that makes a claim under Section B;

DISPUTING PARTIES means the disputing investor and the disputing Party;

DISPUTING PARTY [disputing party] means the disputing investor or the disputing Party;

DISPUTING PARTY [disputing Party] means a Party against which a claim is made under Section B;

ENTERPRISE means an “enterprise” as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

ENTERPRISE OF A PARTY means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.

EQUITY OR DEBT SECURITIES includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

G7 CURRENCY means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID CONVENTION means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

INTER-AMERICAN CONVENTION means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

INVESTMENT means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

i. where the enterprise is an affiliate of the investor, or

ii. where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise

i. where the enterprise is an affiliate of the investor, or

ii. where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

i. contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

ii. contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from

i. commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

ii. the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

INVESTMENT OF AN INVESTOR OF A PARTY means an investment owned or controlled directly or indirectly by an investor of such Party;

INVESTOR OF A PARTY means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

INVESTOR OF A NON-PARTY means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

NEW YORK CONVENTION means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

SECRETARY-GENERAL means the Secretary-General of ICSID;

TRANSFERS means transfers and international payments;

TRIBUNAL means an arbitration tribunal established under Article 1120 or 1126; and

UNCITRAL ARBITRATION RULES means the arbitration rules of the United Nations Commission on International Trade Law [UNCITRAL], approved by the United Nations General Assembly on December 15, 1976.

[Four annexes are omitted here.]

Chapter Twelve: Cross-Border Trade in Services

Article 1201: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:
 - (a) the production, distribution, marketing, sale and delivery of a service;
 - (b) the purchase or use of, or payment for, a service;
 - (c) the access to and use of distribution and transportation systems in connection with the provision of a service;
 - (d) the presence in its territory of a service provider of another Party; and
 - (e) the provision of a bond or other form of financial security as a condition for the provision of a service.
2. This Chapter does not apply to:
 - (a) financial services, as defined in Chapter Fourteen (Financial 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, and
 - ii. specialty air services;
 - (c) procurement by a Party or a state enterprise; or
 - (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
3. Nothing in this Chapter shall be construed to:
 - (a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or
 - (b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1202: National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

Article 1203: Most-Favored-Nation Treatment

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

Article 1204: Standard of Treatment

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

Article 1205: Local Presence

No Party may require a service provider of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 1206: Reservations

1. Articles 1202, 1203 and 1205 do not apply to:
 - (a) any existing non-conforming measure that is maintained by
 - i. a Party at the federal level, as set out in its Schedule to Annex I,
 - ii. a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or
 - iii. a local government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1202, 1203 and 1205.
2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or province, not including a local government.

3. Articles 1202, 1203 and 1205 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 1207: Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the federal level.
2. Within one year of the date of entry into force of this Agreement, each Party shall set out in its Schedule to Annex V any quantitative restriction maintained by a state or province, not including a local government.
3. Each Party shall notify the other Parties of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.
4. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs 1 through 3.

Article 1208: Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 1209: Procedures

The Commission shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule
 - i. state or provincial measures in accordance with Article 1206(2),
 - ii. quantitative restrictions in accordance with Article 1207(2) and (3),
 - iii. commitments pursuant to Article 1208, and
 - iv. amendments of measures referred to in Article 1206(1)(c); and
- (b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 1210: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:
 - (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;

- (b) is not more burdensome than necessary to ensure the quality of a service; and
 - (c) does not constitute a disguised restriction on the cross-border provision of a service.
2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of another Party or of a non-Party:
 - (a) nothing in Article 1203 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of another Party; and
 - (b) the Party shall afford another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.
 3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of another Party. Where a Party does not comply with this obligation with respect to a particular sector, any other Party may, in the same sector and for such period as the non-complying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:
 - (a) any such requirement at the federal level that it eliminated pursuant to this Article; or
 - (b) on notification to the non-complying Party, any such requirement at the state or provincial level existing on the date of entry into force of this Agreement.
 4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.
 5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 1211: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:
 - (a) the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and
 - i. the denying Party does not maintain diplomatic relations with the non-Party, or
 - ii. the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or

(b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

Article 1212: Sectoral Annex

Annex 1212 applies to specific sectors.

Article 1213: Definitions

1. For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.
2. For purposes of this Chapter:

CROSS-BORDER PROVISION OF A SERVICE or CROSS-BORDER TRADE IN SERVICES means the provision of a service:

- (a) from the territory of a Party into the territory of another
- (b) in the territory of a Party by a person of that Party to a person of another Party, or
- (c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 1139 (Investment—Definitions), in that territory;

ENTERPRISE means an “enterprise” as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

ENTERPRISE OF A PARTY means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

PROFESSIONAL SERVICES means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by tradespersons or vessel and aircraft crew members;

QUANTITATIVE RESTRICTION means a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or
- (b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

SERVICE PROVIDER OF A PARTY means a person of a Party that seeks to provide or provides a service; and

SPECIALTY AIR SERVICES means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.

[Two annexes (one in three sections, with an appendix) are not reproduced at this point.]

Chapter Thirteen: Telecommunications

Article 1301: Scope and Coverage

1. This Chapter applies to:

- (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;
- (b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and
- (c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
- (b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or
- (d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

**Article 1302: Access to and Use of Public Telecommunications
Transport Networks and Services**

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.
2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
 - (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;
 - (c) perform switching, signalling and processing functions; and
 - (d) use operating protocols of their choice.
3. Each Party shall ensure that:
 - (a) the pricing of public telecommunications transport services reflects economic costs directly related to providing the services; and
 - (b) private leased circuits are available on a flat-rate pricing basis.

Nothing in this paragraph shall be construed to prevent cross subsidization between public telecommunications transport services.
4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.
5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:
 - (a) ensure the security and confidentiality of messages; or
 - (b) protect the privacy of subscribers to public telecommunications transport networks or services.
6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:
 - (a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
 - (b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:
- (a) a restriction on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and
 - (d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.
8. For purposes of this Article, “non-discriminatory” means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article 1303: Conditions for the Provision of Enhanced or Value Added Services

1. Each Party shall ensure that:
 - (a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value added services is transparent and nondiscriminatory, and that applications filed thereunder are processed expeditiously; and
 - (b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant’s terminal or other equipment with the Party’s applicable standards or technical regulations.
2. No Party may require a person providing enhanced or value added services to:
 - (a) provide those services to the public generally;
 - (b) cost justify its rates;
 - (c) file a tariff;
 - (d) interconnect its networks with any particular customer or network; or
 - (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.
3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
 - (a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
 - (b) a monopoly to which Article 1305 applies.

Article 1304: Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:
 - (a) prevent technical damage to public telecommunications transport networks;
 - (b) prevent technical interference with, or degradation of, public telecommunications transport services;
 - (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
 - (d) prevent billing equipment malfunction; or
 - (e) ensure users' safety and access to public telecommunications transport networks or services.
2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.
3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.
4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.
5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:
 - (a) ensure that its conformity assessment procedures are transparent and non discriminatory and that applications filed thereunder are processed expeditiously;
 - (b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
 - (c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.
6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.
7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913.5.a-2.

Article 1305: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.
2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:
 - (a) accounting requirements;
 - (b) requirements for structural separation;
 - (c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or
 - (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 1306: Transparency

Further to Article 1802 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with the networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the networks; and
- (e) notification, permit, registration or licensing requirements.

Article 1307: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 1308: Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the

International Telecommunication Union and the International Organization for Standardization.

Article 1309: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.
2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Article 1310: Definitions

For purposes of this Chapter:

AUTHORIZED EQUIPMENT means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

CONFORMITY ASSESSMENT PROCEDURE means "conformity assessment procedure" as defined in Article 915 (Standards-Related Measures—Definitions), and includes the procedures referred to in Annex 1310;

ENHANCED OR VALUE ADDED SERVICES means those telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) provide a customer with additional, different or restructured information; or
- (c) involve customer interaction with stored information;

FLAT-RATE PRICING BASIS means pricing on the basis of a fixed charge per period of time regardless of the amount of use;

INTRACORPORATE COMMUNICATIONS means telecommunications through which an enterprise communicates:

- (a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or
- (b) on a non commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

NETWORK TERMINATION POINT means the final demarcation of the public telecommunications transport network at the customer's premises;

PRIVATE NETWORK means a telecommunications transport network that is used exclusively for intracorporate communications;

PROTOCOL means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORK means public telecommunications infrastructure that permits telecommunications between defined network termination points;

PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS OR SERVICES means public telecommunications transport networks or public telecommunications transport services;

PUBLIC TELECOMMUNICATIONS TRANSPORT SERVICE means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

STANDARDS-RELATED MEASURE means a "standards-related measure" as defined in Article 915;

TELECOMMUNICATIONS means the transmission and reception of signals by any electromagnetic means; and

TERMINAL EQUIPMENT means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

[The single annex here is omitted.]

Chapter Fourteen: Financial Services

Article 1401: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) financial institutions of another Party;
 - (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (c) cross-border trade in financial services.
2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.
3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:
 - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
 - (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1401.4 applies to the Parties specified in that Annex.

Article 1402: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such selfregulatory organization.

Article 1403: Establishment of Financial Institutions

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.
2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:
 - (a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;
 - (b) expand geographically in that Party's territory; and
 - (c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.
3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.
4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:
 - (a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or
 - (b) impose terms and conditions on establishment that are consistent with Article 1405.
5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

Article 1404: Cross-Border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of another Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Party's Schedule to Annex VII.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of another Party located in the territory of that other Party or of another Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.
4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

Article 1405: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.
2. Each Party shall accord to financial institutions of another Party and to investments of investors of another Party in financial institutions treatment no less favorable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.
4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure of any state or province:
 - (a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province, treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and
 - (b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a financial institution, its financial institution

or its investment in a financial institution, in like circumstances. For greater certainty, in the case of an investor of another Party with investments in financial institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:

- (c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states or provinces, in like circumstances; and
- (d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

- 5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.
- 6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.
- 7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

Article 1406: Most-Favored-Nation Treatment

- 1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions and cross-border financial service providers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any other Party or of a non-Party, in like circumstances.
- 2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
 - (a) accorded unilaterally;
 - (b) achieved through harmonization or other means; or
 - (c) based upon an agreement or arrangement with the other Party or non-Party.
- 3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 1407: New Financial Services and Data Processing

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.
2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.

Article 1408: Senior Management and Boards of Directors

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 1409: Reservations and Specific Commitments

1. Articles 1403 through 1408 do not apply to:
 - (a) any existing non-conforming measure that is maintained by
 - i. a Party at the federal level, as set out in Section A of its Schedule to Annex VII,
 - ii. a state or province, for the period ending on the date specified in Annex 1409.1 for that state or province, and thereafter as described by the Party in Section A of its Schedule to Annex VII in accordance with Annex 1409.1, or
 - iii. a local government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1403 through 1408.
2. Articles 1403 through 1408 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VII.

3. Section C of each Party's Schedule to Annex VII sets out certain specific commitments by that Party.
4. Where a Party has set out a reservation to Article 1102, 1103, 1202 or 1203 in its Schedule to Annex I, II, III or IV, the reservation shall be deemed to constitute a reservation to Article 1405 or 1406, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

Article 1410: Exceptions

1. Nothing in this Part 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 institution or cross-border financial service provider;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and
 - (c) ensuring the integrity and stability of a Party's financial system.
2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 1106 (Performance Requirements) with respect to measures covered by Chapter Eleven (Investment) or Article 1109 (Transfers).
3. Article 1405 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 1401 (3)(a).
4. Notwithstanding Article 1109(1), (2) and (3), as incorporated into this Chapter, and without limiting the applicability of Article 1109(4), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial services provider to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

Article 1411: Transparency

1. In lieu of Article 1802(2) (Publication), each Party shall, to the extent practicable, 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 official publication;
 - (b) in other written form; or
 - (c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.
3. On the request of an applicant, the regulatory 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. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of another Party relating to the provision of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
5. Nothing in this Chapter requires a Party to furnish or allow access to:
 - (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or
 - (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.
6. Each Party shall maintain or establish one or more inquiry points no later than 180 days after the date of entry into force of this Agreement, to respond in writing as soon as practicable, to all reasonable inquiries from interested persons regarding measures of general application covered by this Chapter.

Article 1412: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1412.1.
2. Subject to Article 2001(2)(d) (Free Trade Commission), the Committee shall:
 - (a) supervise the implementation of this Chapter and its further elaboration;
 - (b) consider issues regarding financial services that are referred to it by a Party; and
 - (c) participate in the dispute settlement procedures in accordance with Article 1415.
3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

Article 1413: Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give

sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 1412.1.
3. A Party may request that regulatory authorities of another Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service providers in the requesting Party's territory.
4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.
5. Where a Party requires information for supervisory purposes concerning a financial institution in another Party's territory or a cross-border financial service provider in another Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.
6. Annex 1413.6 shall apply to further consultations and arrangements.

Article 1414: Dispute Settlement

1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.
3. Financial services roster members shall:
 - (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
 - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
 - (c) meet the qualifications set out in Article 2009(2)(b) and (c) (Roster).
4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall apply, except that:
 - (a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
 - (b) in any other case,
 - i. each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and
 - ii. if the Party complained against invokes Article 1410, the chair of the panel shall meet the qualifications set out in paragraph 3.
5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1415: Investment Disputes in Financial Services

1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment—Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.
2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.
3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.
4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article 1416: Definitions

For purposes of this Chapter:

CROSS-BORDER FINANCIAL SERVICE PROVIDER OF A PARTY means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides financial services through the cross-border provision of such services;

CROSS-BORDER PROVISION OF A FINANCIAL SERVICE or CROSS-BORDER TRADE IN FINANCIAL SERVICES means the provision of a financial service:

- (a) from the territory of a Party into the territory of another Party,
- (b) in the territory of a Party by a person of that Party to a person of another Party, or
- (c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment in that territory;

FINANCIAL INSTITUTION means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

FINANCIAL INSTITUTION OF ANOTHER PARTY means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

FINANCIAL SERVICE means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

FINANCIAL SERVICE PROVIDER OF A PARTY means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

INVESTMENT means “investment” as defined in Article 1139 (Investment—Definitions), except that, with respect to “loans” and “debt securities” referred to in that Article:

- (a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

- (c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and
- (d) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 1139;

INVESTOR OF A PARTY means a Party or state enterprise thereof, or a person of that Party, that seeks to make, makes, or has made an investment;

NEW FINANCIAL SERVICE means a financial service not provided in the Party’s territory that is provided within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

PERSON OF A PARTY means “person of a Party” as defined in Chapter Two (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

PUBLIC ENTITY means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

SELF-REGULATORY ORGANIZATION means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

[Six annexes to this Chapter are not reproduced here.]

Chapter Fifteen: Competition Policy, Monopolies and State Enterprises**Article 1501: Competition Law**

1. Each Party shall adopt or maintain measures to proscribe anticompetitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.
2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.
3. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 1502: Monopolies and State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of another Party, the Party shall:
 - (a) wherever possible, provide prior written notification to the other Party of the designation; and
 - (b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 2004 (Nullification and Impairment).
3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:
 - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;
 - (b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;
 - (c) provides non-discriminatory treatment to investments of investors, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.
- 4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.
- 5. For purposes of this Article “maintain” means designate prior to the date of entry into force of this Agreement and existing on January 1, 1994.

Article 1503: State Enterprises

- 1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.
- 2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party’s obligations under Chapters Eleven (Investment) and Fourteen (Financial Services) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.
- 3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party’s territory of investors of another Party.

Article 1504: Working Group on Trade and Competition

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years of the date of entry into force of this Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

Article 1505: Definitions

For purposes of this Chapter:

DESIGNATE means to establish, designate or authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

DISCRIMINATORY PROVISION includes treating:

- (a) a parent, a subsidiary or other enterprise with common ownership more favorably than an unaffiliated enterprise, or

(b) one class of enterprises more favorably than another, in like circumstances;

GOVERNMENT MONOPOLY means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly;

IN ACCORDANCE WITH COMMERCIAL CONSIDERATIONS means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

MARKET means the geographic and commercial market for a good or service;

MONOPOLY means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

NON-DISCRIMINATORY TREATMENT means the better of national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement; and

STATE ENTERPRISE means, except as set out in Annex 1505, an enterprise owned, or controlled through ownership interests, by a Party.

[The single annex is not reproduced here.]

Chapter Sixteen: Temporary Entry For Business Persons

Article 1601: General Principles

Further to Article 102 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 1603: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1603.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
 - (b) the employment of any person who is involved in such dispute.
3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
- (a) inform in writing the business person of the reasons for the refusal; and
 - (b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.
4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 1604: Provision of Information

1. Further to Article 1802 (Publication), each Party shall:
- (a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to this Chapter; and
 - (b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Parties to become acquainted with them.
2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 1605: Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.
2. The Working Group shall meet at least once each year to consider:
- (a) the implementation and administration of this Chapter;
 - (b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
 - (c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 1603; and
 - (d) proposed modifications of or additions to this Chapter.

Article 1606: Dispute Settlement

1. A Party may not initiate proceedings under Article 2007 (Commission—Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:
 - (a) the matter involves a pattern of practice; and
 - (b) the business person has exhausted the available administrative remedies regarding the particular matter.
2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 1607: Relation to Other Chapters

Except for this Chapter, Chapters One (Objectives), Two (General Definitions), Twenty (Institutional Arrangements and Dispute Settlement Procedures) and Twenty-Two (Final Provisions) and Articles 1801 (Contact Points), 1802 (Publication), 1803 (Notification and Provision of Information) and 1804 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Article 1608: Definitions

For purposes of this Chapter:

BUSINESS PERSON means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities; CITIZEN means “citizen” as defined in Annex 1608 for the Parties

specified in that Annex;

EXISTING means “existing” as defined in Annex 1608 for the Parties specified in that Annex; and

TEMPORARY ENTRY means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

[Three annexes to this Chapter are not reproduced here.]

PART SIX: INTELLECTUAL PROPERTY

Chapter Seventeen: Intellectual Property

Article 1701: Nature and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring

that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:
 - (a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);
 - (b) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);
 - (c) the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and
 - (d) the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention). If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.
3. Annex 1701.3 applies to the Parties specified in that Annex.

Article 1702: More Extensive Protection

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 1703: National Treatment

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.
2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:
 - (a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and
 - (b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect 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 1704: Control of Abusive or Anticompetitive Practices or Conditions

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705: Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

- (a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and
- (b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:
 - (a) the importation into the Party's territory of copies of the work made without the right holder's authorization;
 - (b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;
 - (c) the communication of a work to the public; and
 - (d) the commercial rental of the original or a copy of a computer program.

Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

- (a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and
 - (b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.
- 4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.
 - 5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
 - 6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.
 - 7. Annex 1705.7 applies to the Parties specified in that Annex.

Article 1706: Sound Recordings

- 1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:
 - (a) the direct or indirect reproduction of the sound recording;
 - (b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;
 - (c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and
 - (d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

- 2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.
- 3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

Article 1707: Protection of Encrypted Program Carrying Satellite Signals

Within one year from the date of entry into force of this Agreement, each Party shall make it:

- (a) a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
- (b) a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).

Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.

Article 1708: Trademarks

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.
2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.
3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.
4. Each Party shall provide a system for the registration of trademarks, which shall include:
 - (a) examination of applications;
 - (b) notice to be given to an applicant of the reasons for the refusal to register a trademark;
 - (c) a reasonable opportunity for the applicant to respond to the notice;
 - (d) publication of each trademark either before or promptly after it is registered; and
 - (e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.
6. Article 6bis of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.
7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.
8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non use only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.
9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.
10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.
11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.
12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.
13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.
14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

Article 1709: Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that

such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than microorganisms; and
- (c) essentially biological processes for the production of plants or animals, other than non biological and microbiological processes for such production.

Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

- (a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine, and
- (b) as of July 1, 1991, for any other subject matter,
that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

- (a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and
- (b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.
8. A Party may revoke a patent only when:
 - (a) grounds exist that would have justified a refusal to grant the patent; or
 - (b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.
9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.
10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:
 - (a) authorization of such use shall be considered on its individual merits;
 - (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
 - (c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
 - (d) such use shall be non-exclusive;
 - (e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;
 - (f) any such use shall be authorized predominantly for the supply of the Party's domestic market;
 - (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;
 - (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
 - (i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;
 - (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;

- (k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;
- (l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:

- (a) the product obtained by the patented process is new; or
- (b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 1710: Layout Designs of Semiconductor Integrated Circuits

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989.
2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:
 - (a) a protected layout design;
 - (b) an integrated circuit in which a protected layout design is incorporated; or
 - (c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.
3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article

incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.
5. No Party may permit the compulsory licensing of layout designs of integrated circuits.
6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:
 - (a) filing of the application for registration; or
 - (b) the first commercial exploitation of the layout design, wherever in the world it occurs.
7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.
8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.
9. Annex 1710.9 applies to the Parties specified in that Annex.

Article 1711: Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:
 - (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;
 - (b) the information has actual or potential commercial value because it is secret; and
 - (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.
2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.
3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.
4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.
6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.
7. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

Article 1712: Geographical Indications

1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:
 - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;
 - (b) any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.
2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.
3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.
4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that

geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:

- (a) for at least 10 years, or
- (b) in good faith,

before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:

- (a) before the date of application of these provisions in that Party, or
- (b) before the geographical indication is protected in its Party of origin,

no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.
7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.
8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.
9. Nothing in this Chapter shall be construed to require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

Article 1713: Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:
- (a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and
 - (b) such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not

- unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.
3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
 4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.
 5. Each Party shall provide a term of protection for industrial designs of at least 10 years.

Article 1714: Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.
2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time limits or unwarranted delays.
3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:
 - (a) preferably be in writing and preferably state the reasons on which the decisions are based;
 - (b) be made available at least to the parties in a proceeding without undue delay; and
 - (c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.
4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.
5. Nothing in this Article or Articles 1715 through 1718 shall be construed to require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.
6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right provided in this Chapter. Each Party shall provide that:
 - (a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;
 - (b) parties in a proceeding are allowed to be represented by independent legal counsel;
 - (c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;
 - (d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and
 - (e) the procedures include a means to identify and protect confidential information.
2. Each Party shall provide that its judicial authorities shall have the authority:
 - (a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;
 - (b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;
 - (c) to order a party in a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;
 - (d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;
 - (e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and
 - (f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.
4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.
5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:
 - (a) goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and
 - (b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

6. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.
7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.
8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1716: Provisional Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and
- (b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

- (a) the applicant is the right holder;
- (b) the applicant's right is being infringed or such infringement is imminent; and
- (c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its judicial authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:

- (a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;
- (b) a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

- (a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or
- (b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 1717: Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.
2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.
3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 1718: Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.
2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:
 - (a) to satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is *prima facie* an infringement of its intellectual property right; and
 - (b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.
5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.
6. Each Party shall provide that its customs administration shall release goods from suspension if, within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension, the customs administration has not been informed that:
 - (a) a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or
 - (b) a competent authority has taken provisional measures prolonging the suspension, provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.
7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.
8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 1716(6) shall apply.
9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.

10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate the right holder's claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.
11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:
 - (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
 - (b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 6 through 8; and
 - (c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.
12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.
13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.
14. Annex 1718.14 applies to the Parties specified in that Annex.

Article 1719: Cooperation and Technical Assistance

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include the training of personnel.
2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties by January 1, 1994 of contact points in its federal government and shall exchange information concerning trade in infringing goods.

Article 1720: Protection of Existing Subject Matter

1. Except as required under Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.
2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question and that is protected in a Party on such date, or that meets or subsequently meets the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.
3. Except as required under Article 1705(7), and notwithstanding the first sentence of paragraph 2, no Party may be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.
4. In respect of any acts relating to specific objects embodying protected subject matter that become infringing under the terms of laws in conformity with this Agreement, and that were begun or in respect of which a significant investment was made, before the date of entry into force of this Agreement for that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.
5. No Party shall be obliged to apply Article 1705(2)(d) or 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.
6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.
7. In the case of intellectual property rights for which protection is conditional on registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under this Agreement. Such amendments shall not include new matter.

Article 1721: Definitions

1. For purposes of this Chapter:
CONFIDENTIAL INFORMATION includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law.

2. For purposes of this Agreement:

ENCRYPTED PROGRAM CARRYING SATELLITE SIGNAL means a program carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception, by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;

GEOGRAPHICAL INDICATION means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

IN A MANNER CONTRARY TO HONEST COMMERCIAL PRACTICES means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

INTELLECTUAL PROPERTY RIGHTS refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

NATIONALS OF ANOTHER PARTY means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1 (Country-Specific Definitions);

PUBLIC includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

SECONDARY USES OF SOUND RECORDINGS means the use directly for broadcasting or for any other public communication of a sound recording.

[Four short annexes are omitted here.]

PART SEVEN: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter Eighteen: Publication, Notification and Administration of Laws

Article 1801: Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 1802: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 1803: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 1804: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1802 to particular persons, goods or services of another Party in specific cases that:

- (a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a

proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

Article 1805: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:
 - (a) a reasonable opportunity to support or defend their respective positions; and
 - (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 1806: Definitions

For purposes of this Chapter:

ADMINISTRATIVE RULING OF GENERAL APPLICATION

means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasijudicial proceeding that applies to a particular person, good or service of another Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Chapter Nineteen: Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

Article 1901: General Provisions

1. Article 1904 applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or

countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For purposes of Articles 1903 and 1904, panels shall be established in accordance with Annex 1901.2.
3. Except for Article 2203 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.
2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:
 - (a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or from the Parties to this Agreement;
 - (b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;
 - (c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and
 - (d) such amendment, as applicable to that other Party, is not inconsistent with
 - i. the General Agreement on Tariffs and Trade (GATT), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Code) or the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), or any successor agreement to which all the original signatories to this Agreement are party, or
 - ii. the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.

Article 1903: Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

- (a) the amendment does not conform to Article 1902(2)(d)(i) or (ii); or
- (b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to Article 1902(2)(d)(i) or (ii).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

- (a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;
- (b) if corrective legislation is not enacted within nine months from the end of the 90-day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may

- i. take comparable legislative or equivalent executive action, or
- ii. terminate this Agreement with regard to the amending Party on 60-day written notice to that Party.

Article 1904: Review of Final Antidumping and Countervailing Duty Determinations

- 1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.
- 2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Agreement.
- 3. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.
5. An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.
6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.
7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.
8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.
9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.
10. This Agreement shall not affect:
 - (a) the judicial review procedures of any Party, or
 - (b) cases appealed under those procedures,with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set out in this Article. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.
12. This Article shall not apply where:
 - (a) neither involved Party seeks panel review of a final determination;
 - (b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or
 - (c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.
13. Where, within a reasonable time after the panel decision is issued, an involved Party alleges that:
 - (a)
 - i. a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,
 - ii. the panel seriously departed from a fundamental rule of procedure, or
 - iii. the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and
 - (b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.
14. To implement this Article, the Parties shall adopt rules of procedure by January 1, 1994. Such rules shall be based, where appropriate, on judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre and post hearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:
 - (a) 30 days for the filing of the complaint;
 - (b) 30 days for designation or certification of the administrative record and its filing with the panel;
 - (c) 60 days for the complainant to file its brief;

- (d) 60 days for the respondent to file its brief;
- (e) 15 days for the filing of reply briefs;
- (f) 15 to 30 days for the panel to convene and hear oral argument; and
- (g) 90 days for the panel to issue its written decision.

15. In order to achieve the objectives of this Article, the Parties shall amend their antidumping and countervailing duty statutes and regulations with respect to antidumping or countervailing duty proceedings involving goods of the other Parties, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing, each Party shall:

- (a) amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;
- (b) amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;
- (c) amend its statutes or regulations to ensure that
 - i. domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and
 - ii. as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and
- (d) make the further amendments set out in its Schedule to Annex 1904.15.

Article 1905: Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:
 - (a) has prevented the establishment of a panel requested by the complaining Party;
 - (b) has prevented a panel requested by the complaining Party from rendering a final decision;
 - (c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or
 - (d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent

investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

the Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations, or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.
3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with this Chapter.
4. The roster for special committees shall be that established under Annex 1904.13.
5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.
6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.6.
7. Where the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days thereafter and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.
8. If, within the 60-day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems with respect to which the committee has made an affirmative finding, the complaining Party may suspend:
 - (a) the operation of Article 1904 with respect to the Party complained against; or
 - (b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

If the complaining Party decides to take action under this paragraph, it shall do so within 30 days after the end of the 60-day consultation period.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904 within 30 days after the suspension of the operation of Article 1904 by the complaining Party. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.
10. On the request of the Party complained against, the special committee shall reconvene to determine whether:
 - (a) the suspension of benefits by the complaining Party pursuant to paragraph 8(b) is manifestly excessive; or

- (b) the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraph 8 or 9 shall be terminated.

- 11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's report:

- (a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed

- i. in the case of review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1, and in no case more than 150 days prior to an affirmative finding by the special committee, or
- ii. in the case of review of any final determination of the Party complained against requested by the complaining Party, on the request of the complaining Party; and

- (b) the time set out in Article 1904(4) or Annex 1904.13 for requesting panel or committee review shall not run unless and until resumed in accordance with paragraph 12.

- 12. If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11 (a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

- (a) in the case of review of any final determination of the complaining Party requested by the Party complained against, on the request of either Party, or of a party to the panel review under Article 1904; or
- (b) in the case of review of any final determination of the Party complained against requested by the complaining Party, on the request of the complaining Party, or of a person of the complaining Party that is a party to the panel review under Article 1904.

If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), any running of time suspended under paragraph 11(b) shall resume.

If the suspension of the operation of Article 1904 does not become effective, panel or committee review stayed under paragraph 11 (a), and any running of time suspended under paragraph 11(b), shall resume.

- 13. If the complaining Party suspends the application to the Party complained against of such benefits under the Agreement as may be appropriate under the circumstances

pursuant to paragraph 8(b), panel or committee review stayed under paragraph 11 (a), and any running of time suspended under paragraph 11(b), shall resume.

14. Each Party shall provide in its domestic law that, in the event of an affirmative finding by the special committee, the time for requesting judicial review of a final antidumping or countervailing duty determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution under paragraph 7, or have suspended the operation of Article 1904 or the application of other benefits under paragraph 8.

Article 1906: Prospective Application

This Chapter shall apply only prospectively to:

- (a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and
- (b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

Article 1907: Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.
2. The Parties further agree to consult on:
 - (a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and
 - (b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.
3. The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of antidumping and countervailing duty laws to:
 - (a) publish notice of initiation of investigations in the importing Party's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the goods at issue;
 - (b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;
 - (c) provide explicit written notice and instructions as to the information required from interested parties and reasonable time to respond to requests for information;
 - (d) accord reasonable access to information, noting that in this context

- i. "reasonable access" means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set out in subparagraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review, and
 - ii. "access to information" means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic law of a Party; any privileges arising under the domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;
- (e) provide an opportunity for interested parties to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;
 - (f) protect confidential (business proprietary) information received by the competent investigating authority to ensure that there is no disclosure except to representatives determined by the competent investigating authority to be qualified;
 - (g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of ex parte meetings that may be required to be kept;
 - (h) provide disclosure of relevant information, including an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of the subsidy, on which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties;
 - (i) provide a statement of reasons concerning the final determination of dumping or subsidization; and
 - (j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in subparagraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 1904 in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

Article 1908: Special Secretariat Provisions

1. Each Party shall establish a division within its section of the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter, including the work of panels or committees that may be convened pursuant to this Chapter.
2. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to this Chapter. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in that Party's Section office. Such Secretary shall, on request, provide to the Secretary for the Section of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the Secretary for the Section of any Party that is not an involved Party.
3. Each Secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.
4. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall forward to the Secretary for the Section of the other involved Party copies of all official letters, documents or other papers received or filed with that Party's Section office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 2. The Secretary for the Section of an involved Party shall provide on request to the Secretary for the Section of a Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

Article 1909: Code of Conduct

The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904 and 1905.

Article 1910: Miscellaneous

On request of another Party, the competent investigating authority of a Party shall provide to the other Party copies of all public information submitted to it for purposes of an antidumping or countervailing duty investigation with respect to goods of that other Party.

Article 1911: Definitions

For purposes of this Chapter:

ADMINISTRATIVE RECORD means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

- (a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;
- (b) a copy of the final determination of the competent investigating authority, including reasons for the determination;
- (c) all transcripts or records of conferences or hearings before the competent investigating authority; and
- (d) all notices published in the official journal of the importing Party in connection with the administrative proceeding;

ANTIDUMPING STATUTE as referred to in Articles 1902 and 1903 means “antidumping statute” of a Party as defined in Annex 1911;

COMPETENT INVESTIGATING AUTHORITY means “competent investigating authority” of a Party as defined in Annex 1911;

COUNTERVAILING DUTY STATUTE as referred to in Articles 1902 and 1903 means “countervailing duty statute” of a Party as defined in Annex 1911;

DOMESTIC LAW for purposes of Article 1905(1) means a Party’s constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

FINAL DETERMINATION means “final determination” of a Party as defined in Annex 1911;

FOREIGN INTERESTS includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

GENERAL LEGAL PRINCIPLES includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

GOODS OF A PARTY [goods of a Party] means domestic products as these are understood in the General Agreement on Tariffs and Trade;

IMPORTING PARTY [importing Party] means the Party that issued the final determination;

INTERESTED PARTIES [interested parties] includes foreign interests;

INVOLVED PARTY [involved Party] means:

- (a) the importing Party; or
- (b) a Party whose goods are the subject of the final determination;

REMAND means a referral back for a determination not inconsistent with the panel or committee decision; and

STANDARD OF REVIEW means the “standard of review” for each Party as defined in Annex 1911.

[Six annexes are not reproduced here.]

Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures

SECTION A: INSTITUTIONS

Article 2001: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.
2. The Commission shall:
 - (a) supervise the implementation of this Agreement;
 - (b) oversee its further elaboration;
 - (c) resolve disputes that may arise regarding its interpretation or application;
 - (d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and
 - (e) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
 - (a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;
 - (b) seek the advice of non governmental persons or groups; and
 - (c) take such other action in the exercise of its functions as the Parties may agree.
4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise agree.
5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

Article 2002: The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.
2. Each Party shall:
 - (a) establish a permanent office of its Section;
 - (b) be responsible for
 - i. the operation and costs of its Section, and
 - ii. the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;
 - (c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and
 - (d) notify the Commission of the location of its Section's office.
3. The Secretariat shall:
 - (a) provide assistance to the Commission;

(b) provide administrative assistance to

- i. panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908, and
- ii. panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

(c) as the Commission may direct

- i. support the work of other committees and groups established under this Agreement, and
- ii. otherwise facilitate the operation of this Agreement.

SECTION B: DISPUTE SETTLEMENT

Article 2003: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 2004: Recourse to Dispute Settlement Procedures

Except for the matters covered in Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.

Article 2005: GATT Dispute Settlement

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.
2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.
4. In any dispute referred to in paragraph 1 that arises under Section B of Chapter Seven (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures):
 - (a) concerning a measure adopted or maintained by a Party to protect its human, animal or plant life or health, or to protect its environment, and
 - (b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.
5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007.
6. Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.
7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXIII: 2 of the General Agreement on Tariffs and Trade 1947, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code.

CONSULTATIONS

Article 2006: Consultations

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.
3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the

matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.

4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.
5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:
 - (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
 - (c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.

INITIATION OF PROCEDURES

Article 2007: Commission—Good Offices, Conciliation and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:
 - (a) 30 days of delivery of a request for consultations,
 - (b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter,
 - (c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or
 - (d) such other period as they may agree,any such Party may request in writing a meeting of the Commission.
2. A Party may also request in writing a meeting of the Commission where:
 - (a) it has initiated dispute settlement proceedings under the GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Article 2005(5) for recourse to dispute settlement procedures under this Chapter; or
 - (b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 723 (Sanitary and Phytosanitary Measures—Technical Consultations) and Article 914 (Standards-Related Measures—Technical Consultations).
3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Parties and to its Section of the Secretariat.
4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly.
5. The Commission may:
 - (a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

6. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

PANEL PROCEEDINGS

Article 2008: Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 2007(4), and the matter has not been resolved within:
 - (a) 30 days thereafter,
 - (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2007(6), or
 - (c) such other period as the consulting Parties may agree, any consulting Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.
2. On delivery of the request, the Commission shall establish an arbitral panel.
3. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and its Section of the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.
4. If a third Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:
 - (a) a dispute settlement procedure under this Agreement, or
 - (b) a dispute settlement proceeding in the GATT on grounds that are substantially equivalent to those available to that Party under this Agreement, regarding the same matter in the absence of a significant change in economic or commercial circumstances.
5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 2009: Roster

1. The Parties shall establish by January 1, 1994 and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.
2. Roster members shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
 - (b) be independent of, and not be affiliated with or take instructions from, any Party; and
 - (c) comply with a code of conduct to be established by the Commission.

Article 2010: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 2009(2).
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

Article 2011: Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:
 - (a) The panel shall comprise five members.
 - (b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
 - (c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
 - (d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.
2. Where there are more than two disputing Parties, the following procedures shall apply:
 - (a) The panel shall comprise five members.
 - (b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.
 - (c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of

whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.
4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 2012: Rules of Procedure

1. The Commission shall establish by January 1, 1994 Model Rules of Procedure, in accordance with the following principles:
 - (a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and
 - (b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.
2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.
3. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

“To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 2016(2).”
4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.
5. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 2004, the terms of reference shall so indicate.

Article 2013: Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to its Section of the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

Article 2014: Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 2015: Scientific Review Boards

1. On request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions as such Parties may agree.
2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article 1012(1).
3. The participating Parties shall be provided:
 - (a) advance notice of, and an opportunity to provide comments to the panel on, the proposed factual issues to be referred to the board; and
 - (b) a copy of the board's report and an opportunity to provide comments on the report to the panel.
4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.

Article 2016: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 1014 or 1015.
2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 1012(1) may provide, present to the disputing Parties an initial report containing:
 - (a) findings of fact, including any findings pursuant to a request under Article 1012(5);
 - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004, or any other determination requested in the terms of reference; and
 - (c) its recommendations, if any, for resolution of the dispute.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
4. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:
 - (a) request the views of any participating Party;
 - (b) reconsider its report; and
 - (c) make any further examination that it considers appropriate.

Article 2017: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.
3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.
4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

IMPLEMENTATION OF PANEL REPORTS

Article 2018: Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.
2. Wherever possible, the resolution shall be non implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

Article 2019: Non-Implementation—Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.
2. In considering what benefits to suspend pursuant to paragraph 1:
 - (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to

be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 2004; and

(b) 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.

3. On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.
4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

SECTION C: DOMESTIC PROCEEDINGS AND PRIVATE COMMERCIAL DISPUTE SETTLEMENT

Article 2020: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2021: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.

Article 2022: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and

Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

[The three annexes attached here are not reproduced.]

PART EIGHT: OTHER PROVISIONS

Chapter Twenty-One: Exceptions

Article 2101: General Exceptions

1. For purposes of:

- (a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and
- (b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:
 - (a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,
 - (b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,
 - (c) Chapter Twelve (Cross-Border Trade in Services), and
 - (d) Chapter Thirteen (Telecommunications), shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection.

Article 2102: National Security

1. Subject to Articles 607 (Energy—National Security Measures) and 1018 (Government Procurement—Exceptions), nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
 - (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
 - i. relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - ii. taken in time of war or other emergency in international relations, or
 - iii. relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
 - (c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2103: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Notwithstanding paragraph 2:
 - (a) Article 301 (Market Access—National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT; and
 - (b) Article 314 (Market Access—Export Taxes) and Article 604 (Energy—Export Taxes) shall apply to taxation measures.
4. Subject to paragraph 2:
 - (a) Article 1202 (Cross-Border Trade in Services—National Treatment) and Article 1405 (Financial Services—National Treatment) shall apply to taxation measures on income, capital gains or the taxable capital of corporations, and to those taxes listed in paragraph 1 of Annex 2103.4, that relate to the purchase or consumption of particular services, and
 - (b) Articles 1102 and 1103 (Investment—National Treatment and Most-Favored-Nation Treatment), Articles 1202 and 1203 (Cross-Border Trade in Services—National Treatment and Most-Favored-Nation Treatment) and Articles 1405 and 1406 (Financial Services—National Treatment and Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital

gains or on the taxable capital of corporations, taxes on estates, inheritances, gifts and generation-skipping transfers and those taxes listed in paragraph 1 of Annex 2103.4, except that nothing in those Articles shall apply

- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention,
- (d) to a non-conforming provision of any existing taxation measure,
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure,
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles,
- (g) to any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex 2004, or
- (h) to the measures listed in paragraph 2 of Annex 2103.4.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 1106(3), (4) and (5) (Performance Requirements) shall apply to taxation measures.
6. Article 1110 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 1116 (Claim by an Investor of a Party on its Own Behalf) or 1117 (Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 2103.6 at the time that it gives notice under Article 1119 (Notice of Intent to Submit a Claim to Arbitration). If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 1120 (Submission of a Claim to Arbitration).

Article 2104: Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with paragraphs 2 through 4 and are:
 - (a) consistent with paragraph 5 to the extent they are imposed on transfers other than cross-border trade in financial services; or
 - (b) consistent with paragraphs 6 and 7 to the extent they are imposed on cross-border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:
 - (a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;
 - (b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and
 - (c) adopt or maintain economic policies consistent with such consultations.
3. A measure adopted or maintained under this Article shall:
 - (a) avoid unnecessary damage to the commercial, economic or financial interests of another Party;
 - (b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;
 - (c) be temporary and be phased out progressively as the balance of payments situation improves;
 - (d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and
 - (e) be applied on a national treatment or most favored nation treatment basis, whichever is better.
4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

Restrictions on Transfers Other Than Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers, other than on cross-border trade in financial services:
 - (a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;
 - (b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);
 - (c) where imposed on transfers covered by Article 1109 (Investment—Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and
 - (d) may not take the form of tariff surcharges, quotas, licenses or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on cross-border trade in financial services:
- (a) may not impose more than one measure on any transfer, unless consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF; and
 - (b) shall promptly notify and consult with the other Parties to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements
 - i. the nature and extent of the balance of payments difficulties of the Party,
 - ii. the external economic and trading environment of the Party, and
 - iii. alternative corrective measures that may be available.
7. In consultations under paragraph 6(b), the Parties shall:
- (a) consider if measures adopted under this Article comply with paragraph 3, in particular paragraph 3(c); and
 - (b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments situation of the Party adopting the measures.

Article 2105: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 2106: Cultural Industries

Annex 2106 applies to the Parties specified in that Annex with respect to cultural industries.

Article 2107: Definitions

For purposes of this Chapter:

CULTURAL INDUSTRIES means persons engaged in any of the following activities:

- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine readable form; or

- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

INTERNATIONAL CAPITAL TRANSACTIONS means “international capital transactions” as defined under the Articles of Agreement of the IMF;

IMF means the International Monetary Fund;

PAYMENTS FOR CURRENT INTERNATIONAL TRANSACTIONS means “payments for current international transactions” as defined under the Articles of Agreement of the IMF;

TAX CONVENTION means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

TAXES and TAXATION MEASURES do not include:

- (a) a “customs duty” as defined in Article 318 (Market Access—Definitions); or
- (b) the measures listed in exceptions (b), (c), (d) and (e) of that definition; and

TRANSFERS means international transactions and related international transfers and payments.

[Three short annexes are omitted at this point.]

Chapter Twenty-Two: Final Provisions

Article 2201: Annexes

The Annexes to this Agreement constitute an integral part of this Agreement [but are not reproduced in this text].

Article 2202: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 2203: Entry into Force

This Agreement shall enter into force on January 1, 1994, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 2204: Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

Article 2205: Withdrawal

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

Article 2206: Authentic Texts

The English, French and Spanish texts of this Agreement are equally authentic.

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

[The signatures and seven annexes to the treaty as a whole (numbered I to VII), on Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters, are not reproduced here.]

CHAPTER FIFTY-SIX

Treaty Establishing the Common Market for Eastern and Southern Africa

Kampala, 5 November 1993

INTRODUCTION

This is another example from the wave of regional economic-bloc formation. The Common Market for Eastern and Southern Africa (COMESA) replaced the Preferential Trade Area (PTA) of the same region, which had had initial, phenomenal success. However, the tragedy of Iddi Amin's rule in Uganda and inadequate imagination by some of the political figures in the region constrained its growth. COMESA, however, retained many of the institutions established under the PTA. These include the Clearing House, the Leather and Leather Products Institute, the Re-insurance Company, the Metallurgical Technology Centre, the Association of Commercial Banks, the Centre for Commercial Arbitration and the Eastern and Southern African Trade and Development Bank. COMESA is supposed to be a bold and ambitious effort at regularizing and promoting regional economic development. It does not specifically aim to integrate the member states politically, although it has institutions such as a court and a secretariat, as well as enforcement mechanisms. The highest institution of COMESA is the Authority of Heads of State and Government. It is responsible for the general policy direction of the organization. The Council of Ministers is next in the hierarchy, meeting twice a year. It monitors and reviews the activities of the Common Market and, in particular, the financial operations. Unlike in similar organizations, there is no prescription as to the portfolio or expertise of the Ministers that serve on the Council. There is also the Inter-governmental Committee, technical committees in specific fields and the Secretariat, which is headed by a Secretary-General. The nature of these bodies and the functions conferred on them by the Treaty show that political integration is not seriously on the agenda. That is further buttressed by article 6(a), which states, as a fundamental principle, the 'equality and inter-dependence of the Member States'.

Article 5(2), however, requires member states to enact legislation 'to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory'. This provision, taken together with those on the Court of the Common Market, might suggest that the COMESA Treaty has its sights set beyond economic co-operation and development. Nevertheless, article 5(2) is subject to legislation enacted in each

country member. Moreover, article 23, on the general jurisdiction of the Court, refers to matters within the ambit of the Treaty. If the Treaty is an economic one, its terms would have to be interpreted as such.

The main objective of COMESA is economic development and economic integration. This is to be done by promoting joint development in all fields of economic activity, by harmonization of macro-economic policy, by creating a conducive environment for regional and foreign investment, and by co-operating in research, technology and security matters. Detailed attention was paid to specific subjects. In regard to the Common Market, member states are to establish a customs union. As at 2000, COMESA established the first African Free Trade Area (FTA), and the common external tariff that would be a key feature of the customs union was meant to become effective in 2004. However, not all COMESA members joined the FTA and there were serious disputes about the common external tariff. According to the founding Treaty, the COMESA members were also to establish a common bond guarantee scheme and rules of origin and rules on re-export of goods from third countries in the Common Market, as well as to simplify and harmonize trade documentation. There are similar provisions on transport and communications, industry, energy, agriculture, finance and monetary policy, and economic and social policy.

COMESA is one of the more progressive regional economic associations in Africa. It is elaborate and, if its goals are achieved, the region and indeed the continent would be transformed. The difficulty is the funding needed to make the ideals of COMESA effective. Peace and stability in the region are also important. The language itself of the Treaty is, in many parts, general, exhortatory, with emphasis on co-operation.

The Treaty was signed in November 1993, but came into effect at a formal ratification in Lilongwe (Malawi) on 8 December 1994. COMESA officially came into being on that date, succeeding (and fulfilling) the PTA. Mozambique and Lesotho withdrew from participation in COMESA in 1998, as did Tanzania in 2000, leaving the organization with 20 active members.

TREATY ESTABLISHING THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA*

PREAMBLE

The President of the Republic of Angola;
 The President of the Republic of Burundi;
 The President of the Federal Islamic Republic of the Comoros;
 The President of the Democratic Republic of Congo;
 The President of the Republic of Djibouti;
 The President of the State of Eritrea;
 The President of the Transitional Government of Ethiopia;
 The President of the Republic of Kenya;
 His Majesty the King of the Kingdom of Lesotho;
 The President of the Republic of Madagascar;
 The Life President of the Republic of Malawi;

The Prime Minister of the Republic of Mauritius;
The President of the Republic of Mozambique;
The President of the Republic of Namibia;
The President of the Republic of Rwanda;
The President of the Republic of Seychelles;
The President of the Somali Democratic Republic;
The President of the Republic of Sudan;
His Majesty the King of the Kingdom of Swaziland;
The President of the United Republic of Tanzania;
The President of the Republic of Uganda;
The President of the Republic of Zambia;
and The President of the Republic of Zimbabwe;

CONSCIOUS of the overriding need to establish a Common Market for Eastern and Southern Africa;

BEARING IN MIND the establishment among their respective States of the Preferential Trade Area for Eastern and Southern African States as a first step towards the creation of a Common Market and eventually of an Economic Community for Eastern and Southern Africa;

RECALLING the provisions of Article 29 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States to the effect that steps should be taken to develop the Preferential Trade Area established by that Treaty into a Common Market and eventually into an Economic Community;

RECALLING further the decision of the Authority of the Preferential Trade Area for Eastern and Southern African States taken at its Tenth Meeting held in Lusaka, Zambia from 30–31 January, 1992 to transform the Preferential Trade Area for Eastern and Southern African States into a Common Market for Eastern and Southern Africa;

INSPIRED by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of Article 28(1) of the said Treaty;

DETERMINED to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation through the implementation of common policies and programmes aimed at achieving sustainable growth and development;

RESOLVED to strengthen and achieve convergence of their economies through the attainment of a full market integration;

HAVING REGARD to the principles of international law governing relations between sovereign states, and the principles of liberty, fundamental freedoms and the rule of law; and In view of further steps which have to be taken in order to advance the economic integration of Eastern and Southern Africa;

HEREBY AGREE AS FOLLOWS:

CHAPTER ONE: THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

Article 1 Establishment and Membership

1. THE HIGH CONTRACTING PARTIES HEREBY establish among themselves a Common Market for Eastern and Southern Africa herein referred to as the Common Market.
2. Membership of the Common Market shall be open to the following Member States of the Preferential Trade Area for Eastern and Southern African States:
 - The Republic of Angola;
 - The Republic of Burundi;
 - The Federal Islamic Republic of the Comoros;
 - The Democratic Republic of Congo;
 - The Republic of Djibouti;
 - The State of Eritrea;
 - The Transitional Government of Ethiopia;
 - The Republic of Kenya;
 - The Kingdom of Lesotho;
 - The Republic of Madagascar;
 - The Republic of Malawi;
 - The Republic of Mauritius;
 - The Republic of Mozambique;
 - The Republic of Namibia;
 - The Republic of Rwanda;
 - The Republic of Seychelles;
 - The Somali Democratic Republic;
 - The Republic of Sudan;
 - The Kingdom of Swaziland;
 - The United Republic of Tanzania;
 - The Republic of Uganda;
 - The Republic of Zambia; and
 - The Republic of Zimbabwe.
3. The following States of Eastern and Southern Africa may become Member States of the Common Market upon fulfilling such conditions as may be determined by the Authority:
 - The Republic of Botswana; and
 - The Republic of South Africa (Post-Apartheid).

CHAPTER TWO: INTERPRETATION

Article 2 Interpretation

In this Treaty unless the context otherwise requires:

“ARSO” means the African Regional Organisation for Standardisation;

“African regional standards” means technical standards issued by ARSO;

“Authority” means the Authority of the Common Market established by Article 7 of this Treaty;

“Bureau of the Council” means the Chairman, Vice-Chairman and Rapporteur elected in accordance with the Rules of Procedure of the meetings of the Council;

“business community” means all commercial and industrial organisations or unions of national chambers of commerce and industry representing agriculture, tourism, commerce, finance, manufacturing, mining and transport, however styled and established under the laws of a Member State;

“CGIAR” means the Consultative Group on International Agricultural Research;

“C.I.F.” means Cost Insurance and Freight;

“Clearing House” means the Clearing House established by Article 1 of the Charter on the Establishment of the Clearing House;

“CMA” means Common Monetary Area of Southern Africa;

“Common Market” means the Common Market for Eastern and Southern Africa established by Article 1 of this Treaty;

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of COMESA (<http://www.comesa.int/>).

“common external tariff” means an identical rate of tariff imposed on goods imported from third countries;

“common carrier” includes a person or an undertaking engaged in the business of providing services for the carriage of goods and passengers for hire or reward and operating as such under the laws of a Member State;

“company or firm” means a company or a firm constituted or registered under the laws of a Member State regulating companies and firms;

“consensus” means general agreement, characterised by the absence of objection to issues secured by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments;

“Consultative Committee” means the Consultative Committee of the business community and other interest groups established by Article 7 of this Treaty;

“co-operation” includes the undertaking by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Common Market as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Common Market;

“Council” means the Council of Ministers of the Common Market established by Article 7 of this Treaty;

“countervailing duty” means a specific duty levied for the purposes of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any product;

“Court” means the Court of Justice of the Common Market established by Article 7 of this Treaty;

“customs clearing agent” means a person, who provides services at a fee, in connection with documentation and customs clearance of import and export of goods consignments;

“customs duties” means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

“customs offence” means any breach or attempted breach of customs law;

“customs law” means all the statutory provisions applied by the customs administration on the importation, exportation, transit or movement of goods whether or not they involve the collection of duties or taxes (or security thereof), on the enforcement of prohibitions, restrictions or control or exchange control regulations or on any other customs regime;

“customs territory” means the territory in which the customs law of a Member State applies in full;

“designated airline” means an airline which has been designated and authorized to operate the agreed services by a competent authority of a Member State;

“economically depressed area” means any area so designated by the Council;

“export duties” means customs duties and other charges of equivalent effect levied on goods by reason of their exportation;

“F.O.B.” means Free On Board;

“free zone” means a part of the territory of a Member State where any goods introduced into that State are considered, in so far as import duties are concerned, as being outside its customs territory and are not subject to the usual customs control;

“freight forwarder” means a person engaged at a fee, either as an agent for other transport operators or on his own account in the management of transport services and related documentation;

“GNP” means Gross National Product;

“goods declaration” means a statement made in the form prescribed by the customs administration by which the persons concerned furnish the particulars which the customs administration requires to be declared for purposes of the application of the relevant customs procedure;

“goods in transit” means goods being conveyed between two Member States or between a Member State and a third country and passing through another Member State or Member States and, “transit” shall be construed accordingly;

“IAEA” means the International Atomic Energy Agency;

“import duties” means customs duties and other charges of equivalent effect levied on goods by reason of their importation;

“importing State” means a Member State from which goods imported into that State are subsequently re-exported to another Member State;

“Intergovernmental Committee” means the Intergovernmental Committee of Experts established by Article 7 of this Treaty;

“international standards” means standards that are adopted by international standardising or standards organisations and made available to the public;

“least developed country” means any Member State so designated by the Authority;

“Member State” means a Member State of the Common Market;

“monetary authority” means a Central Bank or any other institution authorised by a Member State to issue currency within its territory;

“most favoured nation treatment” means any advantage, favour, privilege or immunity granted by any Member State to any product originating in or destined for any third country and shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other Member States;

“multimodal transport” means the transport of goods and services from one point to another by two or more modes of transport on the basis of a single contract issued by the person organising such services and while such person assumes responsibility for the execution of the whole operation;

“multimodal transport facilities” include items such as heavy lift swinging devices, twin deck cranes, gantry crane, elevators, large carriers, mechanized storage, low loaders, access facilities, lowprofile straddle carriers, mobile cranes, container gantry cranes, side loaders, heavy duty forklifts, heavy duty tractors, heavy duty trailers, portable ramps, flat wagons (flats) for containers, low tare special user wagons and trucks for containers, pallets and web-slings for pre-slung cargoes for different commodities;

“multinational industrial enterprise” means an industrial enterprise registered in two or more Member States and which is owned by a person or persons resident in a Member State;

“national standards bodies” means all national institutions whose main concern is with standardisation or quality assurance at the national level in the Member States;

“national standards” means standards that are adopted by national standards bodies and made available to the public;

“other charges of equivalent effect” means any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees and similar charges commensurate with the cost of services rendered;

“person” means a natural or legal person;

“Preferential Trade Area” means the Preferential Trade Area for Eastern and Southern African States (hereinafter referred to as PTA) established by Article 1 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States;

“receiving State” means a Member State into which re-exports consigned from another Member State are imported for domestic use in that State;

“re-exports” means goods which are imported and kept under bonded warehouse for re-exportation from the importing state to the receiving state;

“region” means the geographical area covered by the Common Market;

“SACU” means the Southern African Customs Union;

“Secretariat” means the Secretariat of the Common Market established by Article 7 of this Treaty;

“Secretary-General” means the Secretary-General of the Common Market provided for by Article 17 of this Treaty;

“services” means services provided for remuneration and are governed by the provisions relating to freedom of movement of goods, capital and persons;

“shipping agent” means a local representative of a shipping company;

“Technical Committee” means any of the technical committees established by Article 7 of this Treaty;

“telecommunications” means any form of transmission, emission or reception signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electro magnetic systems;

“telecommunications administrations” means the government designated organisations and recognised private operating agencies accepted by the Member States and offering telecommunication services;

“temporary admission” means customs procedures under which certain goods brought within a customs territory are exempted from payment of import duties and are free of import prohibition and restrictions on condition that they are, within a specified period re-exported from the Member State into which they were imported;

“third country” means any country other than a Member State;

“trade facilitation” means the co-ordination and rationalization of trade procedures and documents relating to the movement of goods from their place of origin to their destination;

“trade procedures” means activities related to the collection, presentation, processing and dissemination of data and information concerning all activities constituting international trade;

“transport operations” means the provision of services for the carrying of goods and passengers for hire or reward and all matters incidental to or connected therewith;

“Treaty” means the Treaty Establishing the Common Market for Eastern and Southern Africa;

“UNCED” means United Nations Conference on Environment and Development;

“UNEP” means United Nations Environmental Programme;

“UNESCO” means the United Nations Educational, Scientific and Cultural Organisation;

“UNIDO” means the United Nations Industrial Development Organisation;

“unique situation of LNS countries” means the unique situation of Lesotho, Namibia and Swaziland arising from their membership of SACU, and CMA; and

“valid travel document” means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Member State of which he is a citizen and shall also include laissez passer issued by the Common Market to its officials.

CHAPTER THREE: AIMS AND OBJECTIVES

Article 3 Aims and Objectives of the Common Market

The aims and objectives of the Common Market shall be:

- (a) to attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;
- (b) to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its Member States;

- (c) to co-operate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;
- (d) to co-operate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region;
- (e) to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
- (f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community.

Article 4 Specific Undertakings

In order to promote the achievement of the aims and objectives of the Common Market as set out in Article 3 of this Treaty and in accordance with the relevant provisions of this Treaty, the Member States shall:

1. In the field of trade liberalisation and customs co-operation:

- (a) establish a customs union, abolish all non-tariff barriers to trade among themselves; establish a common external tariff; co-operate in customs procedures and activities;
- (b) adopt a common customs bond guarantee scheme;
- (c) simplify and harmonize their trade documents and procedures;
- (d) establish conditions regulating the re-export of goods from third countries within the Common Market;
- (e) establish rules of origin with respect to products originating in the Member States; and
- (f) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

2. In the field of transport and communications:

- (a) foster such co-operation among themselves as would facilitate the production of goods and facilitate trade in goods and services and the movement of persons;
- (b) make regulations for facilitating transit trade within the Common Market; and
- (c) adopt a Third Party Motor Vehicle Insurance Scheme.

3. In the field of industry and energy:

- (a) eliminate rigidities in the structures of production and manufacturing so as to provide goods and services that are of high quality and are competitive in the Common Market;
- (b) provide an appropriate enabling environment for the participation of the private sector in economic development and co-operation within the Common Market;
- (c) co-operate in the field of industrial development;

- (d) adopt common standards, measurements systems and quality assurance practices in respect of goods produced and traded within the Common Market; and
- (e) provide an enabling stable and secure investment climate.

4. In the field of monetary affairs and finance:

- (a) co-operate in monetary and financial matters and gradually establish convertibility of their currencies and a payments union as a basis for the eventual establishment of a monetary union;
- (b) harmonise their macro-economic policies;
- (c) remove obstacles to the free movement of services and capital within the Common Market; and
- (d) recognise the unique situation of Lesotho, Namibia and Swaziland within the context of the Common Market and to grant temporary exemptions to Lesotho, Namibia and Swaziland from the full application of specified provisions of this Treaty.

5. In the field of agriculture:

- (a) co-operate in the agricultural development;
- (b) adopt a common agricultural policy;
- (c) enhance regional food sufficiency;
- (d) co-operate in the export of agricultural commodities;
- (e) co-ordinate their policies regarding the establishment of agro-industries;
- (f) co-operate in agricultural research and extension; and
- (g) enhance rural development.

6. In the field of economic and social development:

- (a) harmonise the methodology of collection, processing and analysis of information required to meet the objectives of the Common Market;
- (b) harmonise or approximate their laws to the extent required for the proper functioning of the Common Market;
- (c) promote the accelerated development of the least developed countries and economically depressed areas through the implementation of special programmes and projects in various fields of economic development;
- (d) adopt a regional policy that will look into all possible economic problems that Member States may face during the implementation of this Treaty and propose ways and means of redressing such problems in a manner that will satisfy the conditions of equitable and balanced development within the Common Market;
- (e) remove obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common Market.
- (f) promote co-operation in social and cultural affairs between themselves;
- (g) co-operate in tourism and wildlife development and management;
- (h) co-operate in the development and management of natural resources, energy and environment; and
- (i) take, jointly, such other steps as are necessary to further the aims of the Common Market.

Article 5 General Undertakings

1. The Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Common Market and the implementation of the provisions of this Treaty and shall abstain from any measures likely to jeopardize the achievement of the aims of the Common Market or the implementation of the provisions of this Treaty.
2. Each Member State shall take steps to secure the enactment of and the continuation of such legislation to give effect to this Treaty and in particular:
 - (a) to confer upon the Common Market legal capacity and personality required for the performance of its functions; and
 - (b) to confer upon the regulations of the Council the force of law and the necessary legal effect within its territory.
3. Each Member State shall:
 - (a) designate a Ministry with whom the Secretary-General may communicate in connection with any matter arising out of the implementation and application of this Treaty, and notify such designation to the Secretary-General;
 - (b) transmit to the Secretariat copies of all relevant existing and future legislation and its official gazettes; and
 - (c) where it is required under this Treaty, supply or exchange information to or with another Member State and send copies of such information to the Secretariat.
4. The Member States undertake to accord the Common Market and its staff the privileges and immunities accorded to similar international organisations in their territories and in accordance with the Agreement on Privileges and Immunities.

Article 6 Fundamental Principles

The Member States, in pursuit of the aims and objectives stated in Article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3rd June, 1991, agree to adhere to the following principles:

- (a) equality and inter-dependence of the Member States;
- (b) solidarity and collective self-reliance among the Member States;
- (c) inter-State co-operation, harmonisation of policies and integration of programmes among the Member States;
- (d) non-aggression between the Member States;
- (e) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (f) accountability, economic justice and popular participation in development;
- (g) the recognition and observance of the rule of law;
- (h) the promotion and sustenance of a democratic system of governance in each Member State;

- (i) the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness; and
- (j) the peaceful settlement of disputes among the Member States, the active co-operation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development.

CHAPTER FOUR: ORGANS OF THE COMMON MARKET

Article 7 Organs of the Common Market

1. There shall be established as organs of the Common Market:
 - (a) the Authority;
 - (b) the Council;
 - (c) the Court of Justice;
 - (d) the Committee of Governors of Central Banks;
 - (e) the Intergovernmental Committee;
 - (f) the Technical Committees;
 - (g) the Secretariat; and
 - (h) the Consultative Committee.
2. The Secretary-General, in consultation with the Bureau of the Council may convene Sectoral Ministerial meetings to consider and take decisions on technical sectoral issues not having budgetary implications.
3. The decisions of the Sectoral Ministerial meetings taken in pursuance of the provisions of paragraph 2 of this Article shall take effect and shall be endorsed at the next meeting of the Council following the Sectoral Ministerial meeting.
4. The organs of the Common Market shall perform their functions and act within the limits of the powers conferred upon them by or under this Treaty.

Article 8 The Authority: Composition and Functions

1. The Authority shall consist of the Heads of State or Government of the Member States.
2. The Authority shall be the supreme Policy Organ of the Common Market and shall be responsible for the general policy and direction and control of the performance of the executive functions of the Common Market and the achievement of its aims and objectives and shall have such other powers as are vested in it under this Treaty.
3. Subject to the provisions of this Treaty, the directions and decisions of the Authority taken or given in pursuance of the provisions of this Treaty, shall as the case may be, be binding on the Member States and on all other organs of the Common Market other than the Court in the exercise of its jurisdiction, and on those to whom they may be addressed to under this Treaty.
4. The directions and decisions of the Authority shall be notified to those to whom they are addressed and shall take effect upon the receipt of such notification or on such date as may be specified in the direction or decision.

5. The Authority shall meet once every year and may hold extraordinary meetings at the request of any member of the Authority, provided that such a request is supported by one-third of the members of the Authority.
6. Subject to the provisions of this Treaty, the Authority shall determine its own Rules of Procedure.
7. The decisions of the Authority shall be taken by consensus.

Article 9 The Council of Ministers: Composition and Functions

1. The Council of Ministers of the Common Market shall consist of such Ministers as may be designated by each Member State.
2. It shall be the responsibility of the Council to:
 - (a) monitor and keep under constant review and ensure the proper functioning and development of the Common Market in accordance with the provisions of this Treaty;
 - (b) make recommendations to the Authority on matters of policy aimed at the efficient and harmonious functioning and development of the Common Market;
 - (c) give directions to all other subordinate organs of the Common Market other than the Court in the exercise of its jurisdiction;
 - (d) make regulations, issue directives, take decisions, make recommendations and give opinions in accordance with the provisions of this Treaty;
 - (e) request advisory opinions from the Court in accordance with the provisions of this Treaty;
 - (f) consider and approve the budgets of the Secretariat and the Court;
 - (g) consider what measures should be taken by Member States in order to promote the attainment of the aims of the Common Market;
 - (h) make Staff Rules and Regulations and Financial Regulations of the Secretariat;
 - (i) make recommendations to the Authority on the designation of Least Developed Countries;
 - (j) designate economically depressed areas of the Common Market; and
 - (k) exercise such other powers and perform such other functions as are vested in or conferred on it by this Treaty.
3. Subject to the provisions of this Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Member States, on all subordinate organs of the Common Market other than the Court in the exercise of its jurisdiction and on those to whom they may under this Treaty, be addressed.
4. The Council shall meet once a year immediately preceding a meeting of the Authority. Extraordinary meetings of the Council may be held at the request of a Member State provided that such a request is supported by at least one-third of the Member States.
5. Subject to any directions that the Authority may give and to the provisions of this Treaty, the Council shall determine its own Rules of Procedure.
6. The decisions of the Council shall be taken by consensus, failing which by two-thirds majority of the members of the Council.

7. Where an objection is recorded on behalf of a Member State to a proposal submitted for the decision of the Council, the proposal shall, unless such objection is withdrawn, be referred to the Authority for its decision.

Article 10 Regulations, Directives, Decisions, Recommendations and Opinions of Council

1. The Council may, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions.
2. A regulation shall be binding on all the Member States in its entirety.
3. A directive shall be binding upon each Member State to which it is addressed as to the result to be achieved but not as to the means of achieving it.
4. A decision shall be binding upon those to whom it is addressed.
5. A recommendation and an opinion shall have no binding force.

Article 11 Reasons for Regulations, Decisions and Directives

Regulations, directives and decisions of the Council shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

Article 12 Entry into Force of Regulations, Directives and Decisions of the Council

1. Regulations shall be published in the Official Gazette of the Common Market and shall enter into force on the date of their publication or such later date as may be specified in the Regulations.
2. Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon the receipt of such notification or on such date as may be specified in the directives or decisions.

Article 13 The Committee of Governors of Central Banks: Composition and Functions

1. The Committee of Governors of Central Banks shall consist of the governors of the monetary authorities designated for that purpose by the Member States.
2. The Committee of Governors of Central Banks shall:
 - (a) be responsible for the development of programmes and action plans in the field of finance and monetary co-operation;
 - (b) monitor and keep under constant review and ensure the proper implementation of the programmes and plans adopted pursuant to the provisions of Chapter Ten of this Treaty on Monetary and Financial Co-operation;
 - (c) for the purposes of sub-paragraphs (a) and (b) of this paragraph, request the Secretary-General to undertake specific investigations;

- (d) consider reports and recommendations from the Technical Committee on Finance and Monetary Affairs;
 - (e) submit from time to time, reports and recommendations to the Council concerning the implementation of the Finance and Monetary Co-operation programme; and
 - (f) have such other functions as are conferred upon it by or under this Treaty.
3. Subject to any directions which may be given by the Council, the Committee of Governors of Central Banks shall meet once a year and shall, subject to this Treaty, determine its own Rules of Procedure.

Article 14 Intergovernmental Committee: Composition and Functions

1. The Intergovernmental Committee shall consist of such Permanent or Principal Secretaries as may be designated by each Member State.
2. The Intergovernmental Committee shall:
- (a) be responsible for the development of programmes and action plans in all the sectors of co-operation except in the finance and monetary sector;
 - (b) monitor and keep under constant review and ensure proper functioning and development of the Common Market in accordance with the provisions of this Treaty;
 - (c) oversee the implementation of the provisions of this Treaty and for that purpose may request a Technical Committee to investigate any particular matter;
 - (d) for the purposes of sub-paragraph (a) of this paragraph, request the Secretary-General to undertake specific investigations;
 - (e) submit from time to time either on its own initiative or upon the request of the Council reports and recommendations to the Council; and
 - (f) have such other functions as are conferred upon it by or under this Treaty.
3. Subject to any directions which may be given by the Council, the Intergovernmental Committee shall meet once a year and shall, subject to this Treaty, determine its own Rules of Procedure.

Article 15 Technical Committees: Composition and Functions

1. The Technical Committees of the Common Market shall be the following:
- (a) the Committee on Administrative and Budgetary Matters;
 - (b) the Committee on Agriculture;
 - (c) the Committee on Comprehensive Information Systems;
 - (d) the Committee on Energy; (e) the Committee on Finance and Monetary Affairs;
 - (f) the Committee on Industry;
 - (g) the Committee on Labour, Human Resources and Social and Cultural Affairs;
 - (h) the Committee on Legal Affairs;
 - (i) the Committee on Natural Resources and Environment;
 - (j) the Committee on Tourism and Wildlife;
 - (k) the Committee on Trade and Customs; and

- (1) the Committee on Transport and Communications.
2. The Technical Committees shall be composed of representatives of the Member States designated for that purpose.
3. The Council may establish such additional Technical Committees as may be necessary for the attainment of the objectives of this Treaty.
4. The Technical Committees shall meet as often as necessary for the proper discharge of their functions and shall determine their own Rules of Procedure.

Article 16 Functions of the Technical Committees

Each Technical Committee shall:

- (a) be responsible for the preparation of a comprehensive implementation programme and a time-table prioritising the programmes with respect to its sector;
- (b) monitor and keep under constant review the implementation of co-operation programmes with respect to its sector;
- (c) for the purposes of paragraphs (a) and (b) of this Article request the Secretary-General to undertake specific investigations;
- (d) except for the Committee on Finance and Monetary Affairs which shall submit its reports and recommendations to the Committee of Governors of Central Banks, submit from time to time reports and recommendations to the Intergovernmental Committee, either on its own initiative or upon the request of the Council, concerning the implementation of the provisions of this Treaty; and
- (e) have such other functions as are assigned to it by or under this Treaty.

Article 17 The Secretariat and the Secretary-General

1. The Secretariat shall be headed by a Secretary-General of the Common Market who shall be appointed by the Authority to serve in such office for a term of five years and shall be eligible for reappointment for a further term of five years.
2. The Secretary-General shall be the chief executive officer of the Common Market and shall represent the Common Market in the exercise of its legal personality.
3. There shall be, in addition to the Secretary-General, two Assistant Secretaries-General who shall be appointed by the Authority, and such other staff of the Secretariat as the Council may determine.
4. The terms and conditions of service of the Secretary-General and the Assistant Secretaries-General shall be determined by the Authority. The terms and conditions of service of the other staff of the Secretariat shall be determined by the Council.
5. In appointing staff to offices in the Secretariat, regard shall be had, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, to the desirability of maintaining the principle of equal opportunities and an equitable distribution of appointments to such offices among citizens of all the Member States.
6. In the performance of their duties, the Secretary-General and Assistant Secretaries-General and the staff of the Secretariat shall not seek or receive instructions from any Member State or from any other authority external to the Common Market. They shall

refrain from any actions which may adversely reflect on their position as international officials and shall be responsible only to the Common Market.

7. Each Member State undertakes to respect the international character of the responsibilities of the Secretary-General, Assistant Secretaries-General and the other staff of the Secretariat and shall not seek to unduly influence them in the discharge of their responsibilities.
8. The Secretary-General shall:
 - (a) service and assist the organs of the Common Market in the performance of their functions;
 - (b) submit reports in consultation with the Intergovernmental Committee on the activities of the Common Market to the Council and the Authority;
 - (c) subject to the provisions of this Treaty, be responsible for the administration and finances of the Common Market;
 - (d) submit the budget of the Common Market to the Intergovernmental Committee; (e) act as the secretary to the the Authority and the Council;
 - (f) ensure that the objectives set out in this Treaty are attained and shall, either on his own initiative or on the basis of a complaint, investigate a presumed breach of the provisions of this Treaty and report to the Council in accordance with an investigative procedure to be determined by the Council;
 - (g) keep the functioning of the Common Market under continuous examination and may act in relation to any particular matter which appears to merit examination either on his own initiative or upon the request of a Member State where appropriate and report the results of his examination to the Member State or the organ of the Common Market concerned;
 - (h) subject to the provisions of this Treaty submit references to the Court concerning the alleged breach of any obligation under this Treaty in relation to the Common Market or as to any action or omission affecting the Common Market;
 - (i) promote the adoption of joint positions by the Member States in multilateral negotiations with third countries or international organisations;
 - (j) on his own initiative or as may be assigned to him by the Authority or the Council, undertake such work and studies and perform such services as relate to the aims of the Common Market and to the implementation of the provisions of this Treaty; and
 - (k) for the performance of the functions conferred upon him by this Article, collect information and verify matters of fact relating to the functioning of the Common Market and for that purpose may request a Member State to provide information relating thereto.
9. The Member States agree to co-operate with and assist the Secretary-General in the performance of his functions set out in paragraph 8 of this Article and agree in particular to provide any information which may be requested under sub-paragraph (k) of paragraph 8 of this Article.
10. There may be established, such sub-regional offices or branch offices of the Secretariat in the Member States as the Council may determine.

Article 18 Consultative Committee of the Business Community and Other Interest Groups: Composition and Functions

1. The Consultative Committee shall consist of such representatives, of the business community and other interest groups from the Member States as the Consultative Committee shall determine. The representatives may be accompanied by such experts and advisors as the Consultative Committee may deem necessary for its effective functioning.
2. For the purposes of paragraph 1 of this Article, the composition of the Consultative Committee shall be determined at a first meeting which shall be convened by the Secretary-General for that purpose.
3. The Consultative Committee shall provide a link and facilitate dialogue between the business community and other interest groups and other organs of the Common Market. The Consultative Committee shall:
 - (a) be responsible for ensuring that the interests of the business community and other interest groups in the Common Market are taken into consideration by the organs of the Common Market;
 - (b) be responsible for monitoring the implementation of the provisions of Chapters Twenty Three and Twenty Four of this Treaty and make recommendations to the Intergovernmental Committee;
 - (c) consult and receive reports from other interest groups; and
 - (d) take part in the meetings of the Technical Committees and may make recommendations to the Intergovernmental Committee.
4. The Consultative Committee shall meet as often as necessary for the proper discharge of its functions and shall determine its own Rules of Procedure.

CHAPTER FIVE: THE COURT OF JUSTICE

Article 19 Establishment of the Court

The Court of Justice established under Article 7 of this Treaty shall ensure the adherence to law in the interpretation and application of this Treaty.

Article 20 Composition of the Court

1. Subject to paragraph 2 of this Article, the Court shall be composed of seven Judges who shall be appointed by the Authority and one of whom shall be appointed by the Authority as the President of the Court.
2. The Judges of the Court shall be chosen from among persons of impartiality and independence who fulfill the conditions required for the holding of high judicial office in their respective countries of domicile or who are jurists of recognised competence: Provided that no two or more Judges shall at any time be nationals of the same Member State.
3. Notwithstanding the provisions of paragraph 1 of this Article, the Authority may, upon the request of the Court, appoint additional Judges.

Article 21 Tenure of Office and Resignation

1. The President and Judges shall hold office for a period of five years and shall be eligible for re-appointment for a further period of five years.
2. The President and the Judges shall hold office throughout the term of their respective appointments unless they resign or die or are removed from office in accordance with the provisions of this Treaty.
3. Where the term of office of a Judge comes to an end by effluxion of time or on resignation before a decision or opinion of the Court with respect to a matter which has been argued before the Court of which he was a member is delivered, such Judge shall, only for the purpose of completing that particular matter, continue to sit as a Judge.
4. The President may, at any time, resign his office by giving one year's written notice to the Chairman of the Authority, but his resignation shall not take effect until his successor has been appointed by the Authority and has taken office.
5. A Judge may, at any time, resign his office by letter delivered to the President for transmission to the Chairman of the Authority, and his resignation shall take effect on the date it has been accepted by the Authority.

Article 22 Removal from Office and Temporary Membership of the Court

1. The President or a Judge shall not be removed from office except by the Authority for stated misbehaviour or for inability to perform the functions of his office due to infirmity of mind or body
2. If a Judge is appointed by the Authority to replace the President or due to any other specified cause, or another Judge before the term of office of the President or a Judge expires, the Judge so appointed shall serve in that office for the remainder of the term of the replaced President or Judge.
3. If a Judge is temporarily absent or otherwise unable to carry out his functions, the Authority shall, if such absence or inability to act appears to the Authority to be likely to be of such duration as to cause a significant delay in the work of the Court, appoint a temporary Judge to act in place of the said Judge.
4. If a Judge is directly or indirectly interested in a case before the Court, he shall immediately report the nature of his interest to the President, and, if in his opinion the President considers the Judge's interest in the case prejudicial, he shall make a report to the Authority, and the Authority shall appoint a temporary Judge to act for that case only in place of the interested Judge.
5. If the President is directly or indirectly interested in a case before the Court he shall, if he considers that the nature of his interest is such that it would be prejudicial for him to take part in that case, make a report to the Authority and the Authority shall appoint a temporary President, chosen in the same manner as the substantive President, to act as President for that case only in place of the substantive President.

Article 23 General Jurisdiction of the Court

The Court shall have jurisdiction to adjudicate upon all matters which may be referred to it pursuant to this Treaty.

Article 24 Reference by Member States

1. A Member State which considers that another the Council has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, may refer the matter to the Court.
2. A Member State may refer for determination by the Court, the legality of any act, regulation, directive or decision of the Council on the grounds that such act, regulation, directive or decision is ultra vires or unlawful or an infringement of the provisions of this Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power.

Article 25 Reference by the Secretary-General

1. Where the Secretary-General considers that a Member State has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, he shall submit his findings to the Member State concerned to enable that Member State to submit its observations on the findings.
2. If the Member State concerned does not submit its observations to the Secretary-General within two months, or if the observations submitted are unsatisfactory, the Secretary-General shall refer the matter to the Bureau of the Council which shall decide whether the matter shall be referred by the Secretary-General to the Court immediately or be referred to the Council.
3. Where a matter has been referred to the Council under the provisions of paragraph 2 of this Article and the Council fails to resolve the matter, the Council shall direct the Secretary-General to refer the matter to the Court.

Article 26 Reference by Legal and Natural Persons

Any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty:

Provided that where the matter for determination relates to any act, regulation, directive or decision by a Member State, such person shall not refer the matter for determination under this Article unless he has first exhausted local remedies in the national courts or tribunals of the Member State.

Article 27 Jurisdiction Over Claims by Common Market Employees and Third Parties Against the Common Market or its Institutions

1. The Court shall have jurisdiction to hear disputes between the Common Market and its employees that arise out of the application and interpretation of the Staff Rules and Regulations of the Secretariat or the terms and conditions of employment of the employees of the Common Market.
2. The Court shall have jurisdiction to determine claims by any person against the Common Market or its institutions for acts of their servants or employees in the performance of their duties.

Article 28 Jurisdiction Under Arbitration Clauses and Special Agreements

The Court shall have jurisdiction to hear and determine any matter:

- (a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and
- (b) arising from a dispute between the Member States regarding this Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.

Article 29 Jurisdiction of National Courts

1. Except where the jurisdiction is conferred on the Court by or under this Treaty, disputes to which the Common Market is a party shall not on that ground alone, be excluded from the jurisdiction of national courts.
2. Decisions of the Court on the interpretation of the provisions of this Treaty shall have precedence over decisions of national courts.

Article 30 National Courts and Preliminary Rulings

1. Where a question is raised before any court or tribunal of a Member State concerning the application or interpretation of this Treaty or the validity of the regulations, directives and decisions of the Common Market, such court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the Court to give a preliminary ruling thereon.
2. Where any question as that referred to in paragraph 1 of this Article is raised in a case pending before a court or tribunal of a Member State against whose judgment there is no judicial remedy under the national law of that Member State, that court or tribunal shall refer the matter to the Court.

Article 31 Judgment of the Court

1. The Court shall consider and determine every reference made to it pursuant to this Treaty in accordance with the Rules of Court, and shall deliver in public session a

reasoned judgment which, subject to the provisions of the said Rules as to review, shall be final and conclusive and not open to appeal:

Provided that, if the Court considers that in the special circumstances of the case it is undesirable that its judgment be delivered in open Court, the Court may make an order to that effect and deliver its judgment before the parties privately.

2. The Court shall deliver one judgment only in respect of every reference to it, which shall be the judgment of the Court reached in private by majority verdict.
3. An application for revision of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given, but which fact, at that time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake or error on the face of the record.

Article 32 Advisory Opinions of the Court

1. The Authority, the Council or a Member State may request the Court to give an advisory opinion regarding questions of law arising from the provisions of this Treaty affecting the Common Market, and the Member States shall in the case of every such request have the right to be represented and take part in the proceedings.
2. A request for an advisory opinion under paragraph 1 of this Article shall be made in writing and shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Court.
3. Upon the receipt of the request under paragraph 1 of this Article, the Registrar shall forthwith give notice thereof, to all the Member States, and shall notify them that the Court shall be prepared to accept, within a time fixed by the President, written submissions, or to hear oral submissions relating to the question.
4. In the exercise of its advisory function, the Court shall be governed by the provisions of this Treaty and the Rules of Court relating to references of disputes to the extent that the Court considers appropriate.

Article 33 Representation before the Court

Every party to a reference before the Court shall be represented by Counsel appointed by that party.

Article 34 Acceptance of Court Judgments

1. Any dispute concerning the interpretation or application of this Treaty or any of the matters referred to the Court pursuant to this Chapter shall not be subjected to any method of settlement other than those provided for in this Treaty.
2. Where a dispute has been referred to the Council or the Court, the Member States shall refrain from any action which might be detrimental to the resolution of the dispute or might aggravate the dispute.

3. A Member State or the Council shall take, without delay, the measures required to implement a judgment of the Court.
4. The Court may prescribe such sanctions as it shall consider necessary to be imposed against a party who defaults in implementing the decisions of the Court.

Article 35 Interim Orders

The Court may, in any case referred to it, make any interim order or issue any directions which it considers necessary or desirable. Interim orders and other directions issued by the Court shall have the same effect ad interim as decisions of the Court.

Article 36 Intervention

A Member State, the Secretary-General or a resident of a Member State who is not a party to a case before the Court may with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

Article 37 Proceedings

1. The proceedings before the Court shall be either written or oral.
2. Records of each hearing shall be signed by the President and shall be kept and maintained by the Registrar.

Article 38 Rules of Court

The Court shall make Rules of Court which shall, subject to the provisions of this Treaty, regulate the detailed conduct of business of the Court.

Article 39 Immunity of the President and Judges

The President and the Judges shall be immune from legal action for any act or omission committed in the discharge of their functions under this Treaty.

Article 40 Execution of Judgment

The execution of a judgment of the Court which imposes a pecuniary obligation on a person shall be governed by the rules of civil procedure in force in the Member State in which execution is to take place. The order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar whereupon, the party in whose favour execution is to take place, may proceed to execution in accordance with the rules of civil procedure in force in that Member State.

Article 41 Registrar and Other Staff

1. The Council shall appoint a Registrar from among nationals of the Member States qualified to hold high judicial office in their respective States.
2. The Court shall employ such other staff as may be required to enable it to perform its functions and who shall hold office in the service of the Court.
3. The terms and conditions of service of the Registrar and other staff shall, subject to this Treaty, be determined by the Council on the recommendation of the Court.
4. Subject to the overall supervision of the President, the Registrar shall be responsible for the day to day administration of the business of the Court. The Registrar shall also carry out the duties imposed upon him by this Treaty and the Rules of Court.

Article 42 Budget

1. The budget of the Court shall be borne by the Member States.
2. The formula for contributions to the budget for the Court shall be the formula applicable to the determination of contributions by the Member States to the budget of the Secretariat.
3. The President shall present the budget of the Court to the Council for approval, through the Intergovernmental Committee.
4. The Council shall determine the payment and currencies of contributions by the Member States to the budget of the Court.

Article 43 Official Languages of the Court

The official languages of the Court shall be English, French and Portuguese.

Article 44 Seat of the Court

The Seat of the Court shall be determined by the Authority.

CHAPTER SIX: CO-OPERATION IN TRADE LIBERALISATION AND DEVELOPMENT

Article 45 Scope of Co-operation in Trade Liberalisation and Development

There shall be progressively established in the course of a transitional period of ten years from the entry into force of this Treaty, a Customs Union among the Member States. Within the Customs Union, customs duties and other charges of equivalent effect imposed on imports shall be eliminated. Non-tariff barriers including quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained.

Article 46 Customs Duties

1. The Member States shall reduce and ultimately eliminate by the year 2000, in accordance with the programme adopted by the PTA Authority, customs duties and other charges of equivalent effect imposed on or in connection with the importation of goods which are eligible for Common Market tariff treatment.
2. Notwithstanding the provisions of paragraph 1 of this Article, where, by virtue of obligations under an existing contract entered into by a Member State and such a Member State is unable to comply with the provisions of this Article, the Member State shall, upon the entry into force of this Treaty, notify the Council of this fact. The Member State shall, however, not renew or extend such contract at its expiry.
3. Within the period specified in paragraph 1 of this Article, the Member States shall not impose any new duties and taxes or increase existing ones in respect of products traded within the Common Market and shall transmit to the Secretariat all information on import duties for study by the relevant institutions of the Common Market.
4. The Authority may at any time, on the recommendation of the Council, decide that any import duties shall be reduced more rapidly or eliminated earlier than is scheduled in paragraph 1 of this Article.

Article 47 Common External Tariff

The Member States agree to the gradual establishment of a common external tariff in respect of all goods imported into the Member States from third countries within a period of ten years from the entry into force of this Treaty and in accordance with a schedule to be adopted by the Council.

Article 48 Rules of Origin

1. For the purposes of this Treaty, goods shall be accepted as eligible for Common Market tariff treatment if they originate in the Member States.
2. The definition of products originating in the Member States shall be as provided for in a Protocol on the Rules of Origin to be concluded by the Member States.
3. The Intergovernmental Committee shall, from time to time, examine the rules referred to in paragraph 2 of this Article and propose amendments thereto to the Council.

Article 49 Elimination of Non-tariff Barriers on Common Market Goods

1. Except as may be provided for or permitted by this Treaty, each of the Member States undertakes to remove immediately upon the entry into force of this Treaty, all the then existing non-tariff barriers to the import into that Member State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions.
2. For the purposes of protecting an infant industry, a Member State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, impose for the purposes only of protecting such industry for a specified

period to be determined by Council, quantitative or like restrictions or prohibitions on similar goods originating from the other Member States:

Provided that the measures are applied on a non-discriminatory basis and that the Member State shall furnish to Council proof that it has taken all reasonable steps to overcome the difficulties faced by such an infant industry.

3. The Council shall adopt criteria for determining that an industry is an infant industry.
4. The Secretariat shall keep under constant review the operation of any quantitative or like restriction or prohibitions imposed under the provisions of paragraph 2 of this Article and deliver an opinion to the Member State concerned and report the matter to the Council with its recommendations.
5. Notwithstanding the provisions of paragraph 1 of this Article, if a Member State encounters balance-of-payments difficulties arising from the application of the provisions of this Chapter, that Member State may, provided that it has taken all reasonable steps to overcome the difficulties, impose for the purpose only of overcoming such difficulties for a specified period to be determined by the Council, quantitative or the like restrictions or prohibitions, on goods originating from the other Member States.

Article 50 Security and Other Restrictions to Trade

1. A Member State may, after having given notice to the Secretary-General of its intention to do so, introduce or continue or execute restrictions or prohibitions affecting:
 - (a) the application of security laws and regulations;
 - (b) the control of arms, ammunition and other war equipment and military items;
 - (c) the protection of human, animal or plant health or life, or the protection of public morality;
 - (d) the transfer of gold, silver and precious and semi-precious stones;
 - (e) the protection of any item deemed to be of national importance provided that the Member State concerned shall furnish proof to the Council that the item is of national importance; and
 - (f) the maintenance of food security in the event of war and famine.
2. A Member State shall not so exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this Article as to stultify the free movement of goods envisaged in this Chapter.
3. Security and other restrictions imposed in accordance with paragraph 1 of this Article shall not extend for more than is necessary to achieve security aims and other risks intended to be eliminated and shall be applied on the basis of non-discrimination.

Article 51 Dumping

1. The Member States recognise that dumping, by which products of a Member State are introduced into the commerce of another Member State at less than the normal value of the products, is to be prohibited if it causes or threatens material injury to an

established industry in the territory of the other Member State or materially retards the establishment of a domestic industry.

2. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing Member State at less than its normal value, if the price of the product exported from one Member State to another:

- (a) is less than the comparable price in the ordinary course of trade, for the like product when destined for consumption in the exporting Member State; or
- (b) in the absence of such domestic prices, is less than either:

- i. the highest comparable price for the like product for export to any third country in the ordinary course of trade; or
- ii. the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit:

Provided that due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation and for other differences affecting price comparability.

- 3. A Member State may, for the purposes of offsetting or preventing dumping, and subject to the provision of paragraph 4 of this Article, levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 2(b)(ii) of this Article.
- 4. No Member State shall levy any anti-dumping duty on the importation of any product of another Member State unless it is determined that the effect of the alleged dumping is such as to cause or threaten material injury to an established domestic industry or such as to retard materially the establishment of a domestic industry.
- 5. Dumping from a third country into a Member State shall be prohibited and any affected Member State may, pursuant to the provisions of paragraph 3 of this Article, levy an anti-dumping duty on any dumped products.
- 6. Proceedings initiated pursuant to the provisions of this Article shall be carried out in accordance with anti-dumping regulations made by the Council.

Article 52 Subsidies Granted by Member States

- 1. Except as otherwise provided in this Treaty, any subsidy granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Member States, be incompatible with the Common Market.
- 2. A Member State may, for the purposes of offsetting the effects of subsidies and subject to regulations made by the Council, levy countervailing duty on any product of any Member State imported into another Member State equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation.

3. Except as otherwise provided in this Treaty, any subsidy granted by a third country or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Member States and the third country, be incompatible with the Common Market.
4. A Member State may, for the purposes of offsetting the effects of subsidies and subject to regulations made by the Council, levy a countervailing duty on any product of any third country imported into another Member State equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation.

Article 53 Exceptions to Levying of Countervailing Duty

No Member State shall levy a countervailing duty on the importation of any product of the territory of another Member State unless it determines that the effect of the subsidisation is such as to cause or threaten material injury to an established domestic industry or is such as to materially retard the establishment of a domestic industry.

Article 54 Co-operation in the Investigation of Dumping and Subsidies

1. The Member States shall co-operate in the detection and investigation of dumping and subsidy practices and in imposing agreed measures to curb such practises.
2. Where there is evidence of dumping or export of subsidised goods by a third country to the territory of a Member State that threatens or distorts competition in the Common Market, the affected Member States may request the Member State in whose territory the goods are being dumped or exported to impose anti-dumping duties or countervailing duties on those goods from the third country.

Article 55 Competition

1. The Member States agree that any practice which negates the objective of free and liberalised trade shall be prohibited. To this end, the Member States agree to prohibit any agreement between undertakings or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Common Market.
2. The Council may declare the provisions of paragraph 1 of this Article inapplicable in the case of:
 - (a) any agreement or category thereof between undertakings;
 - (b) any decision by association of undertakings;
 - (c) any concerted practice or category thereof;

which improves production or distribution of goods or promotes technical or economic progress and has the effect of enabling consumers a fair share of the benefits;

Provided that the agreement, decision or practice does not impose on the undertaking restrictions inconsistent with the attainment of the objectives of this Treaty or has the effect of eliminating competition.

3. The Council shall make regulations to regulate competition within the Member States.

Article 56 Most Favoured Nation Treatment

1. The Member States shall accord to one another the most favoured nation treatment.
2. Nothing in this Treaty shall prevent a Member State from maintaining or entering into new preferential agreements with third countries provided such agreements do not impede or frustrate the objectives of this Treaty and that any advantage, concession, privilege and favour granted to a third country under such agreements are extended to the Member States on a reciprocal basis.
3. Nothing in this Treaty shall prevent two or more Member States from entering into new preferential agreements among themselves which aim at achieving the objectives of the Common Market, provided that any preferential treatment accorded under such agreements is extended to the other Member States on a reciprocal and non-discriminatory basis.
4. Copies of agreements concluded pursuant to paragraph 2 of this Article shall be transmitted to the Secretary-General by the Member States parties to them.

Article 57 National Treatment

The Member States shall refrain from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Member States.

Article 58 Customs Administration

The Member States shall apply the provisions of Chapter Nine of this Treaty in order to simplify, harmonize and standardize their customs regulations, procedures and documents to ensure the effective application of the provisions of this Chapter and to reduce the costs of and facilitate the speedy movement of goods and services across their frontiers.

Article 59 Drawback

The Member States may, at the end of the ten years specified in Article 45 of this Treaty, refuse to accept as eligible for Common Market tariff treatment goods in relation to which drawback is claimed or made use of in connection with their exportation from the Member States in the territory of which the goods have undergone the last process of production.

Article 60 Remedy for Loss of Revenue

1. The Council shall, on the recommendation of the Intergovernmental Committee, determine what remedial steps shall be taken with respect to a Member State which has suffered substantial loss of revenue from import duties as a result of the application of this Chapter.
2. For the purposes of paragraph 1 of this Article, the Member States shall conclude a Protocol which shall, inter-alia, determine the machinery and formula to be used in carrying out the remedial steps with respect to a Member State which has suffered substantial loss of revenue from import duties as a result of the application of this Chapter.

Article 61 Safeguard Clause

1. In the event of serious disturbances occurring in the economy of a Member State following the application of the provisions of this Chapter, the Member State concerned shall, after informing the Secretary-General and the other Member States, take necessary safeguard measures.
2. Safeguard measures taken under the provisions of paragraph 1 of this Article, shall remain in force for a period of one year and may be extended by the decision of the Council provided that the Member State concerned shall furnish to the Council proof that it has taken the necessary and reasonable steps to overcome or correct imbalances for which safeguard measures are being applied and that the measures applied are on the basis of non-discrimination.
3. The Council shall examine the method and effect of the application of existing safeguard measures and take a decision thereon.

Article 62 Trade Promotion

The Member States shall adopt measures designed to promote trade within the Common Market. In this regard, Member States shall:

- (a) ensure the development and dissemination of market intelligence and trade information with a view to providing the widest possible knowledge-base of intra-Common Market trade opportunities and encourage the development of exports and markets to meet the public and private procurement needs;
- (b) actively encourage the undertaking of supply and demand surveys, the organisation of buyers and sellers meetings and other multi-country contact promotion events in order to further identify and exploit the potential of intra-Common Market trade;
- (c) undertake the removal of measures that have been identified during the market surveys, which restrict the flow of goods and services to their identified markets, including the establishment of agency offices, trade missions, free movement of samples and advertising;
- (d) identify the possibilities of product adaptation and diversification to broaden their respective export base with a view to expanding or introducing products to new markets in the Member States;

- (e) review and initiate programmes for the rationalisation and improvement of import operations and techniques to ensure that savings will accrue from such rationalisation of purchase operations;
- (f) seek to ensure that donor-funded import procurement programmes allow as far as possible for the purchase of goods from other Member States;
- (g) organise frequent general and specialised trade fairs;
- (h) improve the performance of small-and-medium scale enterprises for export development such as marketing, business management and the provision of credits;
- (i) promote export-oriented joint ventures, by encouraging and facilitating enterprise-to-enterprise contacts;
- (j) support privatisation endeavours through the introduction of trade services or improvement of the trade promotion infrastructure to meet the special requirements of privatised companies; and
- (k) encourage the improvement of services relating to trade such as export financing, quality control and standardisation, packaging and specification aspects, warehousing and storage operations, and others that will increase the flow of goods within the Member States.

CHAPTER SEVEN: COMMON MARKET CUSTOMS CO-OPERATION

Article 63 Scope of Customs Co-operation

1. The provisions of this Chapter shall apply to any activity being undertaken in co-operation among the Member States in the field of customs management and the organization of customs and shall include in particular:
 - (a) matters concerning the application of Common Market tariff treatment for their exports and imports;
 - (b) the simplification and harmonization of trade documents, customs regulations and procedures with particular reference to such matters as the valuation of goods, tariff classification, temporary admission, warehousing, re-exports, frontier trade and export drawback;
 - (c) the prevention, investigation and suppression of customs offences;
 - (d) national and joint institutional arrangements; and
 - (e) training facilities and programmes for customs officials.
2. The provisions of paragraph 1 of this Article shall not affect the gradual establishment of a common external tariff in respect of goods imported into the Member States from third countries.

Article 64 Common Market Tariff Treatment

1. The Member States undertake to co-operate in the implementation of the provisions of this Treaty concerning the treatment of goods eligible for Common Market tariff treatment and more particularly those relating to:

- (a) the evolution of uniform national customs legislation and procedures;
 - (b) the reduction and eventual elimination of import duties and non-tariff barriers on trade among themselves;
 - (c) the establishment of a common external tariff; and
 - (d) any other aspect of customs law and practice concerning Common Market tariff treatment.
2. For the purposes of paragraph 1 of this Article, the Member States undertake where they have not already done so, to:
- (a) adopt uniform, comprehensive and systematic tariff classification of goods with a common and specific basis of description and interpretation in accordance with internationally accepted standards;
 - (b) adopt a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;
 - (c) agree on common terms and conditions governing temporary admission procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorized;
 - (d) implement the customs requirements for the re-exportation of goods provided for in this Treaty;
 - (e) implement the customs requirements for the transit of goods as prescribed in this Treaty;
 - (f) harmonize and simplify customs formalities and documents in accordance with the provisions of this Treaty; and
 - (g) adopt common procedures for the establishment and operation of free zones, free ports, customs supervised factories and export drawbacks.
3. The Member States undertake to harmonize their customs and statistical nomenclature and standardize their foreign trade statistics to ensure comparability and reliability of the relevant information.

Article 65 Communication of Customs Information

The Member States shall exchange information on matters relating to customs and more particularly to the following:

- (a) changes in customs legislation, procedures, duties and commodities subject to import or export restrictions; and
- (b) information relating to the prevention, investigation and suppression of customs offences as provided for in Article 66 of this Treaty.

Article 66 Prevention, Investigation and Suppression of Customs Offences

1. The Member States undertake to co-operate in the prevention, investigation and suppression of customs offences.

2. For the purposes of paragraph 1 of this Article, the Member States undertake to:

- (a) exchange lists of goods and publications the importation of which is prohibited in their respective territories;
- (b) prohibit the exportation of goods and publications referred to in sub-paragraph (a) of this paragraph to each other's customs territories;
- (c) exchange among themselves lists of goods known to be the subject of illicit traffic between their customs territories and maintain special surveillance over the movement of such goods;
- (d) consult each other on the establishment of common border posts and take such steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognized Customs Offices and along approved routes;
- (e) exchange among themselves lists of Customs Offices located along common frontiers, details of the powers of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of sub-paragraph (d) of this paragraph;
- (f) endeavour to correlate the powers and harmonise the working hours of their corresponding Customs Offices referred to in sub-paragraph (e) of this paragraph; and
- (g) maintain special surveillance over:
 - i. the entry into, sojourn in, and exit from their customs territories of particular persons reasonably suspected by a Member State of being involved in activities that are contrary to the customs law of any Member State;
 - ii. the movement of particular goods suspected by any Member State to be the subject of illicit traffic towards the importing Member State;
 - iii. particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Member States; and
 - iv. particular vehicles, ships, aircraft, or other means of transport suspected of being used to commit customs offences in any Member State.

3. The Member States shall exchange:

- (a) as a matter of course and without delay, any information regarding:
 - i. operations which it is suspected will give rise to customs offences in any Member State;
 - ii. persons, vehicles, ships, aircraft and other means of transport reasonably suspected of being engaged in activities that may be in violation of the customs laws of any Member State;
 - iii. new techniques of committing customs offences; and
 - iv. goods known to be the subject of illicit traffic;
- (b) on the request from a Member State and as promptly as possible, any available information:

- i. contained in customs documents relating to such exchanges of goods between countries as are suspected of being in violation of the customs law of the requesting Member State;
- ii. enabling false declarations to be detected, in particular with respect to dutiable value; and
- iii. concerning certificates of origin, invoices or other documents, known to be, or suspected of being, false; and

(c) on the request and if appropriate in the form of official documents from a Member State, information concerning the following matters:

- i. the authenticity of any official document produced in support of goods declaration made to customs authorities of the requesting Member State;
- ii. whether goods which were granted preferential treatment on departure from the territory of the requesting Member State, because they were declared as intended for home use in the other Member State, have been duly cleared for home use in that State;
- iii. whether goods imported into the territory of the requesting Member State have been lawfully exported from that of the exporting Member States;
- iv. whether goods exported from the territory of the requesting Member State have been lawfully imported into that of the importing Member States, and in accordance with the importer's declaration; and
- v. special documents which may be issued by the customs authorities of the exporting Member State for surrender to the customs authorities of the importing Member State in order that they may certify that the goods were lawfully exported.

4. Each Member State undertakes, whenever expressly requested by another Member State, to:

- (a) make enquiries, record statements and obtain evidence concerning a customs offence under investigation in the requesting Member State and transmit the results of the enquiry as well as any documents or other evidence, to the requesting Member State; and
- (b) notify the competent authorities of the requesting Member State of actions and decisions taken by the competent authorities of the Member State where the customs offence took place in accordance with the law in force in that Member State.

CHAPTER EIGHT: RE-EXPORTATION OF GOODS

Article 67 General Provisions

1. The Member States agree that re-exports bound for a receiving State shall be exempted from the payment of import or export duties in the importing State:

Provided that this paragraph shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with their customs laws and regulations.

2. The Member States agree that:

- (a) re-exports imported into any Member State shall be subjected to the same import duties as are applicable to similar goods imported directly into their territories from third countries; and
- (b) there shall be no discrimination in the treatment of re-exports traded among the Member States.

3. Notwithstanding the provisions of paragraph 2 of this Article, the Member States agree that re-exported goods which qualify as originating in a Member State under the provisions of this Treaty shall be treated as if they were directly imported by the receiving State from the Member State where they originate. Such goods shall be accorded appropriate Common Market tariff treatment:

Provided that the re-exporter thereof produces documentary evidence certified by the authorities designated for that purpose, to the effect that the goods originated in the Member State from which they were originally imported.

4. The Member States undertake to facilitate the re-export of goods within the Common Market in accordance with the provisions of the Protocol on Transit Trade and Transit Facilities.

Article 68 Refund and Remission of Duties and Taxes

1. Where import duties on goods have been charged and collected by the importing State, that State shall refund all such duties less import subsidies, if any, to the re-exporter of those goods in its territory when the goods are re-exported to another Member State in an unused condition:

Provided that the re-export is made within twelve months from the date on which the goods are received in the importing State.

2. Where imported goods have been admitted with suspended customs duties for warehousing, transit or trans-shipment under customs bond without payment of customs duties, no import or export duties shall be charged in respect of such goods when they are subsequently re-exported by the importing State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article and of Article 59 of this Treaty, the importing State shall, in accordance with its customs laws and regulations be free to withhold or charge part of the duties collected or collectable where the goods have been re-packed, assembled, preserved, blended or otherwise processed in the importing State:

Provided that no duties shall be refunded where the processed goods qualify as originating in the importing State under the provisions of this Treaty.

CHAPTER NINE: SIMPLIFICATION AND HARMONISATION OF TRADE DOCUMENTS AND PROCEDURES

Article 69 Trade Documents and Procedures

The Member States agree to simplify and harmonize their trade documents and procedures in accordance with the provisions of this Chapter so as to facilitate trade in goods and services within the Common Market by:

- (a) reducing to a minimum the number of trade documents and copies thereof;
- (b) reducing to a minimum the number of national bodies required to handle documents referred to in sub-paragraph (a) of this paragraph; and
- (c) harmonizing the nature of the information to be contained in documents referred to in sub-paragraph (a) of this paragraph.

Article 70 Trade Facilitation

The Member States undertake to initiate trade facilitation programmes aimed at:

- (a) reducing the cost of documents and the volume of paper work required in respect of trade among the Member States;
- (b) ensuring that the nature and volume of information required in respect of trade within the Common Market does not adversely affect the economic development of, or trade among the Member States;
- (c) adopting common standards of trade procedures within the Common Market where international requirements do not suit the conditions prevailing among the Member States;
- (d) ensuring adequate co-ordination between trade and transport facilitation within the Common Market;
- (e) keeping under review the procedures adopted in international trade and transport with a view to simplifying and adopting them for use by the Member States;
- (f) collecting and disseminating information on trade facilitation and documents;
- (g) promoting the development and adoption of common solutions to problems in trade facilitation among the Member States; and
- (h) initiating or promoting the establishment of joint programmes for the training of personnel engaged in trade facilitation among the Member States.

Article 71 Standardisation of Trade Documents and Information

1. The Member States undertake, where appropriate, to design and standardise their trade documents and the information required to be contained in such documents in accordance with internationally accepted standards, practices and guidelines, and taking into account their possible use in computer and other automatic data programming systems.
2. The simplification, harmonisation and standardisation of customs regulations, documents and procedures and their computerisation will be facilitated by the

regional Automated System for Customs Data Centre at the Headquarters of the Common Market.

3. For the purpose of implementing the provisions of this Chapter, the Member States agree to establish national trade facilitation bodies.

CHAPTER TEN: MONETARY AND FINANCIAL CO-OPERATION

Article 72 Scope of Co-operation

The Member States undertake to co-operate in monetary and financial matters in accordance with the approved PTA monetary harmonisation programme in order to establish monetary stability within the Common Market aimed at facilitating economic integration efforts and the attainment of sustainable economic development of the Common Market by:

- (a) strengthening the clearing and payments system in order to promote the use of national currencies in the settlement of payments for all transactions among the Member States thereby economising on the use of foreign currency;
- (b) taking measures that would facilitate trade and capital movement within the Common Market;
- (c) the realisation of greater harmony in economic policies, particularly in fiscal and monetary policies, the management of the foreign sector and in the development policies of the Member States;
- (d) the integration of the financial structures of the Member States; and
- (e) the mobilisation of financial resources for the expansion of trade and development projects and programmes.

Article 73 Settlement of Payments

For the purposes of sub-paragraph (a) of Article 72 of this Treaty, the Member States undertake, until a common central bank is established, to settle all payments in respect of all transactions in goods and services conducted within the Common Market through the Clearing House.

Article 74 Unit of Account

1. There shall be a unit of account of the Common Market to be known as the Eastern and Southern Africa Currency Unit (ESACU) whose value shall be equal to one Special Drawing Right (SDR) of the International Monetary Fund or any other unit of account that may be determined by the Council from time to time on the recommendation of the Committee of Governors of Central Banks.
2. Each monetary authority shall communicate to the Clearing House the official exchange rate of its currency against its intervention currency or reference currency as the case may be.

3. Any change in the official exchange rate of the currency of a Member State shall be notified immediately by the monetary authority to the Clearing House.
4. All books of account of the Common Market and all monetary instruments issued by the Common Market shall be denominated in the unit of account of the Common Market.

Article 75 Establishment of a Payments Union

1. There shall be established a Payments Union among the Member States.
2. The Council shall adopt measures which would be required to be implemented in order to establish the Payments Union. For this purpose, the Member States agree to set up a reserve fund for the provision of assistance to the Member States which may experience difficulties regarding the settlement of their net debit balances in the Clearing House and general balance of payments.

Article 76 Monetary and Fiscal Policy Harmonisation

1. The Member States undertake to adopt collective policy measures in accordance with the monetary harmonisation programme which is designed to achieve a harmonised monetary and fiscal system in the Common Market.
2. For the purposes of paragraph 1 of this Article, the Member States agree to:
 - (a) remove all exchange restrictions on imports and exports within the Common Market;
 - (b) make necessary adjustments in their exchange rates towards free market rates in order to improve their balance of payments positions and enhance the level of their international reserves;
 - (c) adjust their fiscal policies and domestic credit to the government and private sector designed to ensure monetary stability and the achievement of sustained economic growth;
 - (d) liberalise their financial sectors by freeing and deregulating interest rates or their equivalent with a view to achieving positive real interest rates or their equivalent in order to promote savings for investment and to enhance competition and efficiency in the financial system; and
 - (e) harmonise their tax policies with a view to removing tax distortions affecting commodity and factor movements in order to bring about a more efficient allocation of resources within the Common Market.

Article 77 Establishment of Currency Convertibility

1. The Member States undertake to establish, at a time to be determined by the Council, currency convertibility which shall make their currencies convertible into one another.
2. For the purposes of paragraph 1 of this Article, the Member States shall abolish all restrictions on current transactions.

Article 78 Formation of an Exchange Rate Union

1. The Member States undertake to establish, at a time to be determined by the Council, an Exchange Rate Union.
2. The Member States agree to the immutable fixing of the exchange rates of their currencies within a band to be prescribed by the Council.

Article 79 Regional Macro-economic Co-ordination

1. The Member States undertake to co-ordinate their macro-economic policies and economic reform programmes with a view to promoting the economic and social balance of the Common Market and to develop a framework for macro-economic planning and programming.
2. The Member States undertake to evolve policies designed to improve the resource and production base of the economically weaker Member States in order to achieve balanced development within the Common Market.

Article 80 Banking and Capital Market Development

The Member States undertake to implement a region-wide capital market development programme to be determined by the Council and shall create a conducive environment for the movement of capital. To this end Member States shall:

- (a) take steps to achieve wider monetization of the region's economies under a liberalised market economy;
- (b) establish national stock exchanges and an association of national stock exchanges to enable objectives to be pursued in a concerted and coordinated manner including promotional activities, training, standardisation and harmonisation of operational rules and regulations;
- (c) establish a Common Market rating system of listed companies and an index of trading performance to facilitate the negotiation and sale of shares within the Common Market and also external to the Common Market;
- (d) develop a region-wide network of national capital markets, with the purpose of facilitating the flow of information on national stock exchanges and their functioning, listed companies, availability of stocks, bonds, securities, treasury bills, notes, and other monetary instruments for the cross-border marketing of such instruments; and
- (e) ensure adherence by their appropriate national authorities to harmonised stock trading systems, promotion of monetary instruments, and permission for residents of the Member States to acquire and negotiate monetary instruments.

Article 81 Capital Movement

The Member States shall, permit the free movement of capital within the Common Market and integrate their financial structures. In this regard, the Member States shall:

- (a) ensure the unimpeded flow of capital within the Common Market through the removal of controls on the transfer of capital among the Member States in accordance with a timetable to be determined by the Council;
- (b) ensure that the citizens of and persons resident in the Member States are allowed to acquire stocks, shares and other securities or to invest in enterprises in the territories of the other Member States; and
- (c) encourage cross border trade in government securities such as treasury bills, development and loan stocks within the Common Market.

Article 82 Joint Project Financing

1. The Member States undertake to co-operate in financing projects jointly in each other's territory, especially those that facilitate regional integration.
2. The Member States undertake to co-operate in the mobilisation of foreign capital for the financing of national and regional projects.

Article 83 Safeguard Measures

The Council may approve measures designed to remedy any adverse effects a Member State may experience by reason of the implementation of the provisions of this Chapter, provided that such a Member State shall furnish to the Council, proof that it has taken all reasonable steps to overcome the difficulties, and that such measures are applied on a non-discriminatory basis.

CHAPTER ELEVEN: CO-OPERATION IN THE DEVELOPMENT OF TRANSPORT AND COMMUNICATIONS

Article 84 Common Transport and Communication Policies

The Member States undertake to evolve coordinated and complementary transport and communications policies, to improve and expand the existing links and establish new ones as a means of furthering the physical cohesion of the Member States, so as to facilitate movement of inter-State traffic and to promote greater movement of persons, goods and services within the Common Market. To this end the Member States shall take all necessary steps to:

- (a) maintain, upgrade, and rehabilitate the roads, railways, airports and harbours in their territories;
- (b) review and redesign their intermodal transport systems and develop new inter-territorial routes of the Common Market to link and to cater for the types of goods and services produced in the Member States;
- (c) maintain, expand and upgrade communications and meteorological facilities that would enhance and improve contacts between persons and businessmen in the Member States and promote the full exploitation of the market and investment opportunities created by the Common Market;

- (d) grant special treatment to landlocked and island Member States in respect of the application of the provisions of this Chapter; and
- (e) provide security and protection to transport systems to ensure the smooth movement of goods and persons within the Common Market.

Article 85 Roads and Road Transport

The Member States shall:

- (a) take measures to ratify or accede to international Conventions on Road Traffic and Road Signs and Signals, and take such steps as may be necessary to implement these Conventions;
- (b) harmonize the provisions of their laws concerning the equipment for and markings of vehicles used for inter-State transport within the Common Market;
- (c) adopt common standards and regulations for the issuance of driving licences;
- (d) harmonize and simplify formalities and documents required for the vehicles and cargo used in inter-State transport within the Common Market;
- (e) adopt minimum requirements for the insurance of goods and vehicles;
- (f) adopt common regulations governing speed limits on urban roads and highways;
- (g) adopt common regulations prescribing minimum safety requirements for the transport of dangerous substances;
- (h) establish common measures for the facilitation of road transit traffic;
- (i) harmonize rules and regulations concerning special transport requiring escort;
- (j) adopt common rules and regulations governing the dimensions, technical requirements, gross weight and load per axle of vehicles used in inter-State trunk roads within the Common Market;
- (k) construct inter-State trunk roads linking the Member States to common standards of design and maintain existing road networks to such standards as will enable the carriers of other Member States to operate to and from their territories in a reasonably efficient manner;
- (l) maintain, rehabilitate, upgrade and reconstruct the inter-State trunk road network;
- (m) ensure that inter-State roads once rehabilitated will not disintegrate and for this purpose shall make adequate provisions for funds and maintenance personnel;
- (n) adopt a coordinated approach in the implementation of inter-State trunk road projects;
- (o) agree on common policies for the manufacture and the maintenance of road transport equipment;
- (p) establish common road design and construction standards for the inter-State trunk roads that would promote the use as much as possible of local materials and resources;
- (q) adopt common procedures for the harmonisation of road transit charges;
- (r) agree on measures for the gradual reduction and eventual elimination of all non-physical barriers to road transport within the Common Market;
- (s) ensure that common carriers from other Member States have the same opportunities and facilities as common carriers in their territories in the undertaking of inter-State transport operations;
- (t) ensure, as far as practicable, that transport rates of common carriers applicable within the Member States for inter-State transport of passengers and goods to and from other

Member States shall not be less favourable than similar transport rates applicable within their own territories for similar transport;

- (u) ensure that the treatment of motor transport operators engaged in inter-State transport within the Common Market from other Member States is not less favourable than that accorded to the operators of similar transport from their own territories; and
- (v) make road transport efficient and cost effective by promoting competition and introducing regulatory framework to facilitate the road haulage industry operations.

Article 86 Railways and Rail Transport

1. The Member States agree to the establishment of an efficient and coordinated railway services which would interlink Member States within the Common Market, the connection of different railway gauges and the construction of required additional railway links.
2. The Member States in whose territories railways are operated shall, in particular:
 - (a) adopt common policies for the development of railways and railway transport in the Common Market;
 - (b) undertake to make their railways more efficient and competitive through, inter-alia, autonomous management;
 - (c) adopt common safety rules, regulations and requirements with regard to signs, signals, rolling stock and the transport of dangerous substances;
 - (d) harmonize their legal and administrative requirements for inter-State railway transport within the Common Market with a view to eliminating related barriers and inconsistencies that exist among themselves;
 - (e) adopt measures for the facilitation, harmonisation and rationalisation of railway transport within the Common Market;
 - (f) harmonize and simplify documents required for inter-State railway transport among themselves;
 - (g) harmonize procedures with respect to the packaging, marking and loading of goods and wagons for inter-State railway transport among themselves;
 - (h) agree to charge non-discriminatory tariffs in respect of goods from their territories and goods from other Member States, except where their goods enjoy domestic transport subsidies, and apply the same rules and regulations in respect of railway transport among themselves without discrimination;
 - (i) consult each other on proposed measures that might affect the railway transport of other Member States;
 - (j) integrate the operations of their railway administrations including the synchronization of train schedules and the operations of unit trains;
 - (k) establish common standards for the construction and maintenance of railway facilities;
 - (l) agree on common policies for the manufacture of railway transport equipment and railway facilities;
 - (m) agree to allocate adequate space for the storage of goods from each other within their goods sheds;
 - (n) take measures to facilitate the transfer of railway wagons used for inter-State railway transport within the Common Market from one railway network to another;

- (o) facilitate the deployment of railway rolling stock for the conveyance of goods to and from the territories of each other without discrimination;
- (p) endeavour to maintain the existing physical facilities of their railways to such standards as will enable other Member States to operate their own systems within the Common market in a reasonably efficient manner; and
- (q) provide good quality railway transport services among the Member States on a non-discriminatory basis.

Article 87 Air Transport

1. In order to promote the provision of better and efficient air transport, the Member States shall promote the establishment of joint ventures for co-operation in the use of equipment, in the pooling of aircraft maintenance and training facilities, in the acquisition and use of fuel and spare parts, in insurance schemes, in the co-ordination of flight schedules and the improvement of managerial techniques and skills.
2. The Member States shall take necessary steps to promote the establishment of joint air services operations by their designated airlines on intercontinental routes and the joint use by them of wide body aircraft as steps towards the eventual establishment of a Common Market airline.
3. The Member States shall in particular:
 - (a) adopt common policies for the development of air transport in the Common Market in collaboration with other relevant international organisations including the African Civil Aviation Commission, the African Airlines Association, the International Air Transport Association and the International Civil Aviation Organisation;
 - (b) undertake to make air transport services efficient and profitable through, inter-alia, autonomous management;
 - (c) liberalise the granting of air traffic rights for passengers and cargo operations with a view to increasing the efficiency and profitability of their airlines;
 - (d) harmonise civil aviation rules and regulations by implementing the provisions of the Chicago Convention on International Civil Aviation, with particular reference to Annex 9 thereof;
 - (e) establish common measures for the facilitation of passenger and cargo air services in the Common Market;
 - (f) co-ordinate the flight schedules of their designated airlines;
 - (g) consider ways to develop, maintain and co-ordinate in common, their navigational, communications and meteorological facilities for the provision of safe air navigation and the joint management of their air space;
 - (h) encourage the joint use of maintenance and overhaul facilities and other services for aircraft, ground handling equipment and other facilities;
 - (i) agree to take common measures for the control and protection of the Common Market air space;
 - (j) agree to charge the same rates and apply the same rules and regulations relating to scheduled air transport services among themselves;

- (k) take measures directed towards aircraft standardization including co-operation in the preparation of technical specifications for the type of aircraft to be operated; and
- (l) coordinate measures and co-operate in the maintenance of the high security of air services operations.

Article 88 Maritime Transport and Ports

The Member States shall:

- (a) promote the co-ordination and harmonization of their maritime transport policies and the eventual establishment of a common maritime transport policy;
- (b) promote the development of efficient and profitable sea port services;
- (c) make rational use of existing port installations;
- (d) in the case of those that are coastal Member States, co-operate with those that are landlocked Member States in maritime transport so as to facilitate the trade of such landlocked Member States;
- (e) take measures to ratify or accede to International Conventions on maritime transport;
- (f) establish a harmonious traffic organisation system for the optimal use of maritime transport services;
- (g) co-operate in the elaboration and application of measures to facilitate the arrival, stay and departure of vessels;
- (h) promote co-operation among their port authorities in the management and operations of their ports and maritime transport so as to facilitate the efficient movement of traffic between their territories;
- (i) agree to charge non-discriminatory tariffs in respect of goods from their territories and goods from other Member States, except where their goods enjoy domestic transport subsidies, and apply the same rules and regulations in respect of maritime transport among themselves without discrimination;
- (j) agree to allocate space on board their ships for goods consigned to or from the territories of other Member States;
- (k) install and maintain efficient cargo handling equipment, cargo storage facilities and general operations and train related manpower;
- (l) agree to allocate adequate space for the storage of goods traded among themselves within their storage facilities;
- (m) coordinate measures with respect to, and co-operate in the maintenance of, the safety of maritime transport services.
- (n) provide adequate facilities with good communication systems that would receive and respond to signals promptly;
- (o) inter-link their national communication systems so as to identify polluted points in oceans for concerted regional marine pollution control;
- (p) encourage their respective national shipping lines to form sub-regional associations;
- (q) agree to provide cargo to vessels of the Member States in priority to other vessels and to co-operate in establishing a policy favouring the vessels of the Member States with regard to priority berthing and other port services and facilities; and
- (r) review their national maritime legislations in accordance with the existing international maritime conventions.

Article 89 Inland Waterway Transport

The Member States which have common navigable inland waterways shall:

- (a) adopt, harmonize and simplify rules, regulations and administrative procedures governing their inter-State inland waterway transport;
- (b) install and maintain efficient cargo handling equipment, cargo storage facilities and general operations and train related manpower resources;
- (c) use, where feasible, joint maintenance facilities;
- (d) harmonise tariffs structure for their inter-State inland waterway transport;
- (e) adopt common rules to govern the packaging, marking, loading and other procedures for their inter-State inland waterway transport;
- (f) agree to charge the same tariffs structure in respect of goods from their territories and goods from other Member States except where their goods enjoy domestic transport subsidies, and apply the same rules and regulations in respect of inland waterway transport among themselves without discrimination;
- (g) agree to provide space without discrimination on board vessels registered in their territories for goods consigned to and from the territories of other Member States;
- (h) wherever possible, promote co-operation among themselves by undertaking joint ventures in inland waterway transport including the establishment of joint shipping services; and
- (i) coordinate measures with respect to, and co-operate in the maintenance of, safety in inland water transport services including the provision and maintenance of the right communication equipment to receive distress position promptly.

Article 90 Pipeline Transport

- 1. The Member States shall co-operate in the development of pipeline transport and in the utilisation of existing pipeline facilities.
- 2. Where common pipeline projects are feasible, the Member States shall co-operate in all aspects of planning, financing, execution, management and maintenance of pipeline services and facilities.

Article 91 Multimodal Transport

The Member States shall:

- (a) harmonize and simplify regulations, goods classification, procedures and documents required for their multimodal inter-State transport;
- (b) apply uniform rules and regulations with respect to the packaging, marking and loading of goods;
- (c) provide, where feasible, technical and other facilities for direct trans-shipment of goods at main trans-shipment points, including intermodal cargo exchange points, inland clearance depots, dry ports or inland container depots;
- (d) agree to allocate multimodal transport facilities for goods consigned to or from the territories of other Member States; and

- (e) take measures to ratify or accede to international Conventions on Multimodal Transport and containerisation and take such steps as necessary to implement them.

Article 92 Freight Booking Centres

1. The Member States shall establish freight booking centres where these are economically justified.
2. The Member States shall recommend to all their respective national enterprises or agencies, the contracting of exports or imports handled by them on c.i.f. and f.o.b. basis respectively.

Article 93 Freight Forwarders, Customs Clearing Agents and Shipping Agents

1. The Member States shall allow any person to register, and be licensed, as a freight forwarder, customs clearing agent and shipping agent, provided that, that person fulfills the legal requirements of that Member State.
2. The Member States shall agree not to restrict the commercial activities, rights and obligations of a lawfully registered and licensed freight forwarder or clearing agent.

Article 94 Meteorological Services

1. Each Member State shall collect and disseminate to the other Member States meteorological information in order to facilitate the efficient operation of air navigation, coastal shipping, inland water transport and the issuing of cyclone warnings and other adverse weather phenomena. To this end, the Member States agree to establish a Regional Meteorological Centre.
2. The Member States shall co-operate and support each other in all activities of the World Meteorological Organization affecting the interests of the Common Market especially the monitoring of the atmosphere and climatic changes on the planet.
3. The Member States shall exchange information and expertise concerning new developments in meteorological science and technology including the calibration and comparison of instruments.

Article 95 Postal Services

The Member States shall, in collaboration with the relevant international organisations including Universal Postal Union and Pan-African Postal Union, promote close co-operation between their postal administrations and devise ways and means to achieve fast, reliable, economic and efficient postal services among themselves, through the strengthening of Common Market postal sorting, routing, transit and distribution centres.

Article 96 Telecommunications

The Member States shall:

- (a) adopt common telecommunications policies to be developed within the framework of the Common Market in collaboration with other relevant international organisations including the Pan-African Telecommunications Union and the International Telecommunications Union;
- (b) undertake to give full management autonomy to their telecommunications administrations in their operational functions and in the provision of the telecommunications services;
- (c) make rational use of existing telecommunications installations;
- (d) improve and maintain their inter-State telecommunications networks and modernize equipment, to meet the common standards required for efficient inter-State traffic within the Common Market;
- (e) harmonize and apply non-discriminatory tariffs among themselves and where possible, shall agree on preferential tariff treatment applicable within the Common Market;
- (f) establish adequate direct telecommunications links among themselves;
- (g) co-operate and coordinate their activities in the maintenance of telecommunication facilities especially in the exchange of manpower and spare parts;
- (h) promote the establishment of joint ventures for the manufacture of telecommunication equipment;
- (i) develop their rural telecommunication so as to enhance socio-economic interaction between rural and urban centres; and
- (j) devise common frequency management and monitoring scheme, assign mutually agreed upon frequencies for cross-border mobile radio communication and issue operating licenses agreed upon by the Member States concerned.

Article 97 Radio and Television

The Member States shall:

- (a) co-operate in technical matters and the electronic media that will promote the development of the Common Market through the establishment of direct radio and television links with one another;
- (b) harmonize their technical equipment for the manufacture of radio and television equipment; and
- (c) apply non-discriminatory radio and television tariffs for the exchange of electronic media programmes.

Article 98 Common Provisions

1. The Member States shall take measures directed towards the harmonization and maximum use of programmes within their existing institutions for the training of personnel in the field of transport and communications.
2. The Member States shall exchange information on new technical developments in all modes of transport and communications.
3. Each Member State shall take all necessary measures to prohibit the transportation of those products, mail and merchandise that are considered illegal in another Member State and are gazetted as illegal in accordance with the rules and regulations of that Member State.

CHAPTER TWELVE: CO-OPERATION IN INDUSTRIAL DEVELOPMENT

Article 99 Scope of Co-operation in Industrial Development

The objectives of co-operation in industrial development in the Common Market are to:

- (a) promote self-sustained and balanced growth;
- (b) increase the availability of industrial goods and services for intra-Common Market trade;
- (c) improve the competitiveness of the industrial sector thereby enhancing the expansion of intra-regional trade in manufactures in order to achieve structural transformation of the economy that would foster the overall socio-economic development in Member States; and
- (d) develop industrialists that would acquire ownership and management of the industries.

Article 100 Strategy and Priority Areas

For the purposes of Article 99 of this Treaty, the Member States undertake to formulate an industrial strategy aimed at:

- (a) the promotion of linkages among industries through specialisation and complementarity, paying due regard to comparative advantage in order to enhance the spread effects of industrial growth and to facilitate the transfer of technology;
- (b) the facilitation of the development of:
 - i. small-and-medium scale industries including sub-contracting and other relations between larger and smaller firms;
 - ii. basic capital and intermediate goods industries for the purposes of obtaining the advantages of economies of scale;
 - iii. food and agro industries;
- (c) the rational and full use of established industries so as to promote efficiency in production;

- (d) the promotion of industrial research and development, the transfer, adaptation and development of technology, training, management and consultancy services through the establishment of joint industrial support institutions and other infrastructural facilities;
- (e) the promotion of the linkage between the industrial sector and other sectors of the economies such as agriculture, transport, communications and other sectors;
- (f) the granting of investment incentives to industries particularly those that use local materials and labour;
- (g) the dissemination and exchange of industrial and technological information;
- (h) the improvement in the investment climate for both national and foreign investors and the encouragement of national savings and the re-investment of surpluses;
- (i) the development of human resources including training and the development of indigenous entrepreneurs and industrialists for sustained industrial growth;
- (j) the increased participation of the private sector in project development, promotion and implementation;
- (k) the rehabilitation, maintenance and upgrading of agro-industries and the metallurgical, engineering, chemical and building materials industries;
- (l) the development and promotion of integrated inter-State resource-based core and basic industries;
- (m) the promotion of multinational projects with the aim of increasing added value to raw materials in the Member States for export; and
- (n) the joint exploitation and utilisation of shared resources.

Article 101 Multinational Industrial Enterprises

1. The Member States shall promote and encourage the establishment of multinational industrial enterprises in accordance with the laws in force in the Member States in which such enterprises shall be established, having due regard to the economic conditions and priorities of the particular Member States concerned.
2. The Member States concerned shall determine:
 - (a) the conditions and priorities that shall govern multinational industrial enterprises that:
 - i. require the combined markets of more than one Member State to be profitable and which require for their consumption large quantities of the natural resources or raw materials of the Member States which are either exported to third countries or are unused;
 - ii. require for their establishment and operation, large sums of money;
 - iii. lead to the earning or saving of substantial amounts of foreign exchange;
 - iv. through their activities, enhance the development or acquisition of modern technology, managerial and marketing experience; and
 - v. through their activities, provide substantial employment or reduce unemployment within the territories of the Member States;
 - (b) the guidelines relating to the establishment and operation of multinational industrial enterprises which shall include:

- i. the location of multinational industrial enterprises and the criteria to be applied in that respect;
 - ii. repatriation of funds;
 - iii. regulations regarding ownership and management by the Member States in a multinational industrial enterprise; and
 - iv. any other matter designed to ensure the attainment of the objectives of this Chapter.
3. For the purposes of paragraph 2 of this Article, the Member States may take into account any recommendations that the Sectoral Ministerial Meeting on Industry, may make for the purpose of assisting in the co-ordination of and the provision of advice on the process of establishing multinational industrial enterprises in the Member States.
 4. The Member States agree that in order to provide a comprehensive inventory of raw materials required by multinational industrial enterprises, they shall give consideration to the desirability of making an inventory of their potential natural resources.

Article 102 Industrial Manpower Development, Training, Management and Consultancy Services

1. The Member States shall take appropriate measures to establish, where necessary, joint training institutions and programmes, to share available national institutions and use African training institutions to meet the requirements for the training of skilled manpower for their industrial and technological development.
2. The Member States shall diligently endeavour to develop and make maximum use of their national entrepreneurs and technical managerial and marketing manpower and other human resources to promote and accelerate the process of their industrialization.
3. The Member States undertake to encourage the development and the use, as much as possible, of national industrial management and consultancy services in their industrial development and shall also use as much as practicable the services of any appropriate African institution for industrial management and consultancy services.

Article 103 Industrial Research and Development and the Acquisition of Modern Technology

1. The Member States shall share and make the best use of existing and future industrial and scientific research institutions, facilities and technical know-how. The institutions referred to herein include the Leather and Leather Products Institute and the Metallurgical Technology Centre.
2. The Member States shall endeavour to adopt a common approach to and determine the terms and conditions governing the transfer or adaptation and development of technology.
3. The Member States shall endeavour to co-ordinate their efforts and consult each other in matters relating to industrial property.

Article 104 Exchange of Industrial and Technological Information

1. The Member States shall exchange information on:
 - (a) the production of and requirements for capital, intermediate and consumer goods;
 - (b) the availability of facilities for industrial manpower development and training;
 - (c) legislation and regulations concerning investment from third countries and related incentives;
 - (d) legislation on patents, trade marks and designs; and
 - (e) industrial investment opportunities, processes, technology and related information.
2. The Member States undertake to communicate to each other and exchange any information acquired as a result of industrial research, engineering and technological adaptation or innovation and managerial and marketing experience.
3. The Member States shall disseminate and exchange any other information or documents deemed necessary by the Sectoral Ministerial Meeting on Industry.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, a Member State may withhold classified documents.
5. The Member States undertake to strengthen their capability to compile, disseminate and absorb industrial information.
6. The Member States agree that the provisions of this Article shall not apply where the communication of the information in question is prohibited under an agreement concluded before the entry into force of this Treaty, between a Member State and another party.

Article 105 Mechanism for the Promotion of Industrial Development

1. The Member States shall establish a centre for the promotion of industrial development, referred to in this Chapter as “the Centre”, as an institution of the Common Market whose constitution shall be determined by the Council.
2. The objectives of the Centre shall be to:
 - (a) promote co-operation in industrial development among the Member States;
 - (b) assist the Member States to establish or strengthen national industrial development institutions;
 - (c) assist in the training and development of various categories of industrial skills including management and marketing;
 - (d) organize and maintain a data bank for industrial information;
 - (e) assist in the development of common standards and quality control in accordance with the provisions of Chapter Fifteen of this Treaty; and
 - (f) co-operate with the national industrial development institutions of the Member States and with African regional institutions for industrial development.
3. The functions of the Centre shall include:
 - (a) the undertaking of industrial surveys, project identification and prefeasibility studies;

- (b) the provision of advisory services for industrial development with particular reference to multinational enterprises;
- (c) working closely and exchanging information with the trade and investment promotion centers in the Member States; and
- (d) any other function that the Council, on the recommendation of the Sectoral Ministerial Meeting on Industry, may assign to it.

CHAPTER THIRTEEN: CO-OPERATION IN THE DEVELOPMENT OF ENERGY

Article 106 Scope of Co-operation

1. The Member States recognise that a secure supply of energy at competitive prices is a pre-condition for economic development and that to ensure competitively priced supplies of energy to all the Member States requires both the development of local or renewable energy resources and the rational management of existing resources.
2. For the purposes of paragraph 1 of this Article, the Member States undertake to co-operate in the joint development and utilisation of energy resources including hydro, fossil and bio-mass and shall, in particular, co-operate in the:
 - (a) joint exploration and exploitation of hydro and fossil fuel;
 - (b) creation of more favourable investment climate to encourage public and private investment in this sub-sector;
 - (c) encouragement of joint utilisation of training and research utilities;
 - (d) exchange of information on energy systems and investment opportunities; and
 - (e) development of research programmes on renewable energy systems.

Article 107 Trade in Energy Resources

1. The Member States agree to develop a mechanism for facilitating trade in energy fuels, such as coal, natural gas, petroleum and electricity.
2. For the purposes of paragraph 1 of this Article, the Member States agree to co-operate in:
 - (a) joint procurement of petroleum products; and
 - (b) interconnecting national electricity grids.

Article 108 Efficient Use of Energy in Transport

The Member States shall develop a common strategy in the more efficient use of energy in the transport sector such as the use of fuel efficient vehicles, the diversion of traffic to energy saving transport systems such as railways and water transport, the use of buses and urban mass transport facilities and the mixing of any imported fuel with local substitutes.

Article 109 International Agreements

The Member States undertake to accede to international agreements that are designed to improve the management of energy resources, develop new renewable energy resources and coordinate the exchange of information on energy resources.

CHAPTER FOURTEEN: CO-OPERATION IN HEALTH MATTERS

Article 110 Scope of Co-operation

1. The Member States agree to undertake concerted measures to cooperate in health through:
 - (a) the control of pandemics or epidemics, communicable and vector borne diseases that might endanger the health and welfare of citizens of the Common Market;
 - (b) the facilitation of movement of pharmaceuticals within the Common Market and control of their quality;
 - (c) joint action in the prevention of drug trafficking;
 - (d) the training of manpower to deliver effective health care; and
 - (e) the exchange of research, development and information on health issues.
2. For the purposes of paragraph 1 of this Article, the Member States undertake to:
 - (a) devise and implement systems to ensure that pharmaceuticals entering the Common Market from third countries, produced in the Common Market or moving within the Common Market conform to internationally acceptable standards in terms of quality and therapeutic value;
 - (b) evolve mechanisms for joint action in combating outbreak of epidemics such as aids, cholera, malaria, hepatitis and yellow fever as well as co-operation in facilitating mass immunization and other public health community campaigns;
 - (c) designate national hospitals to be Common Market referral hospitals;
 - (d) develop a national drug policy which would include establishing quality control capacities, national formularies and good procurement practices;
 - (e) harmonise drug registration procedures so as to achieve good control of pharmaceutical standards without impeding or obstructing the movement of pharmaceuticals within the Common Market;
 - (f) accord each other mutual recognition of drugs registered in the Common Market;
 - (g) encourage research and development on drugs and medicinal plants;
 - (h) co-operate, within the framework of co-operation in industrial development, in the local production of pharmaceutical products;
 - (i) apply the World Health Organisation Certification on the quality of pharmaceutical products dealt with in international trade; and
 - (j) establish an audit team to assist local pharmaceutical industries to produce high quality products that are safe, effective and free from harmful side effects and to assist the Member States in controlling the standards of pharmaceuticals manufactured within their territories in conformity with the WHO Certification.

Article 111 Illicit Drug Trafficking and Use of Banned Ingredients

The Member States agree to develop a common approach through the education of the general public and in collaboration with their law enforcement agencies in controlling and eradicating illicit drug trafficking and the use of harmful or banned ingredients in drugs.

CHAPTER FIFTEEN: STANDARDISATION AND QUALITY ASSURANCE

Article 112 Role of Standardisation and Quality Assurance

The Member States, recognising the importance of standardisation and quality assurance in the promotion of health, the enhancement of the standard of living, the rationalisation and reduction of unnecessary variety of products, the facilitation of interchangeability of products, the promotion of trade, consumer protection, the creation of savings in government purchasing, improved productivity, the facilitation of information exchange as well as in the protection of life, property, and the environment, agree to:

- (a) evolve and apply a common policy with regard to the standardisation and quality assurance of goods produced and traded within the Common Market, the relationship of their national standards bodies with regional, international and other organisations concerned with standardisation and quality assurance and in the development of activities in standardisation and quality assurance for the achievement of the objectives of the Common Market;
- (b) establish within their territories, national standards bodies, and develop their technical capacities so as to enable them to adequately carry out standardisation and quality assurance activities at the national level and to co-operate with other Member States;
- (c) promote and enforce standards relating to public health and safety and the protection of the environment by applying appropriate standards for goods produced and traded within the Common Market; and
- (d) recognise the African Regional Organization for Standardization as a leading co-operating partner in the implementation of appropriate provisions of this Chapter and agree to accede to the Agreement Establishing ARSO.

Article 113 Establishment of Standards

The Member States undertake to:

- (a) apply uniform rules and procedures for the formulation of their national standards;
- (b) adopt African regional standards and where these are unavailable, adopt suitable international standards for products traded in the Common Market;
- (c) coordinate their views with regard to the selection, recognition, adaptation and application of regional and international standards in so far as the needs of the Common Market are concerned, and constantly endeavour to improve the standardisation of goods and services within the Common Market; and

- (d) apply the principle of reference to standards in their national regulations, so as to facilitate the harmonisation of their technical regulations.

Article 114 Quality Assurance

The Member States shall:

- (a) apply uniform standards and specifications for the inspection and testing of goods traded within the Common Market, so that the results may be more easily interpreted and coordinated in a uniform manner within the Common Market;
- (b) adopt regionally acceptable quality management systems standards, and develop capacities for quality assurance of products traded in the Common Market;
- (c) use harmonised documentation for the evaluation of the quality of goods traded in the Common Market; and
- (d) in conjunction with customs and other relevant authorities, provide for the ease of movement of samples meant for testing within the Common Market.

Article 115 Certification and Laboratory Accreditation

The Member States shall:

- (a) adopt and apply a harmonised scheme for the certification of goods manufactured and traded in the Common Market;
- (b) adopt and apply a harmonised scheme for the accreditation of laboratories used for the evaluation of goods produced and traded in the Common Market; and
- (c) adopt common rules and procedures for the certification marks to be applied on goods produced and traded in the Common Market and for the mutual recognition of each others national certification marks, as well as certification and laboratory accreditation schemes.

Article 116 Metrology

The Member States shall:

- (a) adopt a harmonised system for legal, scientific and industrial metrology activities in the Member States and formulate modalities for the mutual recognition of calibration certificates issued by the national metrology laboratories of the Member States;
- (b) promulgate national legal frameworks for legal metrology as well as the pre-packing and labelling of goods produced and traded in the Common Market;
- (c) adopt and systematically apply a uniform system of labelling goods to be traded within the Common Market;
- (d) agree to standardise all aids to the recognition and movement of goods and their containers such as labels and transit documents;
- (e) apply safety codes for the handling and shipment of goods traded within the Common Market; and

- (f) in conjunction with customs and other relevant authorities, provide for the ease of movement of metrology standards and equipment sent for calibration within the Common Market.

Article 117 Co-operation in Testing

The Member States undertake to encourage inter-laboratory comparison testing and mutual recognition of each others' accredited laboratories.

Article 118 Documentation and Information

The Member States agree to adopt compatible management systems for standardisation and quality assurance related documentation and information to facilitate easier exchange of information among themselves.

Article 119 Training in Standardisation and Quality Assurance

The Member States agree to:

- (a) consult one another through the Secretariat concerning their common training needs in the field of standardisation and quality assurance;
- (b) undertake to coordinate among themselves the use of existing facilities with a view to making them accessible to other Member States;
- (c) establish, in conjunction with the African Regional Organization for Standardization, training programmes designed to meet the specific needs of the Common Market; and
- (d) co-operate with the African Regional Organization for Standardization and through it with other international agencies concerned with standardization and quality assurance, in the implementation of training programmes established for the Common Market.

Article 120 Publicity of Standardisation Activities

The Member States shall endeavour to make the activity of standardisation and quality assurance known to all concerned through seminars, advertisements, publications, films, discussions, participation of the national standardisation institutions in trade fairs, special national awards and the creation of national quality associations within the Member States.

Article 121 Administrative Procedures

The Member States shall use harmonised documentation for the evaluation of the quality of goods for customs clearance for goods traded in the Common Market.

CHAPTER SIXTEEN: CO-OPERATION IN THE DEVELOPMENT OF NATURAL RESOURCES, ENVIRONMENT AND WILDLIFE

Article 122 Scope and Principles of Co-operation

1. The Member States agree to take for their mutual benefit, concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market.
2. The Member States recognise that economic activity is often accompanied by environmental degradation, excessive depletion of resources and serious damage to natural heritage and that a clean as well as an attractive environment is a prerequisite for long-term economic growth.
3. The Member States undertake, through a regional conservation strategy, to co-operate and coordinate strategies for the protection and preservation of the environment against all forms of pollution including atmospheric and industrial pollution, pollution of the water resources, and pollution from urban development.
4. The Member States undertake to co-operate and adopt common policies for the control of hazardous waste, nuclear materials, radioactive materials and any other materials used in the development or exploitation of nuclear energy.
5. Action by the Common Market relating to the environment shall have the following objectives:
 - (a) to preserve, protect and improve the quality of the environment;
 - (b) to contribute towards protecting human health; and
 - (c) to ensure the prudent and rational utilisation of natural resources.
6. Action by the Common Market relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements shall be a component of the Common Market's policy in all the fields of Common Market activity.

Article 123 Co-operation in Management of Natural Resources

1. The Member States agree to take concerted measures to foster cooperation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market for the mutual benefit of the Member States. In particular, the Member States shall:
 - (a) take necessary measures to conserve their natural resources;
 - (b) co-operate in the management of their natural resources for the preservation of the eco-systems and arrest environmental degradation; and
 - (c) adopt common regulations for the preservation of shared land, marine and forestry resources.
2. The Member States agree to take necessary measures to conserve and manage forests, through the:

- (a) adoption of common policies for the conservation and management of natural forests, industrial plantations and nature reserves;
- (b) exchange of information on natural forests and industrial plantations development and management;
- (c) joint promotion of a common forestry practice within the Common Market;
- (d) joint utilisation of forestry training and research facilities;
- (e) adoption of common regulations for the preservation and management of all catchment forests within the Common Market; and
- (f) the establishment of uniform regulations for the utilisation of forestry resources in order to reduce the depletion of the natural forests and avoid desertification within the Common Market.

3. The Member States shall take measures to engage in Api-Agro-Forestry Systems.

4. The Member States agree to co-operate in the management of their fresh water and marine resources, through the:

- (a) establishment and adoption of common regulations for the better management and development of marine parks, reserves and controlled areas;
- (b) adoption of common policies for the conservation, management and development of fisheries resources; and
- (c) establishment of uniform fisheries investment guidelines for

5. The Member States undertake to accede to international conventions or agreements that are designed to improve the policies of development, management and protection of their natural resources.

Article 124 Co-operation in the Management of the Environment

1. The Member States undertake to co-operate in the management of the environment and agree to:

- (a) develop a common environmental management policy that would preserve the ecosystems of the Member States, prevent, arrest and reverse the effects of environmental and industrial pollution, declining bio-diversity, loss of genetic diversity and land degradation;
- (b) develop special environmental management strategies to manage forests, terrestrial and marine resources, water resources, atmospheric emissions, water and hazardous toxic substances;
- (c) accede to the UNCED Agreements relating to the Conventions on climatic change and biodiversity;
- (d) accede to the UNEP Convention for Eastern and Southern Africa on water and marine resources; and
- (e) take measures to control trans-boundary, air and water pollution arising from mining, fishing and agricultural activities.

2. For the purposes of paragraph 1 of this Article, the Member States undertake to:

- (a) adopt common environmental control regulations, incentives and standards;

- (b) develop capabilities for the assessment of all forms of environmental degradation and pollution and the formulation of regional solutions;
- (c) encourage the manufacture and use of biodegradable pesticides, herbicides and packaging materials;
- (d) discourage the excessive use of agricultural chemicals and fertilizers;
- (e) adopt sound land management techniques for the control of soil erosion, desertification and bush encroachment;
- (f) promote the use of ozone and environmental friendly chemicals;
- (g) promote the utilisation and strengthen the facilities of training and research institutions within the Common Market;
- (h) adopt common standards for the control of atmospheric industrial and water pollution arising from urban and industrial development activities;
- (i) exchange information on atmospheric, industrial and other forms of pollution and conservation technology;
- (j) adopt common regulations for the management of shared natural resources;
- (k) adopt measures and policies to address the existing unsatisfactory demographic profiles such as high growth rates and fertility rates, high dependency ratio and poor social conditions in order to mitigate their adverse impact on environment and development; and
- (l) adopt community environmental management criteria.

Article 125 Prevention of Illegal International Trade in Toxic and Hazardous Wastes

1. The Member States undertake to co-operate and adopt common positions against illegal dumping of toxic and undesirable wastes within the Common Market from either a Member State or third country.
2. The Member States undertake to co-operate in sharing technological know-how on clean technologies and low-waste production systems for the energy and productive sectors.
3. The Member States undertake to accede to international environmental Conventions that are designed to improve the environmental policies and management. To this end, the Member States agree to accede to the Montreal Protocol on the Environment.
4. The Member States agree to include environmental management and conservation measures in trade, transport, agricultural, industrial, mining and tourism activities in the Common Market.

Article 126 Wildlife Development and Management

1. The Member States undertake to develop a collective and coordinated approach to sustainable development and management rational exploitation and utilisation and the protection of wildlife in the Common Market. In particular, the Member States shall:
 - (a) adopt common policies for the conservation of wildlife, natural reserves, national parks and marine parks;
 - (b) exchange information on wildlife development and management;

- (c) exchange information on anti-poaching activities and suspected poachers and where feasible, carry out joint anti-poaching programmes;
- (d) establish wildlife ranches in arid and semi-arid regions of the Common Market as a compliment to agricultural and live-stock production;
- (e) develop common anti-poaching regulations and ensure the effective supervision of the implementation of such regulations;
- (f) carry out joint-breeding programmes of selected wildlife species and domesticated animals so as to infuse disease resistance and hardness qualities in the domesticated animals;
- (g) encourage joint utilisation of training and research facilities;
- (h) utilise proceeds from wildlife for the development and conservation of national parks and the development of adjacent areas; and
- (i) establish uniform trophy hunting prices so as to reduce depletion of wildlife stocks in the Member States.

2. The Member States undertake to accede to international conventions or agreements that are designed to improve their policies for development, management and protection of wildlife and national parks.

CHAPTER SEVENTEEN: CO-OPERATION IN THE DEVELOPMENT OF SCIENCE AND TECHNOLOGY

Article 127 Scope of Co-operation

Recognising the fundamental importance of science in socio-economic and cultural development and technological progress, the Member States agree to:

- (a) build up basic scientific and technological research capabilities in their universities and technology centres by appropriate training of scientists, engineers, technologists so as to assure a critical mass while maintaining regional and international contact;
- (b) build up at the same time expertise in conventional low and indigenous technologies emphasizing craftsmanship and fabrication techniques;
- (c) effect appropriate reforms in primary, secondary and tertiary education in respect of science and technology;
- (d) develop a comprehensive plan for the development of applied sciences related to agriculture, health, industry, energy, local materials and minerals, the environment, soil science, oceans, transport and communications;
- (e) enhance the training of personnel for research and development in the areas of conventional technology and science-based high technology as the quickest way to produce wealth;
- (f) allocate adequate resources on science and technology to the minimum of one per cent of GNP as recommended in the Lagos Plan of Action;
- (g) liaise with the IAEA, UNESCO and UNIDO in basic science and the CGIAR Network and other recognised regional institutions for applied science and technology including training facilities; and

- (h) ensure that research and development is closely inter-linked with production units to secure their integration with national development planning.

Article 128 Promotion of Science and Technology

In order to promote co-operation in science and technology development, the Member States agree to:

- (a) jointly establish and support scientific and technological research and development institutions in the various disciplines including the strengthening of existing institutions;
- (b) create a conducive environment for the promotion of science and technology, socio-economic development and growth through the removal of impediments to pro-competitive collaboration in generic research and the swift transfer of technology and technical information from the government to the private sector;
- (c) facilitate the access of the indigenous scientists, engineers and technologists to international literature and publications on science and technology and promote their contacts with the international fraternity in the various relevant disciplines;
- (d) promote the exchange of expertise and research results and technical information sharing within the Common Market on science and technology and develop appropriate links and exchange programmes;
- (e) jointly develop and implement suitable patent laws and industrial licensing systems for the protection of industrial property rights and encourage the effective use of technological information contained in patents;
- (f) encourage the use of indigenous science and technologies where appropriate and provide incentives for the development of indigenous science and technologies;
- (g) individually and collectively mobilise technical and financial support from the local and international organisations or agencies for the development of science and technology in the Common Market;
- (h) collaborate in the training of personnel in the various scientific and technological disciplines at all levels using existing institutions where feasible;
- (i) establish national centres for the commercialisation of research results and take appropriate political action to develop scientific enterprise through self reliance and adequate allocation of resources;
- (j) encourage collaboration in the establishment of innovative firms in biotechnology and energy generation including nuclear plants and in the production of scientific equipment; and
- (k) to set up regional internship and technical assistance programmes to promote the free movement of scientists, engineers and technologists within the Common Market.

CHAPTER EIGHTEEN: CO-OPERATION IN AGRICULTURE AND RURAL DEVELOPMENT

Article 129 Objectives of Co-operation in Agricultural Development

The overall objectives of co-operation in the agricultural sector are the achievement of regional food security and rational agricultural production within the Common Market. To this end, the Member States undertake to adopt a scheme for the rationalisation of agricultural production with a view to promoting complementarity and specialisation in and sustainability of national agricultural programmes in order to ensure:

- (a) a common agricultural policy;
- (b) regional food sufficiency;
- (c) an increase in the productivity of crops, livestock, fisheries and forestry for domestic consumption, exports within and outside the Common Market and as inputs to agro-based industries; and
- (d) replacement of imports on a regional basis;

Article 130 Co-operation in Agricultural Development

The Member States undertake to co-operate in specific fields of agriculture, including:

- (a) the harmonisation of agricultural policies of the Member States with a view to having a common agricultural policy;
- (b) research, extension and the exchange of technical information and experience;
- (c) agro-meteorology and climatology;
- (d) the production and supply of food-stuffs;
- (e) the coordination of the export and import of agricultural commodities;
- (f) the coordination of bulk purchases of imports of essential agricultural inputs;
- (g) the control of animal and plant diseases and pests;
- (h) the development and utilisation of land and water resources, particularly shared river and lake basins;
- (i) the exploitation and surveillance of the exclusive economic zones with regards to marine fisheries development; and
- (j) the marketing and stabilization of prices of agricultural commodities bearing in mind internal agricultural and exchange rate policies in individual member countries.

Article 131 Co-operation in the Supply of Staple Foods

1. The Member States undertake to:

- (a) ensure the adequate supply and availability of food by the promotion of agricultural development that would lead to the production of surpluses in food, the establishment of adequate storage facilities and strategic grain reserves;
- (b) promote co-operation in the production of foodstuffs which are rich in protein such as meat, fish, dairy products and legumes;
- (c) ensure the prevention of pre- and post-harvest losses;

- (d) establish a Common Market Early Warning System to assess and supply information regarding the food security position within the Member States and the Common Market; and
- (e) conclude such agreements amongst themselves as would facilitate the realisation of food security in the Common Market.

2. The Member States agree to provide the infrastructure and investment required to implement the undertakings in paragraph 1 of this Article.

Article 132 Co-operation in the Export of Agricultural Commodities

The Member States shall:

- (a) coordinate their policies and activities relating to the export of crops, livestock, livestock products, fish and fish products and forest products;
- (b) harmonise their policies in relation to international commodity agreements for the export of crops, livestock and livestock products, fish and fish products and forest products;
- (c) co-operate in solving specific problems relating to the export of crops, livestock, livestock products, fish and fish products and forest products;
- (d) harmonise their policies and regulations relating to phytosanitary and sanitary measures without impeding the export of crops, plants, seeds, livestock, livestock-products, fish and fish-products; and
- (e) harmonise their agreements granting concessions for the exploitation of their agricultural resources, especially fisheries and forest products by third country nationals.

Article 133 Co-operation in Agro-industries

In order to foster strong linkages between agriculture and industry, the Member States shall:

- (a) promote on-farm processing of crop, livestock, fish and forest products so as to enhance the value and availability of finished or semi-processed products and to increase rural employment and incomes;
- (b) endeavour to consult one another concerning the establishment of large-scale agro-industries so as to avoid under-utilisation of existing and planned processing capacities;
- (c) co-operate in jointly establishing any large-scale agro-industrial processing complexes where such collective processing of agricultural commodities is synergistically advantageous for the Common Market;
- (d) coordinate national agro-industry development policies and programmes so as to achieve balanced agro-industries development in the Common Market in line with the comparative advantages enjoyed by individual the Member States;
- (e) coordinate their policies and activities regarding the production of raw materials to sustain agro-industries within the Common Market; and

- (f) coordinate their policies regarding the importation of raw materials which can be produced within the Common Market.

Article 134 Co-operation in Agricultural Research and Extension

The Member States shall:

- (a) give priority to research on foodcrops;
- (b) strengthen and effectively utilise existing national agricultural research and extension institutions on a network basis for the benefit of the Common Market;
- (c) exchange pertinent research findings and research and extension expertise for the benefit of the farming community within the Common Market;
- (d) strengthen extension services in order to establish effective liaison mechanisms between research systems and farmers; and
- (e) establish data banks and journals for the dissemination of research and extension information within the Common Market.

Article 135 Co-operation in Drought and Desertification Management

The Member States shall:

- (a) agree on appropriate policies on the utilisation of fragile lands in order to prevent land degradation;
- (b) institute appropriate measures to contain the effects of droughts by developing irrigation programmes, improved techniques in dryland farming and the use of drought-tolerant crops; and
- (c) co-operate in the exchange of information and expertise regarding drought and desertification managements.

Article 136 Co-operation in Rural Development

The Member States shall promote rural development through the adoption of measures such as:

- (a) appropriate mechanisation;
- (b) improved water supply;
- (c) health services;
- (d) improved nutrition;
- (e) improved rural access roads and means of transport and telecommunications;
- (f) rural electrification and supply of wood fuel;
- (g) educational services;
- (h) rural resettlement to facilitate the rational utilisation of land; and
- (i) the development of rural industries.

Article 137 Strengthening Farmers Participation in Agricultural Development

The Member States agree to strengthen farmer organisations and coordinate their activities for the improvement of agriculture in the Common Market through:

- (a) the utilisation of such organisations as effective mechanisms for the marketing and processing of agricultural produce;
- (b) the provision of essential services to members of the organisations at a regional level;
- (c) the fostering of collaboration among the farming community by means of inter-regional visits, exchange of ideas and information, and trading;
- (d) training on risk management practices and promoting the development of agricultural insurance schemes and other loss minimisation measures within the Common Market; and
- (e) the promotion of rural insurance.

CHAPTER NINETEEN: CO-OPERATION IN TOURISM

Article 138 Promotion of Tourism

1. The Member States undertake to develop a collective and coordinated approach to the promotion of tourism in the Common Market. To this end, the Member States shall:
 - (a) remove restrictions on the movement of tourists within the Common Market;
 - (b) promote regional tourist circuits and coordinate the policies governing the tourism industry;
 - (c) promote investment programmes in tourism;
 - (d) organise regional tourism promotional activities for the development of the tourism industry;
 - (e) co-operate in the organisation of, and participation in, regional and international tourism fairs and exhibitions;
 - (f) exchange cultural groups among themselves in order to develop social and cultural tourism;
 - (g) co-operate in research and exchange programmes and publications on tourism;
 - (h) encourage joint utilisation of training, marketing and tourism research facilities;
 - (i) encourage intra-Common Market tourism;
 - (j) promote the participation of the private sector in the development of tourism;
 - (k) provide the regulatory and institutional framework necessary for regional promotion, development, coordination and supervision of the operations of the tourism industry;
 - (l) co-operate in the establishment of Regional Tourism Development Centres;
 - (m) exchange statistics on tourism performance including projections of tourist trends;
 - (n) harmonize and standardize statistics on tourism so that they are comparable in the region for research purposes; and
 - (o) coordinate inter-regional airline schedules and harmonize tourism development strategies for the region.

2. The Member States shall endeavour to establish a common code of ethics for private and public tour and travel operators, standardise hotel classification and harmonize the professional standards of agents in the tourism and travel industry within the Common Market.

CHAPTER TWENTY: DEVELOPMENT OF COMPREHENSIVE INFORMATION SYSTEMS

Article 139 The Common Market Information System

1. The Member States undertake to co-operate in providing information that would enable them to review the functioning and development of the Common Market and move efficiently in the implementation of the provisions of this Treaty. To this end, the Member States shall:
 - (a) collect and disseminate information on various sectors affecting the Common Market;
 - (b) provide the Secretariat with relevant information to facilitate the proper functioning of the Common Market;
 - (c) adopt an information policy that will include common operating standards, administrative and programming support, hardware and software standards and methodology of linking the Secretariat with the Member States; and
 - (d) provide to the Secretariat material deemed essential for the operation of an information system.
2. The Member States undertake to improve the collection, analysis and dissemination of information necessary to enhance the achievement of the objectives of the Common Market, especially in respect of:
 - (a) trade and customs: common external tariff, Rules of Origin, transit facilities, insurance schemes, trade and customs forms and documentation, monetary co-operation;
 - (b) agricultural development: research, extension and the exchange of technical information and experience;
 - (c) industrial information: production, requirements for capital, intermediate and consumer goods, industrial manpower development, investment and incentives;
 - (d) standardisation and quality assurance: national, sub-regional, regional and international standards, techniques, experiences, and consumer protection;
 - (e) natural resources, energy and the environment: available technical options, consequences of industrial pollution, environmental control and impact assessment;
 - (f) transport and communications: new technical developments in all modes;
 - (g) macro-economic policy and planning; national planning concepts, methodology and techniques of the Member States; and
 - (h) other areas that are necessary for achieving the programmes of the Common Market.
3. The Secretariat shall provide to the Member States:

- (a) the Common Market's Operational and Progress Reports;
 - (b) Research Results, Analytical and Specialised Studies;
 - (c) Statistical Series containing numerical nature, production, prices and indices of exports and imports; and
 - (d) other publications as may be specified by the organs of the Common Market.
4. The Secretariat shall adopt necessary measures to enable the public and private sector enterprises to be fully aware and informed of the current and potential trade and investment opportunities that exist in the Member States. Steps shall also be taken to rationalise import and sourcing decisions from third countries through the provision of price data, alternative sources of supply and the availability of incentives of an import nature. The Secretariat shall also perform an external relations function through representation for press interviews, meetings and seminars, the production of press releases and newsletters and other general public relations tasks.

Article 140 Co-operation in Statistical Development

The Member States undertake to co-operate in the field of statistics in order to create an enabling environment for the regular flow of up-to-date, reliable, harmonised and comparable statistical data on various sectors of economic activity, required for an efficient implementation of the objectives of the Common Market. To this end, the Member States shall:

- (a) provide regularly and timely to the Secretariat statistical data that are reliable, harmonised and comparable, through the harmonisation and adoption of common methodologies, concepts and definitions to be used in collecting and compiling statistics;
- (b) harmonise and adopt common statistical classification to be used in compiling their statistics;
- (c) encourage co-operation among their national statistical offices in the exchange of statistical data covering various sectors of their economic activities such as external trade, agriculture, industry, energy, natural resources, transport, communications, tourism, population, manpower, money and banking, balance of payments, external debt, government finance, prices, purchasing power parities and national accounting investments;
- (d) promote the exchange of skills and personnel and enhance co operation in statistical training through the use of existing training institutions;
- (e) co-operate in the field of data processing; and
- (f) adopt a Common Market strategy for the implementation of the Addis Ababa Plan of Action for Statistical Development in Africa in the 1990s.

Article 141 Trade Information

The Member States shall co-operate in increasing the awareness of intra and extra Common Market trade opportunities, provision and exchange of computerised trade information in the region through the support of the sub-region-wide Trade Information Network (TINET), provision of company data, export or import opportunities, tender

invitations issued by national authorities for public procurement, statistical profiles of general and specific product groups, restrictive trade practices, non-tariff barriers and others as stated in the TINET's region-wide standards. These standards contain special TINET instructions, ad hoc requests, and standing practices which are subject to change from time to time.

Article 142 Depository Library

The Member States agree to recognise the status of the library situated at the Secretariat as the official depository library of the Common Market for the storage and retrieval of all documents, regulations, public notices, databases and other documents with regard to national development plans, official gazettes, central bank annuals, periodic reports and other documents as may be determined and notified by the library from time to time, with respect to the Member State.

CHAPTER TWENTY-ONE: SOCIAL AND CULTURAL AFFAIRS

Article 143 Co-operation in Social and Cultural Affairs

1. The Member States shall promote close co-operation between themselves in the social and cultural fields, particularly with respect to:
 - (a) employment and working conditions;
 - (b) labour laws;
 - (c) vocational training and the eradication of adult illiteracy in the region;
 - (d) cultural and sporting exchanges;
 - (e) the prevention of occupational accidents and diseases;
 - (f) the provision of facilities for the disabled;
 - (g) the right of association and collective bargaining between employers and workers; and
 - (h) radio and television programmes on matters that will promote cultural development of the Common Market.
2. The Council shall adopt a social charter, programmes and regulations, as the case may be, on the better implementation of the provisions of paragraph 1 of this Article.

CHAPTER TWENTY-TWO: LEAST DEVELOPED COUNTRIES AND ECONOMICALLY DEPRESSED AREAS

Article 144 Strengthening Capacity for Co-operation

1. The Member States, recognising the need for the promotion of harmonious and balanced development in the Common Market and in particular the need for reducing the disparities among various areas in the region and paying attention to the special problems of each Member State, particularly those of the least developed countries and economically depressed areas, agree to take several measures designed to

strengthen the capacities of those groups of States of the Common Market to solve these problems. To this end, the Member States shall:

- (a) encourage new investments in such areas thereby strengthening their economies so as to enable them to increase the production of exportable goods to other Member States of the Common Market;
- (b) encourage the introduction of new technologies properly designed to meet the needs of such areas so as to assist in the transformation of their economies from dependence on one or two primary commodities to a more diversified production and marketing structures;
- (c) promote special programmes and projects that would enable them to improve the supply side of their economies so as to participate more effectively in the Common Market; and
- (d) strengthen national and regional chambers of commerce and industry as well as other relevant bodies to enable them to play a leading role in the implementation of projects and programmes of the Common Market.

2. The Authority shall, upon the recommendation of the Council, designate a Member State as a least developed country.

Article 145 Development of Infrastructures

The Member States agree that one of the major pre-requisites for sustained economic growth of the least developed countries and economically depressed areas of the Common Market is the development of adequate and reliable infrastructure, especially transport and communications. The short- and medium-term objectives for the development of the transport and communications infrastructure of the least developed countries and economically depressed areas shall include:

- (a) the completion of all inter-State missing links, especially the inter-state rail and road links, and the construction of local and domestic ones where these do not exist to enhance the much needed intra-regional co-operation with neighbouring countries;
- (b) special assistance to such areas in the development of adequate inter-State telecommunications facilities, which under certain circumstances, obviate the need for transport and movement of persons;
- (c) assistance in the maintenance and upgrading of all transport and communications infrastructure such as roads, rail, ports, airports and telecommunications;
- (d) the development of training facilities in the transport and communications sectors to cater for the increasing needs for skilled personnel at all levels and special assistance to enable such areas to acquire manufacturing capacity and capability for the maintenance of equipment required for transport and communications facilities; and
- (e) special assistance for the development of other infrastructural facilities as may be deemed necessary for the accelerated development of such depressed areas. These facilities shall include those necessary for the supply of adequate utilities such as electricity and water.

Article 146 Industrial Development of the Least Developed Countries and Economically Depressed Areas

The Member States agree that special consideration shall be given to the least developed countries, and economically depressed areas of the Common Market in the sector of industry and energy development. In this regard, the Member States undertake to:

- (a) maximise the utilisation of existing capacities to meet local, national and regional demand;
- (b) improve the investment climate for both local and foreign investors;
- (c) increase investment in human resources development in particular, the development of indigenous entrepreneurs;
- (d) develop industrial support services such as product design and adaptation, research and development, standardisation and quality assurance, market research, consultancy and contracting services, information dissemination, project identification, prefeasibility and feasibility studies and industrial surveys; and
- (e) develop small-scale and medium-scale industries.

Article 147 Agriculture and Agro-Industrial Development of the Least Developed Countries and Economically Depressed Areas

The Member States undertake to give special attention to the least developed countries and economically depressed areas of the Common Market in the sector of agriculture by:

- (a) the improvement of the production base of their agricultural products for trade and inputs to agro-industry;
- (b) the promotion of programmes aimed at processing primary agricultural products to enhance their value and create rural employment;
- (c) the promotion of conservation and rational use of natural resources, and the enhancement of environmental friendly programmes; and
- (d) by increasing the income and standard of living of the populations of the economically depressed areas.

Article 148 Development of Services

The Member States agree that special consideration should be given to the least developed countries and economically depressed areas of the Common Market in the service sector. In this regard, the Member States undertake to:

- i. maximise the use of the existing potentials to respond to the needs of the sub-region;
- ii. improve investment conditions for the service sector for nationals and foreigners; and
- iii. develop support services including technical capacities, designing, adjustment of the service, market survey, advisory and contractual services.

Article 149 Other Areas of Co-operation

The Council may from time to time adopt other priority areas to be considered in the context of the provisions of this Chapter.

Article 150 Special Fund for Co-operation, Compensation and Development

1. The Council shall establish a special Fund for Co-operation, Compensation and Development for tackling the special problems of under-developed areas and other disadvantages arising from the integration process.
2. For the purposes of paragraph 1 of this Article, the Member States shall conclude a Protocol which shall, inter-alia, determine the machinery and formula to be used in granting compensation under this Article.

CHAPTER TWENTY-THREE: DEVELOPMENT OF THE PRIVATE SECTOR

Article 151 Creation of an Enabling Environment for the Private Sector

1. The Member States agree to provide an enabling environment for the private sector to take full advantage of the Common Market. To this end, the Member States undertake to:
 - (a) promote a continuous dialogue with the private sector organs at the national and regional levels to help create an improved business environment for the implementation of agreed decisions in all economic sectors; and
 - (b) provide an opportunity for entrepreneurs to participate actively in improving the policies, regulations and institutions that affect them so as to increase confidence in policy reforms, raise productivity and lower costs at enterprise levels.
2. For the purpose of implementing the objectives of paragraph 1 of this Article, the Member States undertake to:
 - (a) improve the business environment through the promotion of conducive investment codes, the protection of property and contract rights and the regularising of the informal sector;
 - (b) stimulate market development through infrastructure lin
 - (c) provide up to date commercial intelligence regularly to kages and the removal of barriers and constraints; speed up market response through co-operation among the chambers of commerce and industry;
 - (d) encourage sourcing of purchases by governments and parastatals within the sub-region;
 - (e) facilitate and support the exchange of experience and pooling of resources through, inter alia, cross-border investments;
 - (f) strengthen the role of chambers of commerce in national economic policy formulation;
 - (g) in collaboration with the chambers of commerce and industries, establish lending institutions that shall primarily cater for the entrepreneurs, especially the small-scale ones, which currently find it difficult to obtain credit from commercial banks and financing institutions; and

(h) encourage the use of the Eastern and Southern African Trade and Development Bank facility to finance the private sector.

3. The Consultative Committee established by Article 7 of this Treaty shall provide the main link in the dialogue between the private sector and other interest groups and organs of the Common Market.

Article 152 Strengthening the Private Sector

1. The Member States shall endeavour to adopt programmes to strengthen and promote the role of the private sector as an effective force for the development, progress and reconstruction of their respective economies.
2. For the purposes of paragraph 1 of this Article, the Member States shall undertake to:
 - (a) encourage the efficient use of scarce resources, infrastructural and programme growth of private or business sector organisations which are engaged in all types of economic activity. These include the chambers of commerce, confederation and associations of industry, agriculture, manufacturers, farmers, external trade, commodities, services, professional development groups and others;
 - (b) increase co-operation in the development of instruments and services which could be shared or absorbed through such organisations and which are currently handled by a Member State. By accepting to operate these transferred services, the organisations manifest both their legitimate concerns and interests of their constituency, and as a revenue source. These may include the issue and fee structure for: visa certification, certificate of origin, transit documentation, translation certification or services, notarisation and others deemed suitable for administration by the private sector organisations;
 - (c) support a viable and autonomous central point for purposes of information operations, coordinating, production, administration, analytical and computerisation tasks. The technical infrastructure needs to be simple, well-understood by all its participants and meet the commercial and business nature of the beneficiaries;
 - (d) encourage and sponsor practical and resourceful methods of income generation and co-operation, with a view to reverse the trend of declining membership, poor services and lack of motivation for advancement; and
 - (e) advocate programmes which will allow the collection, harmonised processing and speedy dissemination of information.

Article 153 Co-operation Among Chambers of Commerce and Other Business Organisations

The Member States undertake to co-operate in promoting common measures to ensure the strengthening of linkages among chambers of commerce. To this end, the Member States agree to:

- (a) support joint activities which will promote trade and investment, both among the Member States as well as global partners;

- (b) recognise and contribute to the efficient operations of region-wide or federation of business representation organisations, professional and commercial interest groups and similar regional associations; and
- (c) encourage, promote and monitor decisions taken by the Consultative Committee and other relevant Common Market organs particularly in areas affecting business people, through their representative organisations.

CHAPTER TWENTY-FOUR: WOMEN IN DEVELOPMENT AND BUSINESS

Article 154 Role of Women in Development

The Member States agree that women make significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for rural transformation and improvements in the informal sector without the full participation of women. To this end, the Member States shall through appropriate legislative and other measures:

- (a) promote the effective integration and participation of women at all levels of development especially at the decision-making levels;
- (b) eliminate regulations and customs that are discriminatory against women and specifically regulations and customs which prevent women from owning land and other assets;
- (c) promote effective education awareness programmes aimed at changing negative attitudes towards women;
- (d) create or adopt technologies which will ensure the stability of employment and professional progress for women workers; and
- (e) encourage and strengthen institutions which are engaged in the promotion and development of labour-saving devices aimed at improving the productive capacity of women.

Article 155 Role of Women in Business

1. Having recognised the importance of women as a vital economic link within the chain of agriculture, industry and trade, the Member States agree to:
 - (a) increase the awareness of Women in Business issues at the policy level;
 - (b) create an enabling environment for the effective participation of women in Common Market trade and development activities;
 - (c) promote special programmes for women in small and medium-size enterprises;
 - (d) eliminate such laws and regulations that hinder women's access to credit;
 - (e) initiate changes in educational and training strategies to enable women to improve their technical and industrial employment levels through the acquisition of transferable skills offered by various forms of vocational and on-the-job training schemes; and

- (f) recognise and support the Federation of National Associations of Women in Business established to promote the effective participation of women in the Common Market trade and development activities.
- 2. The Federation of National Associations of Women in Business shall be represented at the Consultative Committee and be represented at the meetings of the Technical Committees of the Common Market.
- 3. Implementation activities pursuant to the provisions of this Chapter shall be submitted to the appropriate Technical Committees depending on the technical items under consideration.

CHAPTER TWENTY-FIVE: HUMAN RESOURCES DEVELOPMENT AND TECHNICAL CO-OPERATION

Article 156 Development and Utilisation of Human Resources

- 1. The Member States agree to undertake concerted measures to foster co-operation in human resources development and greater utilisation of human, technical know-how and institutional capabilities in all the fields of activity of the Common Market.
- 2. The Member States shall, in particular:
 - (a) coordinate their human resources development policies and programmes;
 - (b) adopt a regional plan for the joint development and exploitation of human resources in terms of knowledge, skills, technological inventiveness and entrepreneurial abilities;
 - (c) promote the development of a critical mass of well-trained personnel in all sectors relevant to the Common Market;
 - (d) jointly utilise existing regional education and vocational training facilities in the Common Market and, where necessary, establish new ones;
 - (e) harmonise the curricula of training institutions in the Common Market; and
 - (f) encourage technical and student exchange programmes among the Member States.

Article 157 Technical Co-operation

The Member States agree:

- (a) to develop a pool of national expertise and capabilities to support the implementation of regional programmes funded from the regular budget and provide counterpart project personnel for donor-funded projects;
- (b) to develop a regional roster of all expertise, know-how and skills available in the region including those national experts not resident in the area;
- (c) to design a mechanism for mobilising and effectively utilising national expertise in the Member States in the conceptualisation, design, implementation, monitoring and follow-up of regional projects approved by the Member States;
- (d) to provide readily available resources for financing technical cooperation programmes in the Member States related to regional programming and the implementation of common projects;

- (e) to provide resources to enable national experts from one Member State to assist other Member States to acquire skills and capabilities in specified areas related to regional co-operation; and
- (f) to enable the Common Market to tap and attract national experts residing outside the region to participate in co-operation programmes.

CHAPTER TWENTY-SIX: INVESTMENT PROMOTION AND PROTECTION

Article 158 Scope of Co-operation in Investment Promotion and Protection

The Member States recognise the need for effective resource mobilisation, investment and the importance of encouraging increased flow of private sector investment into the Common Market for development. To this end, the Member States agree to adopt harmonised macro-economic policies that shall attract private sector investment into the Common Market.

Article 159 Investment Promotion and Protection

1. In order to encourage and facilitate private investment flows into the Common the Market, Member States shall:
 - (a) accord fair and equitable treatment to private investors;
 - (b) adopt a programme for the promotion of cross-border investment;
 - (c) create and maintain a predictable, transparent and secure investment climate in the Member States;
 - (d) remove administrative, fiscal and legal restrictions to intraCommon Market investment; and
 - (e) accelerate the deregulation of the investment process.
2. For the purposes of investment protection, the following activities shall be considered as investment:
 - (a) movable and immovable property and other property rights such as mortgages, loans and pledges;
 - (b) shares and any other rights of participation in the management or economic results of a company or a firm, whether incorporated or not, including minority shares, corporate rights and any other kind of shareholding;
 - (c) stocks, bonds, debentures, guarantees or other financial instruments of a company or a firm, government or other public authority or international organisation;
 - (d) claims to money, goods, services or other performance having economic value;
 - (e) intellectual and industrial property rights, technical processes, know-how, goodwill and other benefits or advantages associated with a business; and
 - (f) such other activities that may be declared by the Council as investments.

3. The Member States agree that part of the conducive climate to investment are measures aimed at protecting and guaranteeing such investment. To this end, the Member States shall:
 - (a) subject to the accepted principle of public interest, refrain from nationalising or expropriating private investment; and
 - (b) in the event private investment is nationalised or expropriated, pay adequate compensation.
4. For the purposes of paragraph 3 of this Article, expropriation shall include any measures attributable to the government of a Member State which have the effect of depriving an investor of his ownership or control of, or a substantial benefit from his investment and shall be interpreted to include all forms of expropriation such as nationalisation and attachment as well as creeping expropriation in the form of imposition of excessive and discriminatory taxes, restrictions in the procurement of raw materials, administrative action or omission where there is a legal obligation to act or measures that frustrate the exercise of the investors rights to dividends, profits and proceeds of the right to dispose of the investment.
5. The benefits to private investors include the right to:
 - (a) repatriate investment returns including dividends and interest or other equivalent charges;
 - (b) repatriate royalties and other payments deriving from licences, franchises, concessions and other similar rights;
 - (c) repatriate funds for repayment of loans;
 - (d) repatriate proceeds from the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;
 - (e) payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well as replacing capital assets;
 - (f) remit the earnings of expatriate staff of the investment project; and
 - (g) the right to enjoy exemption from customs duties and other fiscal exemptions for the period provided for in the investment package of a Member State and depending on the area of investment.
6. The Member States agree that a reasonable period of stability of investment climate is the period required to refinance the investment.

Article 160 Information on Investment Incentives and Opportunities

The Member States undertake to increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant information through regular dissemination and other awareness—promoting activities.

Article 161 Double Taxation Agreements

The Member States undertake to conclude between themselves agreements on the avoidance of double taxation.

Article 162 Multilateral Investment Agreements

The Member States agree to take necessary measures to accede to multilateral agreements on investment dispute resolution and guarantee arrangements as a means of creating a conducive climate for investment promotion. To this end, the Member States undertake to accede to:

- (a) the International Convention on Settlement of Investment Disputes Between States and Nationals of Other States, 1965;
- (b) the Convention Establishing the Multilateral Investment Guarantee Agency; and
- (c) any other multilateral agreements designed to promote or protect investment.

CHAPTER TWENTY-SEVEN: REGIONAL PEACE AND SECURITY

Article 163 Scope of Co-operation

1. The Member States agree that regional peace and security are pre-requisites to social and economic development and vital to the achievement of regional economic integration objectives of the Common Market. In this regard, the Member States agree to foster and maintain an atmosphere that is conducive to peace and security through co-operation and consultations on issues pertaining to peace and security of the Member States with a view to preventing, better managing and resolving inter-State or intraState conflicts.
2. The Member States undertake to promote and maintain good neighbourliness as a basis for promoting regional peace and security within the Common Market.

CHAPTER TWENTY-EIGHT: FREE MOVEMENT OF PERSONS, LABOUR, SERVICES, RIGHT OF ESTABLISHMENT AND RESIDENCE

Article 164 Scope of Co-operation

1. The Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market.
2. The Member States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence.
3. The Member States agree that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements within the PTA adopted under the PTA Treaty shall

remain in force until such time that a Protocol on the Free Movement of Persons, Labour, Service, Right of Establishment and Residence enters into force.

CHAPTER TWENTY-NINE: CO-OPERATION IN OTHER FIELDS

Article 165 General Co-operation

1. Subject to the provisions of this Treaty, the Member States undertake to consult with one another through appropriate organs of the Common Market for the purpose of harmonizing their respective policies in such fields as they may, from time to time, consider necessary or desirable for the efficient and harmonious functioning and development of the Common Market and the implementation of the provisions of this Treaty.
2. For the purposes of paragraph 1 of this Article, the Member States may take in common such other steps as are calculated to further the aims of the Common Market and the implementation of the provisions of this Treaty.

CHAPTER THIRTY: FINANCIAL PROVISIONS

Article 166 Budget

1. There shall be a budget of the Secretariat.
2. A draft budget for each financial year shall be prepared by the Secretary-General and approved by the Council.
3. All expenditures of the Secretariat shall be approved in respect of each financial year by the Council and shall be met from the budget.
4. The resources of the budget shall be derived from annual contributions of the Member States and such other sources as may be determined by the Council. The contributions of the Member States shall be based on the budget as approved by the Council.
5. In determining the annual contributions for each Member State, the Council shall assess the annual contributions for each Member State on the basis of the formula determined by the Council from time to time.
6. Fifty percent of the contributions due from a Member State shall be paid into the budget of the Secretariat within one month from the beginning of the financial year to which they relate and the remainder shall be paid within six months from the beginning of that financial year.
7. There shall be supplementary budgets approved by the Council to meet extraordinary expenditures of the Secretariat.

Article 167 Contributions by Member States

The Council shall determine the payment and currencies of contributions by the Member States to the budget of the Secretariat.

Article 168 Common Market Levy and Other Resources

1. There is hereby instituted a Common Market levy for the purpose of generating resources for financing Common Market activities.
2. The source, level and conditions for the applications of the Common Market levy shall be determined by the Council.
3. Other resources of the Secretariat shall include such extra budgetary resources as:
 - (a) grants, donations, funds for projects and programmes and technical assistance; and
 - (b) income earned from activities undertaken by the Common Market.

Article 169 Accounts of the Secretariat and External Auditors

1. The accounts of the Secretariat relating to each financial year shall be prepared in accordance with international accounting standards and shall be audited in the following financial year by External Auditors.
2. The External Auditors shall be appointed from time to time by the Council on the proposal of the Secretary-General. Such External Auditors shall be based in the Common Market and be qualified to practise in accordance with the national laws of the Member States. The External Auditors shall be persons of outstanding repute and integrity and who shall have demonstrated a high degree of professional skills.
3. The External Auditors shall act in accordance with any general or specific directions of the Council and, subject thereto, shall:
 - (a) determine its own procedure; and
 - (b) submit its report of the audit to the Secretary-General not which the accounts so audited relate. later than six months from the expiry of the financial year to
4. Upon receipt of the report of the External Auditors, the Secretary-General shall circulate copies thereof to every Member State and convene a meeting of the Intergovernmental Committee or Committee on Administrative and Budgetary Matters to examine the report and to make recommendations in relation thereto before the report is submitted to the Council for adoption.
5. The Council may make regulations for the better carrying out of the provisions of this Article and without prejudice to the generality of the foregoing, such regulations may provide for the terms and conditions of service and the powers of the External Auditors.

Article 170 Financial Regulations

The Council shall make financial regulations for the application of the provisions of this Chapter.

CHAPTER THIRTY-ONE: SANCTIONS

Article 171 Sanctions

1. The Member States agree that for the attainment of the objectives of the Common Market, full commitment of each Member State to the fulfillment of the obligations contained in this Treaty shall be required. To this end, the Member States agree that specific sanctions may be imposed by the Authority to secure fulfillment by the Member States of their obligations under this Treaty.
2. For the purposes of paragraph 1 of this Article, the Authority may impose sanctions on a Member State:
 - (a) which defaults in performing an obligation under this Treaty; or
 - (b) whose conduct, in the opinion of the Authority, is prejudicial to the existence or the attainment of the objectives of the Common Market.
3. The Authority may in any of the events stipulated in paragraph 2 of this Article, impose any one or more of the sanctions set out below:
 - (a) suspend the exercise by such a Member State of any of the rights and privileges of membership to the Common Market;
 - (b) impose a financial penalty on such Member State;
 - (c) suspend from the Common Market a Member State on such conditions and for such period as the Authority may consider appropriate; or
 - (d) expel a Member State.
4. The Authority may expel a Member State:
 - (a) whose rights and privileges have been suspended under sub-paragraph (a) of paragraph 3 of this Article who fails to remedy the default leading to such suspension within the period specified therefor; or
 - (b) which fails to pay the financial penalty imposed under subparagraph (b) of paragraph 3 of this Article.
5. A Member State suspended under sub-paragraph (c) of paragraph 3 of this Article and which fails to meet the conditions imposed within the period specified shall automatically cease to be a Member State of the Common Market.
6. Where a Member State is in arrears for more than two years in the payment of its contributions for reasons other than those caused by public or natural calamity or exceptional circumstance that gravely affects its economy, such Member State may, by a resolution of the Authority, be suspended from taking part in the activities of the Common Market and shall cease to enjoy the benefits provided for under this Treaty.

Article 172 Continuation of Obligations and Re-admission

1. A Member State suspended under Articles 171(3)(a) and 171 (3)(c) of this Treaty shall continue to perform its outstanding obligations under this Treaty during the period of suspension.

2. A Member State expelled under Article 171(3)(d) of this Treaty may apply for re-admission to the Common Market. The Authority may impose such conditions as it may consider necessary for re-admission.

CHAPTER THIRTY-TWO: IMPLEMENTATION AND MONITORING ARRANGEMENTS

Article 173 Scope of Co-operation

1. The Member States agree that the implementation of the provisions of this Treaty shall be prioritized on the basis of comprehensive and measurable programmes with clear implementation targets and effective evaluation mechanisms.
2. Subject to the provisions of this Treaty, the Secretariat shall be responsible for following up and monitoring the implementation by the Member States of the provisions of this Treaty and the regulations made, directives issued, recommendations made and decisions taken and opinions delivered by the Council.
3. The Secretary-General shall, within twelve months from the entry into force of this Treaty, submit to the Council a comprehensive and measurable implementation programme with clear targets.
4. The time-table of implementation shall be divided into stages of two years each starting from the date of the entry into force of this Treaty and shall show a set of actions to be initiated and carried through concurrently.
5. The transition from one stage of implementation to the next shall be conditional upon a finding that the objectives specifically laid down in the time-table for that stage have been substantially attained and that the obligations have been fulfilled.
6. The findings shall be made at the end of the year of the time indicated in the time-table for that stage by the Council acting on reports prepared by the Secretariat and on the recommendations of the Intergovernmental Committee.
7. In the event that there is a deadlock in the decision to move on to the next stage, the current stage shall be automatically extended for a period of one year.
8. At the end of the year the Council shall make its finding acting on the reports of the Secretariat and the recommendations of the Intergovernmental Committee.
9. In the event that the Council fails to reach a decision, it shall refer the matter to the Authority for its decision which shall be final and binding on all the Member States and on the organs of the Common Market.
10. A Member State may not rely on the non-fulfillment of its own obligations to prevent a decision from being taken or to reserve its position.

CHAPTER THIRTY-THREE: EXISTING INSTITUTIONS AND AGREEMENTS

Article 174 Continuance in Force of Certain Institutions and Agreements

1. The Member States shall recognise the institutions established under the Preferential Trade Area for Eastern and Southern African States which shall continue to be regulated by the respective Charters establishing them.
2. For the purposes of paragraph 1 of this Article, the Institutions are the:
 - (a) Eastern and Southern African Trade and Development Bank;
 - (b) Clearing House;
 - (c) Leather and Leather Products Institute;
 - (d) Re-insurance Company;
 - (e) Metallurgical Technology Center;
 - (f) Council of Bureaux;
 - (g) Association of Commercial Banks;
 - (h) Centre for Commercial Arbitration;
 - (i) Federation of National Associations of Women in Business; and
 - (j) Federation of Chambers of Commerce and Industry.
3. Upon the entry into force of this Treaty, the institutions specified in paragraph 2 of this Article shall be deemed to be institutions of the Common Market and shall be designated as such.
4. The rights and obligations arising from certain agreements concluded under the provisions of the PTA Treaty shall not be affected by the provisions of this Treaty.
5. For the purposes of paragraph 4 of this Article, the agreements referred to in that paragraph are:
 - (a) the Agreement on Privileges and Immunities adopted by the PTA Member States in December 1984;
 - (b) the Customs Bond Guarantee Agreement adopted by the PTA Member States in November 1990;
 - (c) the Charter on Multinational Industrial Enterprises adopted by the PTA Member States in November 1990;
 - (d) the Protocol on Third Party Motor Vehicle Insurance Scheme; and
6. Any references in the agreements referred to in paragraph 5 of this Article to the Preferential Trade Area or any officer or authority thereof shall have the effect as if references therein were substituted by the Common Market and the corresponding officer or authority thereof.

Article 175 Relationship Between the Institutions of the Common Market and the Common Market

1. Each institution of the Common Market shall, in the implementation of the provisions of its Charter take into account the objectives, policies, programmes and activities of the Common Market.
2. The Secretary-General shall maintain such continuous working relations with the institutions of the Common Market as would further the implementation of the provisions of this Treaty and shall for this purpose, make co-operation arrangements with each Institution of the Common Market.
3. Each institution of the Common Market shall, in accordance with its Charter, submit annual progress Reports to the Council on its activities and in response to which the Council may give its opinion.

Article 176 Dissolution of Certain Existing Institutions

Upon the entry into force of this Treaty the following institutions shall cease to exist:

- (a) the PTA Tribunal established by Article 10 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States; and
- (b) the PTA Administrative Appeals Board established by Article 2 of its Statute.

CHAPTER THIRTY-FOUR: ECONOMIC COMMUNITY FOR EASTERN AND SOUTHERN AFRICA

Article 177 Gradual Establishment of an Economic Community for Eastern and Southern Africa

1. At a date to be determined by the Authority after the entry into force of this Treaty, the Council shall propose to the Authority for its approval, measures which in addition to the provisions of this Treaty would be required to be implemented in order to assist in the eventual development and establishment of an Economic Community for Eastern and Southern Africa.
2. The functioning and development of the Common Market shall be reviewed in accordance with the provisions of this Treaty in order to establish an Economic Community for Eastern and Southern Africa.
3. The transition from the Common Market into an Economic Community for Eastern and Southern Africa shall be conditional upon a finding that the objectives of the Common Market have been substantially attained and that the obligations upon the Member States have been fulfilled.

CHAPTER THIRTY-FIVE: RELATIONS WITH OTHER ORGANISATIONS AND CO-OPERATING PARTNERS

Article 178 Relations with the African Economic Community

1. The Member States agree that the final objective of the Common Market is to contribute to the implementation of the provisions of the Treaty Establishing the African Economic Community. To this end the Member States shall:
 - (a) negotiate, together with other regional economic communities, the Protocol on Relations between the African Economic Community and the Regional Economic Communities;
 - (b) implement the provisions of this Treaty with due consideration to the provisions of the Treaty Establishing the African Economic Community; and
 - (c) convert the Common Market or its successor, at a time to be agreed upon between the Common Market or its successor and the African Economic Community, into an organic entity of the African Economic Community.
2. The Secretary-General shall coordinate the activities of the Common Market with those of the African Economic Community and shall, from time to time, submit reports to the Council.

Article 179 Relations with Other Regional Economic Communities

1. In the context of realising its regional integration objectives, the Common Market may enter into co-operation agreements with other regional communities.
2. The co-operation referred to in paragraph 1 of this Article shall be subject to prior approval by the Council.

Article 180 Relations with other Intergovernmental Organisations

1. Subject to the provisions of this Treaty, the Member States may be members of other regional or sub-regional organisations with other Member States or third countries for the purpose of strengthening co-operation among themselves.
2. The Secretary-General shall endeavour to co-ordinate the activities of the Common Market with those of the organisations referred to in paragraph 1 of this Article.
3. The Common Market shall maintain such continuous working relations with the Organisation of African Unity, the United Nations and such intergovernmental or governmental organisations as would assist the Common Market in the implementation of the provisions of this Treaty.

Article 181 Relations with Co-operating Partners

1. The Common Market shall establish such continuous and close working relations with relevant African organisations such as the United Nations Economic Commission for Africa, the African Development Bank and other intergovernmental and non-

governmental organisations in Eastern and Southern Africa with a view to strengthening the institutional capacity of the Common Market and assisting it in the implementation of the provisions of this Treaty.

2. The Common Market shall accord special importance to cooperation with United Nations systems, other international organisations and bilateral and multi-lateral donor agencies whose policies and programmes are compatible with the policies, programmes and activities of the Common Market.
3. The Secretary-General shall initiate and maintain dialogue with the organisations and agencies referred to in paragraph 2 of this Article and with any other organisation whose policies and programmes are compatible with those of the Common Market in order to facilitate closer co-operation with such organisations, agencies and multi-lateral and bilateral donor agencies.
4. Meetings may be held between the Member States and governmental and non-governmental organisations and bilateral donor agencies on the Common Market policies and strategies including the implementation thereof, with a view to enhancing the participation of these organisations and agencies in the implementation and development of the Common Market.
5. Recommendations from the meetings referred to in paragraph 4 of this Article shall be put before the organs of the Common Market for consideration.

Article 182 Specialised Agencies

1. The Secretariat may, with the approval of the Council, enter into arrangements with any organisation specialised in any of the fields of activity of the Common Market under which such organisation shall implement a specific field of activity for the Common Market.
2. Arrangements made under paragraph 1 of this Article shall provide for the scope and content of the activity, administration and financing of the services concerned.

Article 183 Association with Other Countries

The Member States may together negotiate with any third country with a view to the association of that country with the Common Market.

CHAPTER THIRTY-SIX: GENERAL, TRANSITIONAL AND FINAL PROVISIONS

Article 184 Headquarters of the Common Market

The Headquarters of the Common Market shall be in Lusaka in the Republic of Zambia or in such other place as may be determined by the Authority.

Article 185 Official Languages

The official languages of the Common Market shall be English, French and Portuguese.

Article 186 Status, Privileges and Immunities

1. The Common Market shall enjoy international legal personality.
2. It shall have in the territory of each Member State:
 - (a) the legal capacity required for the performance of its functions under this Treaty; and
 - (b) power to acquire or dispose of movable and immovable property in accordance with the laws and regulations in force in each Member State.
3. The Common Market shall, in the exercise of its legal personality, be represented by the Secretary-General.
4. Subject to the provisions of the Charters establishing the institutions of the Common Market which provide that the institution, as the case may be, shall be capable of being sued, the Agreement shall be extended to the institutions of the Common Market:

Provided that the Secretary-General shall make arrangements by which the administrative costs related to implementation of the provisions of the Agreement are equitably shared with the institutions of the Common Market.
5. The Secretary-General acting on behalf of the Common Market, shall conclude with the governments of the Member States in whose territory the headquarters or regional or country offices of the Common Market shall be situated, agreements relating to the legal capacity and the privileges and immunities to be recognized and granted in connection with the Common Market.
6. The Chief Executives of the institutions of the Common Market shall, acting on behalf of their institutions, conclude with the governments in whose territory the Headquarters or other offices of such institutions are situated, agreements relating to the legal capacity and privileges and immunities to be recognised and granted in connection with their respective institutions of the Common Market.

Article 187 Transitional Arrangements

1. Until Rules of Procedure and Terms of Reference of the Authority, the Council and all subordinate Organs other than the Court of the Common Market are made under the provisions of this Treaty, the Rules of Procedure and Terms of Reference of the Authority, the Council of Ministers and subordinate Organs of the Preferential Trade Area other than the PTA Tribunal shall continue to apply.
2. Until Staff Rules and Regulations and the Financial Rules of the Common Market are adopted the Staff Rules and Regulations and Financial Rules of the Preferential Trade Area shall continue to apply.

Article 188 Dissolution of the Preferential Trade Area

1. Upon the entry into force of this Treaty, hereinafter referred to as "the appointed day" the Preferential Trade Area established on the Thirtieth day of September 1982 by the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States, shall cease to exist.

2. The Secretary-General shall submit to the first meeting of the Council, a programme for the restructuring and re-organisation of the Secretariat including revision of job descriptions of the posts in the Secretariat to ensure that the Secretariat is more suitably structured to efficiently and adequately discharge the responsibilities entrusted upon it by or under this Treaty.

Article 189 Transfer of Assets and Liabilities

1. On the appointed day there shall be transferred to and vested in the Common Market by virtue of this Article and without further assurance, all the assets and liabilities of the Preferential Trade Area and from that day, the Common Market shall, in respect of the assets and liabilities so transferred and vested, have all the rights, and be subject to all the liabilities, which the Preferential Trade Area had, or is subject to, immediately before that day.
2. Every contract made by or on behalf of the Preferential Trade Area in writing and whether or not of such a nature that rights and liabilities thereunder can be assigned by the Preferential Trade Area, shall have effect as if made by or, on behalf of the Common Market and as if for references therein to the Preferential Trade Area or any officer or authority thereof, were substituted, in relation to anything falling to be done on or after the appointed day, references to the Common Market and to the corresponding employee or authority thereof.
3. Any proceedings by or against the Preferential Trade Area pending on the appointed day, shall be continued by or against the Common Market.
4. Reference to the Preferential Trade Area in any law or document shall on and after the appointed day be continued as references to the Common Market.

Article 190 Amendment

1. Any Member State or the Council may submit proposals for the amendment of this Treaty.
2. Any proposals for the amendment of this Treaty shall be submitted to the Secretary-General in writing who shall, within thirty days of its receipt, communicate it to the Member States.
3. The Member States which wish to comment on the proposals shall do so within ninety days from the date of the dispatch of the proposal by the Secretary-General.
4. After the expiration of the period prescribed under paragraph 3 of this Article, the Secretary-General shall submit the proposals and any comments thereon received from the Member States to the Authority through the Committee on Legal Affairs.
5. Any amendment to this Treaty shall be adopted by the Authority and shall enter into force when ratified by two-thirds of the Member States.

Article 191 Withdrawal

1. Any Member State wishing to withdraw from the Common Market shall give to the Secretary-General one year's written notice of its intention to withdraw and at the end

of such year shall, if such notice is not withdrawn, cease to be a Member State of the Common Market.

2. During the period of one year referred to in paragraph 1 of this Article, a Member State wishing to withdraw from the Common Market shall nevertheless observe the provisions of this Treaty and shall remain liable for the discharge of its obligations under this Treaty.
3. The obligations assumed by the Member States under this Treaty shall, to the extent necessary survive the termination of membership of any Member State.
4. A withdrawing Member State shall be entitled to claim any property, assets or rights over any of the property and assets of the Common Market only upon the termination of the Common Market.
5. Any property and assets of the Common Market situated in the territory of a Member State whose membership has been withdrawn shall continue to be the property of the Common Market and be available to the Common Market.

Article 192 Termination of Operations

1. The Authority may, on the recommendation of the Council, terminate the operations of the Common Market.
2. The activities of the Common Market shall cease on the date appointed by the Authority to be the termination date except those activities incidental to the orderly relations, the conservation and preservation of its assets and settlement of its obligations.
3. The liability of all Member States for their share of the contributions due shall continue until all claims of creditors, including all contingent claims shall have been discharged.
4. The Council shall, before making any payments to creditors holding direct claims, make such arrangements as are necessary to ensure a pro rata distribution among holders of direct and contingent claims.
5. All creditors holding direct claims shall first be paid out of the assets of the Common Market and then out of the contributions owing.
6. No distribution of assets shall be made to the Member States on account of their contributions to the budget until all liabilities to creditors shall have been discharged or provided for and any such distribution shall be approved by the Council.
7. Any distribution of assets of the Common Market to the Member States shall be in proportion to their contributions to the budget and shall be effected at such time and under such conditions as the Council considers fair and equitable.
8. No Member State shall be entitled to receive its share in such distribution of assets until it has settled all its obligations to the Common Market.
9. Any Member State receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Common Market enjoyed prior to their distribution.
10. A withdrawing Member State under the provisions of Article 191 of this Treaty shall, for the purposes of distribution of assets, be treated as a Member State.

Article 193 Annexes to the Treaty

The Annexes to this Treaty shall form an integral part of this Treaty.

Article 194 Entry into Force, Ratification and Accession

1. This Treaty shall enter into force when signed by or on behalf of the High Contracting Parties and ratified by at least eleven signatory States.
2. Any State referred to in paragraph 2 of Article 1 of this Treaty may accede to this Treaty.
3. Any State referred to in paragraph 3 of Article 1 of this Treaty may accede to this Treaty on such terms and conditions as the Authority may determine.
4. This Treaty shall enter into force in relation to an acceding State on the date its instrument of accession shall be deposited.

Article 195 Depository

1. This Treaty and all Instruments of Ratification or Accession shall be deposited with the Secretary-General who shall transmit certified true copies of this Treaty to all the Member States.
2. The Secretary-General shall notify the Member States of the dates of deposit of Instruments of Ratification and Accession and shall register this Treaty with the United Nations, the Organisation of African Unity and such other organisations as the Council may determine.

[Annex I to the Treaty, the Protocol on Transit Trade and Transit Facilities, is not reproduced here.]

CHAPTER FIFTY-SEVEN

Trademark Law Treaty

Geneva, 27 October 1994

INTRODUCTION

The Trademark Law Treaty was entered into mainly because the 1883 Paris Convention for the Protection of Industrial Property (see above) was thought inadequate in harmonizing the procedures for the registration of and protection of trade marks. The current Treaty focuses on steps for the registration of, or amendments or changes to, trade marks, but also makes it clear that it is a supplement to and not an amendment of the Paris Convention.

For something to be registered as a trade mark under the Treaty, it must consist of visible signs and must relate to goods or services. The Treaty applies automatically to states parties that accept three-dimensional marks for registration. However, hologram marks and non-visible marks, such as sound and olfactory marks, are not covered by the Treaty. In addition, collective marks, certification marks and guarantee marks are not protected under the Treaty.

There are prescribed procedures for the registration of trade marks by the appropriate authority in individual member states. There must be a request for registration, stating the name and address of the applicant. The nationality of the applicant must be stated, and the state where he is domiciled, if any, and the state in which the applicant has a real and effective industrial or commercial establishment. Where the applicant is an artificial person, its legal status and operations must be stated, as well as its representative office or official in the relevant country. If the circumstances were such that the applicant would like to take advantage of prior publication or advertising, such must be stated. For example, where the goods had been previously displayed at an exhibition, or where the applicant would like to take advantage of the priority accorded an earlier application, it must be stated and relevant supporting evidence attached. If the mark has to be translated, that must be done and one or more copies reproduced. If the mark is three-dimensional, that must also be stated. The next important item is the specification of the goods and/or services for which the registration is sought, defined on the basis of the Nice Classification system (under a 1957 treaty administered by the World Intellectual Property Organization—WIPO). The application must be signed and a declaration made of an intention to use or of actual use of the mark.

Given the subject of the Treaty and that it was drawn up in contemporary times, flexible provisions have been made for the transmission of the application and registration of the trade mark. It can be presented on paper or by fax (telefacsimile) or other prescribed electronic means. Any such electronic transmission of an application may be considered signed if the reproduction of the signature or the reproduction of the seal, together with the indication in letters of the name of the natural person whose seal is used, appears on the printout. Special safeguards should be taken to ensure the integrity of electronic transmission. For example, the registering authority may require that the paper that was reproduced and transmitted electronically itself be filed with that authority within a certain period.

Articles 10–13 deal with amendments of an application, mistakes, renewals and changes in ownership of marks, as well as changes in names or addresses. In all of these instances, the applicant must produce the original application or registration, as well as reasons and evidence of the new feature or of the need to effect changes. The adduction of evidence in support of changes must be done as required by the Treaty, supplemented by the relevant laws of individual states parties.

The Treaty entered into force on 1 August 1996. By late 2004 there were 33 contracting parties.

TRADEMARK LAW TREATY*

ARTICLE 1 Abbreviated Expressions

For the purposes of this Treaty, unless expressly stated otherwise:

- i. “Office” means the agency entrusted by a Contracting Party with the registration of marks;
- ii. “registration” means the registration of a mark by an Office;
- iii. “application” means an application for registration;
- iv. references to a “person” shall be construed as references to both a natural person and a legal entity;
- v. “holder” means the person whom the register of marks shows as the holder of the registration;
- vi. “register of marks” means the collection of data maintained by an Office, which includes the contents of all registrations and all data recorded in respect of all registrations, irrespective of the medium in which such data are stored;
- vii. “Paris Convention” means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;
- viii. “Nice Classification” means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as revised and amended;
- ix. “Contracting Party” means any State or intergovernmental organization party to this Treaty;
- x. references to an “instrument of ratification” shall be construed as including references to instruments of acceptance and approval;
- xi. “Organization” means the World Intellectual Property Organization;

- xii. "Director General" means the Director General of the Organization;
- xiii. "Regulations" means the Regulations under this Treaty that are referred to in Article 17.

ARTICLE 2 Marks to Which the Treaty Applies

1. [Nature of Marks]

- (a) This Treaty shall apply to marks consisting of visible signs, provided that only those Contracting Parties which accept for registration three-dimensional marks shall be obliged to apply this Treaty to such marks.
- (b) This Treaty shall not apply to hologram marks and to marks not consisting of visible signs, in particular, sound marks and olfactory marks.

2. [Kinds of Marks]

- (a) This Treaty shall apply to marks relating to goods (trademarks) or services (service marks) or both goods and services.
- (b) This Treaty shall not apply to collective marks, certification marks and guarantee marks.

ARTICLE 3 Application

1. [Indications or Elements Contained in or Accompanying an Application; Fee]

- (a) Any Contracting Party may require that an application contain some or all of the following indications or elements:
 - i. a request for registration;
 - ii. the name and address of the applicant;
 - iii. the name of a State of which the applicant is a national if he is the national of any State, the name of a State in which the applicant has his domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;
 - iv. where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;
 - v. where the applicant has a representative, the name and address of that representative;
 - vi. where an address for service is required under Article 4(2)(b), such address;
 - vii. where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority that may be required pursuant to Article 4 of the Paris Convention;
 - viii. where the applicant wishes to take advantage of any protection resulting from the display of goods and/or services in an exhibition, a declaration to that effect, together with indications in support of that declaration, as required by the law of the Contracting Party;

- ix. where the Office of the Contracting Party uses characters (letters and numbers) that it considers as being standard and where the applicant wishes that the mark be registered and published in standard characters, a statement to that effect;
- x. where the applicant wishes to claim color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;
- xi. where the mark is a three-dimensional mark, a statement to that effect;
- xii. one or more reproductions of the mark;
- xiii. a transliteration of the mark or of certain parts of the mark;
- xiv. a translation of the mark or of certain parts of the mark;
- xv. the names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;
- xvi. a signature by the person specified in paragraph (4);
- xvii. a declaration of intention to use the mark, as required by the law of the Contracting Party.

(b) The applicant may file, instead of or in addition to the declaration of intention to use the mark referred to in subparagraph (a)(xvii), a declaration of actual use of the mark and evidence to that effect, as required by the law of the Contracting Party.

(c) Any Contracting Party may require that, in respect of the application, fees be paid to the Office.

2. [Presentation] As regards the requirements concerning the presentation of the application, no Contracting Party shall refuse the application,

- i. where the application is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the application Form provided for in the Regulations,
- ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the application is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the application Form referred to in item (i).

3. [Language] Any Contracting Party may require that the application be in the language, or in one of the languages, admitted by the Office. Where the Office admits more than one language, the applicant may be required to comply with any other language requirement applicable with respect to the Office, provided that the application may not be required to be in more than one language.

4. [Signature]

(a) The signature referred to in paragraph (1)(a)(xvi) may be the signature of the applicant or the signature of his representative.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

(b) Notwithstanding subparagraph (a), any Contracting Party may require that the declarations referred to in paragraph (1)(a)(xvii) and (b) be signed by the applicant himself even if he has a representative.

5. [Single Application for Goods and/or Services in Several Classes] One and the same application may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.
6. [Actual Use] Any Contracting Party may require that, where a declaration of intention to use has been filed under paragraph (1)(a)(xvii), the applicant furnish to the Office within a time limit fixed in its law, subject to the minimum time limit prescribed in the Regulations, evidence of the actual use of the mark, as required by the said law.
7. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (4) and (6) be complied with in respect of the application. In particular, the following may not be required in respect of the application throughout its pendency:
 - i. the furnishing of any certificate of, or extract from, a register of commerce;
 - ii. an indication of the applicant's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;
 - iii. an indication of the applicant's carrying on of an activity corresponding to the goods and/or services listed in the application, as well as the furnishing of evidence to that effect;
 - iv. the furnishing of evidence to the effect that the mark has been registered in the register of marks of another Contracting Party or of a State party to the Paris Convention which is not a Contracting Party, except where the applicant claims the application of Article 6quinquies of the Paris Convention.
8. [Evidence] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the application where the Office may reasonably doubt the veracity of any indication or element contained in the application.

ARTICLE 4 Representation; Address for Service

1. [Representatives Admitted to Practice] Any Contracting Party may require that any person appointed as representative for the purposes of any procedure before the Office be a representative admitted to practice before the Office.
2. [Mandatory Representation; Address for Service]
 - (a) Any Contracting Party may require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory be represented by a representative.
 - (b) Any Contracting Party may, to the extent that it does not require representation in accordance with subparagraph (a), require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective

industrial or commercial establishment on its territory have an address for service on that territory.

3. [Power of Attorney]

- (a) Whenever a Contracting Party allows or requires an applicant, a holder or any other interested person to be represented by a representative before the Office, it may require that the representative be appointed in a separate communication (hereinafter referred to as “power of attorney”) indicating the name of, and signed by, the applicant, the holder or the other person, as the case may be.
- (b) The power of attorney may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.
- (c) The power of attorney may limit the powers of the representative to certain acts. Any Contracting Party may require that any power of attorney under which the representative has the right to withdraw an application or to surrender a registration contain an express indication to that effect.
- (d) Where a communication is submitted to the Office by a person who refers to himself in the communication as a representative but where the Office is, at the time of the receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to the Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations. Any Contracting Party may provide that, where the power of attorney has not been submitted to the Office within the time limit fixed by the Contracting Party, the communication by the said person shall have no effect.
- (e) As regards the requirements concerning the presentation and contents of the power of attorney, no Contracting Party shall refuse the effects of the power of attorney,
 - i. where the power of attorney is presented in writing on paper, if it is presented, subject to paragraph (4), on a form corresponding to the power of attorney Form provided for in the Regulations,
 - ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the power of attorney is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (4), to the power of attorney Form referred to in item (i).

4. [Language] Any Contracting Party may require that the power of attorney be in the language, or in one of the languages, admitted by the Office.

5. [Reference to Power of Attorney] Any Contracting Party may require that any communication made to the Office by a representative for the purposes of a procedure before the Office contain a reference to the power of attorney on the basis of which the representative acts.

6. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (3) to (5) be complied with in respect of the matters dealt with in those paragraphs.

7. [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraphs (2) to (5).

ARTICLE 5 Filing Date

1. [Permitted Requirements]

- (a) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office received the following indications and elements in the language required under Article 3(3):
- i. an express or implicit indication that the registration of a mark is sought;
 - ii. indications allowing the identity of the applicant to be established;
 - iii. indications sufficient to contact the applicant or his representative, if any, by mail;
 - iv. a sufficiently clear reproduction of the mark whose registration is sought;
 - v. the list of the goods and/or services for which the registration is sought;
 - vi. where Article 3(1)(a)(xvii) or (b) applies, the declaration referred to in Article 3(1)(a)(xvii) or the declaration and evidence referred to in Article 3(1)(b), respectively, as required by the law of the Contracting Party, those declarations being, if so required by the said law, signed by the applicant himself even if he has a representative.
- (b) Any Contracting Party may accord as the filing date of the application the date on which the Office received only some, rather than all, of the indications and elements referred to in subparagraph (a) or received them in a language other than the language required under Article 3(3).

2. [Permitted Additional Requirement]

- (a) A Contracting Party may provide that no filing date shall be accorded until the required fees are paid.
- (b) A Contracting Party may apply the requirement referred to in subparagraph (a) only if it applied such requirement at the time of becoming party to this Treaty.

3. [Corrections and Time Limits] The modalities of, and time limits for, corrections under paragraphs (1) and (2) shall be fixed in the Regulations.

4. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the filing date.

ARTICLE 6 Single Registration for Goods and/or Services in Several Classes

Where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such an application shall result in one and the same registration.

ARTICLE 7 Division of Application and Registration

1. [Division of Application]

- (a) Any application listing several goods and/or services (hereinafter referred to as “initial application”) may,
 - i. at least until the decision by the Office on the registration of the mark,
 - ii. during any opposition proceedings against the decision of the Office to register the mark,
 - iii. during any appeal proceedings against the decision on the registration of the mark, be divided by the applicant or at his request into two or more applications (hereinafter referred to as “divisional applications”) by distributing among the latter the goods and/or services listed in the initial application. The divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority, if any.
- (b) Any Contracting Party shall, subject to subparagraph (a), be free to establish requirements for the division of an application, including the payment of fees.

2. [Division of Registration] Paragraph (1) shall apply, mutatis mutandis, with respect to a division of a registration. Such a division shall be permitted

- i. during any proceedings in which the validity of the registration is challenged before the Office by a third party,
- ii. during any appeal proceedings against a decision taken by the Office during the former proceedings, provided that a Contracting Party may exclude the possibility of the division of registrations if its law allows third parties to oppose the registration of a mark before the mark is registered.

ARTICLE 8 Signature

1. [Communication on Paper] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party

- i. shall, subject to item (iii), accept a handwritten signature,
- ii. shall be free to allow, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal,
- iii. may, where the natural person who signs the communication is its national and such person’s address is in its territory, require that a seal be used instead of a handwritten signature,
- iv. may, where a seal is used, require that the seal be accompanied by an indication in letters of the name of the natural person whose seal is used.

2. [Communication by Telefacsimile]

- (a) Where a Contracting Party allows the transmittal of communications to the Office by telefacsimile, it shall consider the communication signed if, on the printout produced by the telefacsimile, the reproduction of the signature, or the reproduction

of the seal together with, where required under paragraph (1)(iv), the indication in letters of the name of the natural person whose seal is used, appears.

(b) The Contracting Party referred to in subparagraph (a) may require that the paper whose reproduction was transmitted by telefacsimile be filed with the Office within a certain period, subject to the minimum period prescribed in the Regulations.

3. [Communication by Electronic Means] Where a Contracting Party allows the transmittal of communications to the Office by electronic means, it shall consider the communication signed if the latter identifies the sender of the communication by electronic means as prescribed by the Contracting Party.
4. [Prohibition of Requirement of Certification] No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, except, if the law of the Contracting Party so provides, where the signature concerns the surrender of a registration.

ARTICLE 9 Classification of Goods and/or Services

1. [Indications of Goods and/or Services] Each registration and any publication effected by an Office which concerns an application or registration and which indicates goods and/or services shall indicate the goods and/or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs and shall be presented in the order of the classes of the said Classification.
2. [Goods or Services in the Same Class or in Different Classes]
 - (a) Goods or services may not be considered as being similar to each other on the ground that, in any registration or publication by the Office, they appear in the same class of the Nice Classification.
 - (b) Goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.

ARTICLE 10 Changes in Names or Addresses

1. [Changes in the Name or Address of the Holder]
 - (a) Where there is no change in the person of the holder but there is a change in his name and/or address, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

- i. where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request Form provided for in the Regulations,
- ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request Form referred to in item (i).

(b) Any Contracting Party may require that the request indicate

- i. the name and address of the holder;
- ii. where the holder has a representative, the name and address of that representative;
- iii. where the holder has an address for service, such address.

(c) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

(d) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(e) A single request shall be sufficient even where the change relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request.

2. [Change in the Name or Address of the Applicant] Paragraph (1) shall apply, *mutatis mutandis*, where the change concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

3. [Change in the Name or Address of the Representative or in the Address for Service] Paragraph (1) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, if any, and to any change relating to the address for service, if any.

4. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request referred to in this Article. In particular, the furnishing of any certificate concerning the change may not be required.

5. [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

ARTICLE 11 Change in Ownership

1. [Change in the Ownership of a Registration]

(a) Where there is a change in the person of the holder, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative, or by the person who acquired the ownership (hereinafter referred to as “new owner”) or

his representative, and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

- i. where the request is presented in writing on paper, if it is presented, subject to paragraph (2)(a), on a form corresponding to the request Form provided for in the Regulations,
 - ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (2)(a), to the request Form referred to in item (i).
- (b) Where the change in ownership results from a contract, any Contracting Party may require that the request indicate that fact and be accompanied, at the option of the requesting party, by one of the following:
- i. a copy of the contract, which copy may be required to be certified, by a notary public or any other competent public authority, as being in conformity with the original contract;
 - ii. an extract of the contract showing the change in ownership, which extract may be required to be certified, by a notary public or any other competent public authority, as being a true extract of the contract;
 - iii. an uncertified certificate of transfer drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner;
 - iv. an uncertified transfer document drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner.
- (c) Where the change in ownership results from a merger, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document, which document originates from the competent authority and evidences the merger, such as a copy of an extract from a register of commerce, and that that copy be certified by the authority which issued the document or by a notary public or any other competent public authority, as being in conformity with the original document.
- (d) Where there is a change in the person of one or more but not all of several co-holders and such change in ownership results from a contract or a merger, any Contracting Party may require that any co-holder in respect of which there is no change in ownership give his express consent to the change in ownership in a document signed by him.
- (e) Where the change in ownership does not result from a contract or a merger but from another ground, for example, from operation of law or a court decision, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document evidencing the change and that that copy be certified as being in conformity with the original document by the authority which issued the document or by a notary public or any other competent public authority.
- (f) Any Contracting Party may require that the request indicate

- i. the name and address of the holder;
- ii. the name and address of the new owner;
- iii. the name of a State of which the new owner is a national if he is the national of any State, the name of a State in which the new owner has his domicile, if any, and the name of a State in which the new owner has a real and effective industrial or commercial establishment, if any;
- iv. where the new owner is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;
- v. where the holder has a representative, the name and address of that representative;
- vi. where the holder has an address for service, such address;
- vii. where the new owner has a representative, the name and address of that representative;
- viii. where the new owner is required to have an address for service under Article 4(2)(b), such address,

- (g) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.
- (h) A single request shall be sufficient even where the change relates to more than one registration, provided that the holder and the new owner are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.
- (i) Where the change of ownership does not affect all the goods and/or services listed in the holder's registration, and the applicable law allows the recording of such change, the Office shall create a separate registration referring to the goods and/or services in respect of which the ownership has changed.

2. [Language; Translation]

- (a) Any Contracting Party may require that the request, the certificate of transfer or the transfer document referred to in paragraph (1) be in the language, or in one of the languages, admitted by the Office.
- (b) Any Contracting Party may require that, if the documents referred to in paragraph (1)(b)(i) and (ii), (c) and (e) are not in the language, or in one of the languages, admitted by the Office, the request be accompanied by a translation or a certified translation of the required document in the language, or in one of the languages, admitted by the Office.

- 3. [Change in the Ownership of an Application] Paragraphs (1) and (2) shall apply, *mutatis mutandis*, where the change in ownership concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.
- 4. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in

respect of the request referred to in this Article. In particular, the following may not be required:

- i. subject to paragraph (1)(c), the furnishing of any certificate of, or extract from, a register of commerce;
- ii. an indication of the new owner's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;
- iii. an indication of the new owner's carrying on of an activity corresponding to the goods and/or services affected by the change in ownership, as well as the furnishing of evidence to either effect;
- iv. an indication that the holder transferred, entirely or in part, his business or the relevant goodwill to the new owner, as well as the furnishing of evidence to either effect.

5. [Evidence] Any Contracting Party may require that evidence, or further evidence where paragraph (1)(c) or (e) applies, be furnished to the Office where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Article.

ARTICLE 12 Correction of a Mistake

1. [Correction of a Mistake in Respect of a Registration]

- (a) Each Contracting Party shall accept that the request for the correction of a mistake which was made in the application or other request communicated to the Office and which mistake is reflected in its register of marks and/or any publication by the Office be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned, the mistake to be corrected and the correction to be entered. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

- i. where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request Form provided for in the Regulations,
- ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request Form referred to in item (i).

- (b) Any Contracting Party may require that the request indicate

- i. the name and address of the holder;
- ii. where the holder has a representative, the name and address of that representative;
- iii. where the holder has an address for service, such address.

- (c) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

- (d) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.
 - (e) A single request shall be sufficient even where the correction relates to more than one registration of the same person, provided that the mistake and the requested correction are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.
2. [Correction of a Mistake in Respect of an Application] Paragraph (1) shall apply, *mutatis mutandis*, where the mistake concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.
 3. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the request referred to in this Article.
 4. [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake.
 5. [Mistakes Made by the Office] The Office of a Contracting Party shall correct its own mistakes, *ex officio* or upon request, for no fee.
 6. [Uncorrectable Mistakes] No Contracting Party shall be obliged to apply paragraphs (1), (2) and (5) to any mistake which cannot be corrected under its law.

ARTICLE 13 Duration and Renewal of Registration

1. [Indications or Elements Contained in or Accompanying a Request for Renewal; Fee]
 - (a) Any Contracting Party may require that the renewal of a registration be subject to the filing of a request and that such request contain some or all of the following indications:
 - i. an indication that renewal is sought;
 - ii. the name and address of the holder;
 - iii. the registration number of the registration concerned;
 - iv. at the option of the Contracting Party, the filing date of the application which resulted in the registration concerned or the registration date of the registration concerned;
 - v. where the holder has a representative, the name and address of that representative;
 - vi. where the holder has an address for service, such address;
 - vii. where the Contracting Party allows the renewal of a registration to be made for some only of the goods and/ or services which are recorded in the register of marks and such a renewal is requested, the names of the recorded goods and/or services for which the renewal is requested or the names of the recorded goods and/or services for which the renewal is not requested, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or

services belongs and presented in the order of the classes of the said Classification;

- viii. where a Contracting Party allows a request for renewal to be filed by a person other than the holder or his representative and the request is filed by such a person, the name and address of that person;
- ix. a signature by the holder or his representative or, where item (viii) applies, a signature by the person referred to in that item.

(b) Any Contracting Party may require that, in respect of the request for renewal, a fee be paid to the Office. Once the fee has been paid in respect of the initial period of the registration or of any renewal period, no further payment may be required for the maintenance of the registration in respect of that period. Fees associated with the furnishing of a declaration and/or evidence of use shall not be regarded, for the purposes of this subparagraph, as payments required for the maintenance of the registration and shall not be affected by this subparagraph.

(c) Any Contracting Party may require that the request for renewal be presented, and the corresponding fee referred to in subparagraph (b) be paid, to the Office within the period fixed by the law of the Contracting Party, subject to the minimum periods prescribed in the Regulations.

2. [Presentation] As regards the requirements concerning the presentation of the request for renewal, no Contracting Party shall refuse the request,

- i. where the request is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the request Form provided for in the Regulations,
- ii. where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the request Form referred to in item (i).

3. [Language] Any Contracting Party may require that the request for renewal be in the language, or in one of the languages, admitted by the Office.

4. [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request for renewal. In particular, the following may not be required:

- i. any reproduction or other identification of the mark;
- ii. the furnishing of evidence to the effect that the mark has been registered, or that its registration has been renewed, in the register of marks of any other Contracting Party;
- iii. the furnishing of a declaration and/or evidence concerning use of the mark.

5. [Evidence] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the request for renewal where the Office may reasonably doubt the veracity of any indication or element contained in the request for renewal.

6. [Prohibition of Substantive Examination] No Office of a Contracting Party may, for the purposes of effecting the renewal, examine the registration as to substance.

7. [Duration] The duration of the initial period of the registration, and the duration of each renewal period, shall be 10 years.

ARTICLE 14 Observations in Case of Intended Refusal

An application or a request under Articles 10 to 13 may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit.

ARTICLE 15 Obligation to Comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Paris Convention which concern marks.

ARTICLE 16 Service Marks

Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks.

ARTICLE 17 Regulations

1. [Content]

- (a) The Regulations annexed to this Treaty provide rules concerning
 - i. matters which this Treaty expressly provides to be “prescribed in the Regulations”;
 - ii. any details useful in the implementation of the provisions of this Treaty;
 - iii. any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

2. [Conflict Between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

ARTICLE 18 Revision; Protocols

1. [Revision] This Treaty may be revised by a diplomatic conference.
2. [Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference insofar as those protocols do not contravene the provisions of this Treaty.

ARTICLE 19 Becoming Party to the Treaty

1. [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 20(1) and (3), become party to this Treaty:

- i. any State member of the Organization in respect of which marks may be registered with its own Office;
- ii. any intergovernmental organization which maintains an Office in which marks may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its member States or in those of its member States which are designated for such purpose in the relevant application, provided that all the member States of the intergovernmental organization are members of the Organization;
- iii. any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;
- iv. any State member of the Organization in respect of which marks may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;
- v. any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.

2. [Ratification or Accession] Any entity referred to in paragraph (1) may deposit

- i. an instrument of ratification, if it has signed this Treaty,
- ii. an instrument of accession, if it has not signed this Treaty.

3. [Effective Date of Deposit]

(a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

- i. in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;
- ii. in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;
- iii. in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;
- iv. in the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;
- v. in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

(b) Any instrument of ratification or accession (referred to in this subparagraph as “instrument”) of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is

fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

- (c) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

ARTICLE 20 Effective Date of Ratifications and Accessions

1. [Instruments to Be Taken Into Consideration] For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 19(1) and that have an effective date according to Article 19(3) shall be taken into consideration.
2. [Entry Into Force of the Treaty] This Treaty shall enter into force three months after five States have deposited their instruments of ratification or accession.
3. [Entry Into Force of Ratifications and Accessions Subsequent to the Entry Into Force of the Treaty] Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

ARTICLE 21 Reservations

1. [Special Kinds of Marks] Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 2(1)(a) and (2)(a), any of the provisions of Articles 3(1) and (2), 5, 7, 11 and 13 shall not apply to associated marks, defensive marks or derivative marks. Such reservation shall specify those of the aforementioned provisions to which the reservation relates.
2. [Modalities] Any reservation under paragraph (1) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.
3. [Withdrawal] Any reservation under paragraph (1) may be withdrawn at any time.
4. [Prohibition of Other Reservations] No reservation to this Treaty other than the reservation allowed under paragraph (1) shall be permitted.

ARTICLE 22 Transitional Provisions

1. [Single Application for Goods and Services in Several Classes; Division of Application]
 - (a) Any State or intergovernmental organization may declare that, notwithstanding Article 3(5), an application may be filed with the Office only in respect of goods or services which belong to one class of the Nice Classification.
 - (b) Any State or intergovernmental organization may declare that, notwithstanding Article 6, where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such application

shall result in two or more registrations in the register of marks, provided that each and every such registration shall bear a reference to all other such registrations resulting from the said application.

(c) Any State or intergovernmental organization that has made a declaration under subparagraph (a) may declare that, notwithstanding Article 7(1), no application may be divided.

2. [Single Power of Attorney for More Than One Application and/ or Registration] Any State or intergovernmental organization may declare that, notwithstanding Article 4(3)(b), a power of attorney may only relate to one application or one registration.
3. [Prohibition of Requirement of Certification of Signature of Power of Attorney and of Signature of Application] Any State or intergovernmental organization may declare that, notwithstanding Article 8(4), the signature of a power of attorney or the signature by the applicant of an application may be required to be the subject of an attestation, notarization, authentication, legalization or other certification.
4. [Single Request for More Than One Application and/or Registration in Respect of a Change in Name and/or Address, a Change in Ownership or a Correction of a Mistake] Any State or intergovernmental organization may declare that, notwithstanding Article 10(1)(e), (2) and (3), Article 11(1)(h) and (3) and Article 12(1)(e) and (2), a request for the recordal of a change in name and/or address, a request for the recordal of a change in ownership and a request for the correction of a mistake may only relate to one application or one registration.
5. [Furnishing, on the Occasion of Renewal, of Declaration and/or Evidence Concerning Use] Any State or intergovernmental organization may declare that, notwithstanding Article 13(4)(iii), it will require, on the occasion of renewal, the furnishing of a declaration and/or of evidence concerning use of the mark.
6. [Substantive Examination on the Occasion of Renewal] Any State or intergovernmental organization may declare that, notwithstanding Article 13(6), the Office may, on the occasion of the first renewal of a registration covering services, examine such registration as to substance, provided that such examination shall be limited to the elimination of multiple registrations based on applications filed during a period of six months following the entry into force of the law of such State or organization that introduced, before the entry into force of this Treaty, the possibility of registering service marks.
7. [Common Provisions]
 - (a) A State or an intergovernmental organization may make a declaration under paragraphs (1) to (6) only if, at the time of depositing its instrument of ratification of, or accession to, this Treaty, the continued application of its law would, without such a declaration, be contrary to the relevant provisions of this Treaty.
 - (b) Any declaration under paragraphs (1) to (6) shall accompany the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the declaration.
 - (c) Any declaration made under paragraphs (1) to (6) may be withdrawn at any time.
8. [Loss of Effect of Declaration]

- (a) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, or by an intergovernmental organization each member of which is such a State, shall lose its effect at the end of a period of eight years from the date of entry into force of this Treaty.
 - (b) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State other than a State referred to in subparagraph (a), or by an intergovernmental organization other than an intergovernmental organization referred to in subparagraph (a), shall lose its effect at the end of a period of six years from the date of entry into force of this Treaty.
 - (c) Where a declaration made under paragraphs (1) to (5) has not been withdrawn under paragraph (7)(c), or has not lost its effect under subparagraph (a) or (b), before October 28, 2004, it shall lose its effect on October 28, 2004.
9. [Becoming Party to the Treaty] Until December 31, 1999, any State which, on the date of the adoption of this Treaty, is a member of the International (Paris) Union for the Protection of Industrial Property without being a member of the Organization may, notwithstanding Article 19(1)(i), become a party to this Treaty if marks may be registered with its own Office.

ARTICLE 23 Denunciation of the Treaty

- 1. [Notification] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.
- 2. [Effective Date] Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any mark registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration as from the date on which that registration is due for renewal.

ARTICLE 24 Languages of the Treaty; Signature

- 1. [Original Texts; Official Texts]
 - (a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.
 - (b) At the request of a Contracting Party, an official text in a language not referred to in subparagraph (a) that is an official language of that Contracting Party shall be established by the Director General after consultation with the said Contracting Party and any other interested Contracting Party.

2. [Time Limit for Signature] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

ARTICLE 25 Depositary

The Director General shall be the depositary of this Treaty.

CHAPTER FIFTY-EIGHT

Energy Charter Treaty

Lisbon, 17 December 1994

INTRODUCTION

This Treaty is one of the first important legal initiatives to bring the former communist countries of Eastern Europe and Central Asia into mainstream Western economic and investment ethos. The idea was first mooted by Prime Minister Ruud Lubbers of the Netherlands. The importance of energy to Western European countries cannot be over-emphasized. Getting access to it from a shorter distance and from places of cultural proximity is vital, hence the focus on energy as an important means of integrating the economies of Eastern European countries to the West and the wider world.

The Energy Charter Treaty (ECT) was concluded at about the same time that the 'Uruguay round' of the General Agreement on Tariffs and Trade (GATT—which evolved into the World Trade Organization, WTO) was being negotiated. It is no coincidence then that the Treaty draws on some of the key principles of the more experienced GATT/WTO regime. The most favoured nation and nationality principles that are fundamental to the WTO system are also applied to the ECT. Under article 10(3), contracting parties must accord 'no less favourable [treatment] than that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable'. The ECT takes this principle further by applying it to services, including management. Disputes surrounding the application of the most favoured nation and nationality principles under the ECT are to be referred to and dealt with under the WTO dispute resolution mechanism. This is presumably to avoid duplication of functions and to discourage 'forum shopping' by disputing parties.

The dispute resolution provisions in the ECT are rather revolutionary. In all, four categories of disputes and their respective resolution may be discerned: disputes between contracting states; disputes under the investment regime; disputes regarding the trade-related investment measures under the WTO principles; and disputes emanating from specific aspects of the energy cycle under the Treaty. The remarkable thing about dispute resolution under the ECT is the right, under article 26, of investors to compel state parties to go to arbitration without first seeking the permission of the state concerned. Although exceptions are provided for and procedural conditions have to be satisfied, this is a significant departure from the classic manifestations of sovereignty of states and dispute resolution. These mechanisms are yet to be tested in any important manner, but there can

be little doubt as to its justiciability and farreaching effect. Judging from its quiet acceptance and the signing on of non-European countries such as Iran and Nigeria as observers, the ECT is set to be an important pillar in contemporary international economic law.

The Energy Charter Treaty entered into force on 16 April 1998. By the beginning of 2005 46 countries and the European Communities (for the European Union) had deposited instruments of ratification or accession, a further five had signed but not yet ratified the document (but of which two, Belarus and Russia, were applying it provisionally) and 17 countries and 10 international organizations had observer status.

THE ENERGY CHARTER TREATY (ANNEX 1 TO THE FINAL ACT OF THE EUROPEAN ENERGY CHARTER CONFERENCE)*

PREAMBLE

THE CONTRACTING PARTIES TO THIS TREATY,

HAVING REGARD to the Charter of Paris for a New Europe signed on 21 November 1990;

HAVING REGARD to the European Energy Charter adopted in the Concluding Document of The Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991;

RECALLING that all signatories to the Concluding Document of the Hague Conference undertook to pursue the objectives and principles of the European Energy Charter and implement and broaden their cooperation as soon as possible by negotiating in good faith an Energy Charter Treaty and Protocols, and desiring to place the commitments contained in that Charter on a secure and binding international legal basis;

DESIRING ALSO to establish the structural framework required to implement the principles enunciated in the European Energy Charter;

WISHING to implement the basic concept of the European Energy Charter initiative which is to catalyse economic growth by means of measures to liberalize investment and trade in energy;

AFFIRMING that Contracting Parties attach the utmost importance to the effective implementation of full national treatment and most favoured nation treatment, and that these commitments will be applied to the Making of Investments pursuant to a supplementary treaty;

HAVING REGARD to the objective of progressive liberalization of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the General Agreement on Tariffs and Trade and its Related Instruments and as otherwise provided for in this Treaty;

DETERMINED progressively to remove technical, administrative and other barriers to trade in Energy Materials and Products and related equipment, technologies and services;

LOOKING to the eventual membership in the General Agreement on Tariffs and Trade of those Contracting Parties which are not currently parties thereto and concerned

to provide interim trade arrangements which will assist those Contracting Parties and not impede their preparation for such membership;

MINDFUL of the rights and obligations of certain Contracting Parties which are also parties to the General Agreement on Tariffs and Trade and its Related Instruments;

HAVING REGARD to competition rules concerning mergers, monopolies, anti-competitive practices and abuse of dominant position;

HAVING REGARD ALSO to the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines and other international nuclear non-proliferation obligations or understandings;

RECOGNIZING the necessity for the most efficient exploration, production, conversion, storage, transport, distribution and use of energy;

RECALLING the United Nations Framework Convention on Climate Change, the Convention on Long-Range Transboundary Air Pollution and its protocols, and other international environmental agreements with energy-related aspects; and

RECOGNIZING the increasingly urgent need for measures to protect the environment, including the decommissioning of energy installations and waste disposal, and for internationally-agreed objectives and criteria for these purposes,

HAVE AGREED AS FOLLOWS:

PART I: DEFINITIONS AND PURPOSE

Article 1: Definitions

As used in this Treaty:

1. "Charter" means the European Energy Charter adopted in the Concluding Document of The Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991; signature of the Concluding Document is considered to be signature of the Charter.
2. "Contracting Party" means a state or Regional Economic Integration Organization which has consented to be bound by this Treaty and for which the Treaty is in force.
3. "Regional Economic Integration Organization" means an organization constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.
4. "Energy Materials and Products", based on the Harmonized System of the Customs Cooperation Council and the Combined Nomenclature of the European Communities, means the items included in Annex EM.
5. "Economic Activity in the Energy Sector" means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises.
6. "Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:
 - (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector. A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such investments after the Effective Date. “Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

7. “Investor” means:

(a) with respect to a Contracting Party:

- i. a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
- ii. a company or other organization organized in accordance with the law applicable in that Contracting Party;

(b) with respect to a “third state”, a natural person, company or other organization which fulfils, *mutatis mutandis*, the conditions specified in subparagraph (a) for a Contracting Party.

8. “Make Investments” or “Making of Investments” means establishing new Investments, acquiring all or part of existing Investments or moving into different fields of Investment activity.

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9. “Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.

10. “Area” means with respect to a state that is a Contracting Party:

- (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and
- (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction. With respect to a Regional Economic Integration Organization which is a Contracting Party, Area means the Areas of the member states of such Organization, under the provisions contained in the agreement establishing that Organization.

11.

- (a) "GATT" means "GATT 1947" or "GATT 1994", or both of them where both are applicable.
- (b) "GATT 1947" means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified.
- (c) "GATT 1994" means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified. A party to the Agreement Establishing the World Trade Organization is considered to be a party to GATT 1994.
- (d) "Related Instruments" means, as appropriate:
 - i. agreements, arrangements or other legal instruments, including decisions, declarations and understandings, concluded under the auspices of GATT 1947 as subsequently rectified, amended or modified; or
 - ii. the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended or modified.

12. "Intellectual Property" includes copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

13.

- (a) "Energy Charter Protocol" or "Protocol" means a treaty, the negotiation of which is authorized and the text of which is adopted by the Charter Conference, which is entered into by two or more Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty with respect to any specific sector or category of activity within the scope of this Treaty, or to areas of cooperation pursuant to Title III of the Charter.
- (b) "Energy Charter Declaration" or "Declaration" means a non-binding instrument, the negotiation of which is authorized and the text of which is approved by the Charter Conference, which is entered into by two or more Contracting Parties to complement or supplement the provisions of this Treaty.

14. “Freely Convertible Currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

Article 2: Purpose of the Treaty

This Treaty establishes a legal framework in order to promote longterm cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter.

PART II: COMMERCE

Article 3: International Markets

The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for Energy Materials and Products.

Article 4: Non-Derogation from GATT and Related Instruments

Nothing in this Treaty shall derogate, as between particular Contracting Parties which are parties to the GATT, from the provisions of the GATT and Related Instruments as they are applied between those Contracting Parties.

Article 5: Trade-Related Investment Measures

1. A Contracting Party shall not apply any trade-related investment measure that is inconsistent with the provisions of article III or XI of the GATT; this shall be without prejudice to the Contracting Party's rights and obligations under the GATT and Related Instruments and Article 29.
2. Such measures include any investment measure which is mandatory or enforceable under domestic law or under any administrative ruling, or compliance with which is necessary to obtain an advantage, and which requires:
 - (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 products, or in terms of a proportion of volume or value of its local production; or
 - (b) that an enterprise's purchase or use of imported products be limited to an amount related to the volume or value of local products that it exports; or which restricts:
 - (c) 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;
 - (d) 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

- (e) 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.
- 3. Nothing in paragraph (1) shall be construed to prevent a Contracting Party from applying the trade-related investment measures described in subparagraphs (2)(a) and (c) as a condition of eligibility for export promotion, foreign aid, government procurement or preferential tariff or quota programmes.
- 4. Notwithstanding paragraph (1), a Contracting Party may temporarily continue to maintain trade-related investment measures which were in effect more than 180 days before its signature of this Treaty, subject to the notification and phase-out provisions set out in Annex TRM.

Article 6: Competition

- 1. Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector.
- 2. Each Contracting Party shall ensure that within its jurisdiction it has and enforces such laws as are necessary and appropriate to address unilateral and concerted anti-competitive conduct in Economic Activity in the Energy Sector.
- 3. Contracting Parties with experience in applying competition rules shall give full consideration to providing, upon request and within available resources, technical assistance on the development and implementation of competition rules to other Contracting Parties.
- 4. Contracting Parties may cooperate in the enforcement of their competition rules by consulting and exchanging information.
- 5. If a Contracting Party considers that any specified anti-competitive conduct carried out within the Area of another Contracting Party is adversely affecting an important interest relevant to the purposes identified in this Article, the Contracting Party may notify the other Contracting Party and may request that its competition authorities initiate appropriate enforcement action. The notifying Contracting Party shall include in such notification sufficient information to permit the notified Contracting Party to identify the anti-competitive conduct that is the subject of the notification and shall include an offer of such further information and cooperation as the notifying Contracting Party is able to provide. The notified Contracting Party or, as the case may be, the relevant competition authorities may consult with the competition authorities of the notifying Contracting Party and shall accord full consideration to the request of the notifying Contracting Party in deciding whether or not to initiate enforcement action with respect to the alleged anti-competitive conduct identified in the notification. The notified Contracting Party shall inform the notifying Contracting Party of its decision or the decision of the relevant competition authorities and may if it wishes inform the notifying Contracting Party of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party shall advise the notifying Contracting Party of its outcome and, to the extent possible, of any significant interim development.

6. Nothing in this Article shall require the provision of information by a Contracting Party contrary to its laws regarding disclosure of information, confidentiality or business secrecy.
7. The procedures set forth in paragraph (5) and Article 27(1) shall be the exclusive means within this Treaty of resolving any disputes that may arise over the implementation or interpretation of this Article.

Article 7: Transit

1. Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
2. Contracting Parties shall encourage relevant entities to cooperate in:
 - (a) modernizing Energy Transport Facilities necessary to the Transit of Energy Materials and Products;
 - (b) the development and operation of Energy Transport Facilities serving the Areas of more than one Contracting Party;
 - (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;
 - (d) facilitating the interconnection of Energy Transport Facilities.
3. Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, unless an existing international agreement provides otherwise.
4. In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, except as may be otherwise provided in applicable legislation which is consistent with paragraph (1).
5. A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to
 - (a) permit the construction or modification of Energy Transport Facilities; or
 - (b) permit new or additional Transit through existing Energy Transport Facilities, which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems, including the security of supply.Contracting Parties shall, subject to paragraphs (6) and (7), secure established flows of Energy Materials and Products to, from or between the Areas of other Contracting Parties.
6. A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy

Materials and Products prior to the conclusion of the dispute resolution procedures set out in paragraph (7), except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision.

7. The following provisions shall apply to a dispute described in paragraph (6), but only following the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute or between any entity referred to in paragraph (6) and an entity of another Contracting Party party to the dispute:
 - (a) A Contracting Party party to the dispute may refer it to the Secretary-General by a notification summarizing the matters in dispute. The Secretary-General shall notify all Contracting Parties of any such referral.
 - (b) Within 30 days of receipt of such a notification, the Secretary-General, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in a party to the dispute or one of the other Contracting Parties concerned.
 - (c) The conciliator shall seek the agreement of the parties to the dispute to a resolution thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify until the dispute is resolved.
 - (d) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under subparagraph (c) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.
 - (e) Notwithstanding subparagraph (b) the Secretary-General may elect not to appoint a conciliator if in his judgement the dispute concerns Transit that is or has been the subject of the dispute resolution procedures set out in subparagraphs (a) to (d) and those proceedings have not resulted in a resolution of the dispute.
 - (f) The Charter Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.
8. Nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.
9. This Article shall not be so interpreted as to oblige any Contracting Party which does not have a certain type of Energy Transport Facilities used for Transit to take any measure under this Article with respect to that type of Energy Transport Facilities. Such a Contracting Party is, however, obliged to comply with paragraph (4).
10. For the purposes of this Article:
 - (a) "Transit" means

- i. the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a Contracting Party; or
 - ii. the carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party, unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by delivering a joint written notification of their intentions to the Secretariat, which shall transmit that notification to all other Contracting Parties. The deletion shall take effect four weeks after such former notification.
- (b) “Energy Transport Facilities” consist of high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

Article 8: Transfer of Technology

1. The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and Investment and to implement the objectives of the Charter subject to their laws and regulations, and to the protection of Intellectual Property rights.
2. Accordingly, to the extent necessary to give effect to paragraph (1) the Contracting Parties shall eliminate existing and create no new obstacles to the transfer of technology in the field of Energy Materials and Products and related equipment and services, subject to non-proliferation and other international obligations.

Article 9: Access to Capital

1. The Contracting Parties acknowledge the importance of open capital markets in encouraging the flow of capital to finance trade in Energy Materials and Products and for the making of and assisting with regard to Investments in Economic Activity in the Energy Sector in the Areas of other Contracting Parties, particularly those with economies in transition. Each Contracting Party shall accordingly endeavour to promote conditions for access to its capital market by companies and nationals of other Contracting Parties, for the purpose of financing trade in Energy Materials and Products and for the purpose of Investment in Economic Activity in the Energy Sector in the Areas of those other Contracting Parties, on a basis no less favourable than that which it accords in like circumstances to its own companies and nationals or companies and nationals of any other Contracting Party or any third state, whichever is the most favourable.

2. A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including any objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.
3. Contracting Parties shall, in implementing programmes in Economic Activity in the Energy Sector to improve the economic stability and investment climates of the Contracting Parties, seek as appropriate to encourage the operations and take advantage of the expertise of relevant international financial institutions.
4. Nothing in this Article shall prevent:
 - (a) financial institutions from applying their own lending or underwriting practices based on market principles and prudential considerations; or
 - (b) a Contracting Party from taking measures:
 - i. for prudential reasons, including the protection of Investors, consumers, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
 - ii. to ensure the integrity and stability of its financial system and capital markets.

PART III: INVESTMENT PROMOTION AND PROTECTION

Article 10: Promotion, Protection and Treatment of Investments

1. Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to Make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.
2. Each Contracting Party shall endeavour to accord to Investors of other Contracting Parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).
3. For the purposes of this Article, "Treatment" means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own

Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable.

4. A supplementary treaty shall, subject to conditions to be laid down therein, oblige each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3). That treaty shall be open for signature by the states and Regional Economic Integration Organizations which have signed or acceded to this Treaty. Negotiations towards the supplementary treaty shall commence not later than 1 January 1995, with a view to concluding it by 1 January 1998.
5. Each Contracting Party shall, as regards the Making of Investments in its Area, endeavour to:
 - (a) limit to the minimum the exceptions to the Treatment described in paragraph (3);
 - (b) progressively remove existing restrictions affecting Investors of other Contracting Parties.
6.
 - (a) A Contracting Party may, as regards the Making of Investments in its Area, at any time declare voluntarily to the Charter Conference, through the Secretariat, its intention not to introduce new exceptions to the Treatment described in paragraph (3).
 - (b) A Contracting Party may, furthermore, at any time make a voluntary commitment to accord to Investors of other Contracting Parties, as regards the Making of Investments in some or all Economic Activities in the Energy Sector in its Area, the Treatment described in paragraph (3). Such commitments shall be notified to the Secretariat and listed in Annex VC and shall be binding under this Treaty.
7. Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable.
8. The modalities of application of paragraph (7) in relation to programmes under which a Contracting Party provides grants or other financial assistance, or enters into contracts, for energy technology research and development, shall be reserved for the supplementary treaty described in paragraph (4). Each Contracting Party shall through the Secretariat keep the Charter Conference informed of the modalities it applies to the programmes described in this paragraph.
9. Each state or Regional Economic Integration Organization which signs or accedes to this Treaty shall, on the date it signs the Treaty or deposits its instrument of accession, submit to the Secretariat a report summarizing all laws, regulations or other measures relevant to:
 - (a) exceptions to paragraph (2); or
 - (b) the programmes referred to in paragraph (8). A Contracting Party shall keep its report up to date by promptly submitting amendments to the Secretariat. The

Charter Conference shall review these reports periodically. In respect of subparagraph (a) the report may designate parts of the energy sector in which a Contracting Party accords to Investors of other Contracting Parties the Treatment described in paragraph (3). In respect of subparagraph (b) the review by the Charter Conference may consider the effects of such programmes on competition and Investments.

10. Notwithstanding any other provision of this Article, the treatment described in paragraphs (3) and (7) shall not apply to the protection of Intellectual Property; instead, the treatment shall be as specified in the corresponding provisions of the applicable international agreements for the protection of Intellectual Property rights to which the respective Contracting Parties are parties.
11. For the purposes of Article 26, the application by a Contracting Party of a trade-related investment measure as described in Article 5(1) and (2) to an Investment of an Investor of another Contracting Party existing at the time of such application shall, subject to Article 5(3) and (4), be considered a breach of an obligation of the former Contracting Party under this Part.
12. Each Contracting Party shall ensure that its domestic law provides effective means for the assertion of claims and the enforcement of rights with respect to Investments, investment agreements, and investment authorizations.

Article 11: Key Personnel

1. A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by Investors of another Contracting Party, and key personnel who are employed by such Investors or by Investments of such Investors, to enter and remain temporarily in its Area to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant Investments, including the provision of advice or key technical services.
2. A Contracting Party shall permit Investors of another Contracting Party which have Investments in its Area, and Investments of such Investors, to employ any key person of the Investor's or the Investment's choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the Area of the former Contracting Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person.

Article 12: Compensation for Losses

1. Except where Article 13 applies, an Investor of any Contracting Party which suffers a loss with respect to any Investment in the Area of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Area, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment which is the most favourable of that which that Contracting Party accords to any other Investor,

whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third state.

2. Without prejudice to paragraph (1), an Investor of a Contracting Party which, in any of the situations referred to in that paragraph, suffers a loss in the Area of another Contracting Party resulting from

- (a) requisitioning of its Investment or part thereof by the latter's forces or authorities; or
- (b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 13: Expropriation

1. Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is:

- (a) for a purpose which is in the public interest;
- (b) not discriminatory;
- (c) carried out under due process of law; and
- (d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date"). Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.

2. The Investor affected shall have a right to prompt review, under the law of the Contracting Party making the Expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).
3. For the avoidance of doubt, Expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in its Area in which an Investor of any other Contracting Party has an Investment, including through the ownership of shares.

Article 14: Transfers Related to Investments

1. Each Contracting Party shall with respect to Investments in its Area of Investors of any other Contracting Party guarantee the freedom of transfer into and out of its Area, including the transfer of:
 - (a) the initial capital plus any additional capital for the maintenance and development of an Investment;
 - (b) Returns;
 - (c) payments under a contract, including amortization of principal and accrued interest payments pursuant to a loan agreement;
 - (d) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment;
 - (e) proceeds from the sale or liquidation of all or any part of an Investment;
 - (f) payments arising out of the settlement of a dispute;
 - (g) payments of compensation pursuant to Articles 12 and 13.
2. Transfers under paragraph (1) shall be effected without delay and (except in case of a Return in kind) in a Freely Convertible Currency.
3. Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the Investor.
4. Notwithstanding paragraphs (1) to (3), a Contracting Party may protect the rights of creditors, or ensure compliance with laws on the issuing, trading and dealing in securities and the satisfaction of judgements in civil, administrative and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its laws and regulations.
5. Notwithstanding paragraph (2), Contracting Parties which are states that were constituent parts of the former Union of Soviet Socialist Republics may provide in agreements concluded between them that transfers of payments shall be made in the currencies of such Contracting Parties, provided that such agreements do not treat Investments in their Areas of Investors of other Contracting Parties less favourably than either Investments of Investors of the Contracting Parties which have entered into such agreements or Investments of Investors of any third state.
6. Notwithstanding subparagraph (1)(b), a Contracting Party may restrict the transfer of a Return in kind in circumstances where the Contracting Party is permitted under Article 29(2)(a) or the GATT and Related Instruments to restrict or prohibit the exportation or the sale for export of the product constituting the Return in kind; provided that a Contracting Party shall permit transfers of Returns in kind to be effected as authorized or specified in an investment agreement, investment authorization, or other written agreement between the Contracting Party and either an Investor of another Contracting Party or its Investment.

Article 15: Subrogation

1. If a Contracting Party or its designated agency (hereinafter referred to as the “Indemnifying Party”) makes a payment under an indemnity or guarantee given in respect of an Investment of an Investor (hereinafter referred to as the “Party Indemnified”) in the Area of another Contracting Party (hereinafter referred to as the “Host Party”), the Host Party shall recognize: (a) the assignment to the Indemnifying Party of all the rights and claims in respect of such Investment; and (b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.
2. The Indemnifying Party shall be entitled in all circumstances to: (a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1); and (b) the same payments due pursuant to those rights and claims, as the Party Indemnified was entitled to receive by virtue of this Treaty in respect of the Investment concerned.
3. In any proceeding under Article 26, a Contracting Party shall not assert as a defence, 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.

Article 16: Relation to Other Agreements

Where two or more Contracting Parties have entered into a prior international agreement, or enter into a subsequent international agreement, whose terms in either case concern the subject matter of Part III or V of this Treaty,

1. nothing in Part III or V of this Treaty shall be construed to derogate from any provision of such terms of the other agreement or from any right to dispute resolution with respect thereto under that agreement; and
2. nothing in such terms of the other agreement shall be construed to derogate from any provision of Part III or V of this Treaty or from any right to dispute resolution with respect thereto under this Treaty, where any such provision is more favourable to the Investor or Investment.

Article 17: Non-Application of Part III in Certain Circumstances

Each Contracting Party reserves the right to deny the advantages of this Part to:

1. a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized; or
2. an Investment, if the denying Contracting Party establishes that such Investment is an Investment of an Investor of a third state with or as to which the denying Contracting Party:
 - (a) does not maintain a diplomatic relationship; or
 - (b) adopts or maintains measures that:

- i. prohibit transactions with Investors of that state; or
- ii. would be violated or circumvented if the benefits of this Part were accorded to Investors of that state or to their Investments.

PART IV: MISCELLANEOUS PROVISIONS

Article 18: Sovereignty over Energy Resources

1. The Contracting Parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.
2. Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.
3. Each state continues to hold in particular the rights to decide the geographical areas within its Area to be made available for exploration and development of its energy resources, the optimalization of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploration, development and reclamation within its Area, and to participate in such exploration and exploitation, inter alia, through direct participation by the government or through state enterprises.
4. The Contracting Parties undertake to facilitate access to energy resources, inter alia, by allocating in a non-discriminatory manner on the basis of published criteria authorizations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

Article 19: Environmental Aspects

1. In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimize in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area, taking proper account of safety. In doing so each Contracting Party shall act in a Cost-Effective manner. In its policies and actions each Contracting Party shall strive to take precautionary measures to prevent or minimize environmental degradation. The Contracting Parties agree that the polluter in the Areas of Contracting Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade. Contracting Parties shall accordingly:
 - (a) take account of environmental considerations throughout the formulation and implementation of their energy policies;

- (b) promote market-oriented price formation and a fuller reflection of environmental costs and benefits throughout the Energy Cycle;
 - (c) having regard to Article 34(4), encourage cooperation in the attainment of the environmental objectives of the Charter and cooperation in the field of international environmental standards for the Energy Cycle, taking into account differences in adverse effects and abatement costs between Contracting Parties;
 - (d) have particular regard to Improving Energy Efficiency, to developing and using renewable energy sources, to promoting the use of cleaner fuels and to employing technologies and technological means that reduce pollution;
 - (e) promote the collection and sharing among Contracting Parties of information on environmentally sound and economically efficient energy policies and Cost-Effective practices and technologies;
 - (f) promote public awareness of the Environmental Impacts of energy systems, of the scope for the prevention or abatement of their adverse Environmental Impacts, and of the costs associated with various prevention or abatement measures;
 - (g) promote and cooperate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimize harmful Environmental Impacts of all aspects of the Energy Cycle in an economically efficient manner;
 - (h) encourage favourable conditions for the transfer and dissemination of such technologies consistent with the adequate and effective protection of Intellectual Property rights;
 - (i) promote the transparent assessment at an early stage and prior to decision, and subsequent monitoring, of Environmental Impacts of environmentally significant energy investment projects;
 - (j) promote international awareness and information exchange on Contracting Parties' relevant environmental programmes and standards and on the implementation of those programmes and standards;
 - (k) participate, upon request, and within their available resources, in the development and implementation of appropriate environmental programmes in the Contracting Parties.
2. At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution.
3. For the purposes of this Article:
- (a) "Energy Cycle" means the entire energy chain, including activities related to prospecting for, exploration, production, conversion, storage, transport, distribution and consumption of the various forms of energy, and the treatment and disposal of wastes, as well as the decommissioning, cessation or closure of these activities, minimizing harmful Environmental Impacts;
 - (b) "Environmental Impact" means any effect caused by a given activity on the environment, including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the

interactions among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;

- (c) “Improving Energy Efficiency” means acting to maintain the same unit of output (of a good or service) without reducing the quality or performance of the output, while reducing the amount of energy required to produce that output;
- (d) “Cost-Effective” means to achieve a defined objective at the lowest cost or to achieve the greatest benefit at a given cost.

Article 20: Transparency

1. Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the GATT and relevant Related Instruments.
2. Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.
3. Each Contracting Party shall designate one or more enquiry points to which requests for information about the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and shall communicate promptly such designation to the Secretariat which shall make it available on request.

Article 21: Taxation

1. Except as otherwise provided in this Article, nothing in this Treaty shall create rights or impose obligations with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of the Treaty, this Article shall prevail to the extent of the inconsistency.
2. Article 7(3) shall apply to Taxation Measures other than those on income or on capital, except that such provision shall not apply to:
 - (a) an advantage accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii); or
 - (b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure of a Contracting Party arbitrarily discriminates against Energy Materials and Products originating in, or destined for the Area of another Contracting Party or arbitrarily restricts benefits accorded under Article 7(3).
3. Article 10(2) and (7) shall apply to Taxation Measures of the Contracting Parties other than those on income or on capital, except that such provisions shall not apply to:

- (a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii) or resulting from membership of any Regional Economic Integration Organization; or
- (b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates against an Investor of another Contracting Party or arbitrarily restricts benefits accorded under the Investment provisions of this Treaty.

4. Article 29(2) to (6) shall apply to Taxation Measures other than those on income or on capital.

5.

- (a) Article 13 shall apply to taxes.
- (b) Whenever an issue arises under Article 13, to the extent it pertains to whether a tax constitutes an expropriation or whether a tax alleged to constitute an expropriation is discriminatory, the following provisions shall apply:
 - i. The Investor or the Contracting Party alleging expropriation shall refer the issue of whether the tax is an expropriation or whether the tax is discriminatory to the relevant Competent Tax Authority. Failing such referral by the Investor or the Contracting Party, bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) shall make a referral to the relevant Competent Tax Authorities;
 - ii. The Competent Tax Authorities shall, within a period of six months of such referral, strive to resolve the issues so referred. Where non-discrimination issues are concerned, the Competent Tax Authorities shall apply the non-discrimination provisions of the relevant tax convention or, if there is no non-discrimination provision in the relevant tax convention applicable to the tax or no such tax convention is in force between the Contracting Parties concerned, they shall apply the non-discrimination principles under the Model Tax Convention on Income and Capital of the Organisation for Economic Cooperation and Development;
 - iii. Bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) may take into account any conclusions arrived at by the Competent Tax Authorities regarding whether the tax is an expropriation. Such bodies shall take into account any conclusions arrived at within the six-month period prescribed in subparagraph (b)(ii) by the Competent Tax Authorities regarding whether the tax is discriminatory. Such bodies may also take into account any conclusions arrived at by the Competent Tax Authorities after the expiry of the six-month period;
 - iv. Under no circumstances shall involvement of the Competent Tax Authorities, beyond the end of the six-month period referred to in subparagraph (b)(ii), lead to a delay of proceedings under Articles 26 and 27.

6. For the avoidance of doubt, Article 14 shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means.

7. For the purposes of this Article:

(a) The term “Taxation Measure” includes:

- i. any provision relating to taxes of the domestic law of the Contracting Party or of a political subdivision thereof or a local authority therein; and
- ii. any provision relating to taxes of any convention for the avoidance of double taxation or of any other international agreement or arrangement by which the Contracting Party is bound.

(b) There shall be regarded as taxes on income or on capital all taxes imposed 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, or substantially similar taxes, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(c) A “Competent Tax Authority” means the competent authority pursuant to a double taxation agreement in force between the Contracting Parties or, when no such agreement is in force, the minister or ministry responsible for taxes or their authorized representatives.

(d) For the avoidance of doubt, the terms “tax provisions” and “taxes” do not include customs duties.

Article 22: State and Privileged Enterprises

1. Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party’s obligations under Part III of this Treaty.
2. No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party’s obligations under other provisions of this Treaty.
3. Each Contracting Party shall ensure that if it establishes or maintains an entity and entrusts the entity with regulatory, administrative or other governmental authority, such entity shall exercise that authority in a manner consistent with the Contracting Party’s obligations under this Treaty.
4. No Contracting Party shall encourage or require any entity to which it grants exclusive or special privileges to conduct its activities in its Area in a manner inconsistent with the Contracting Party’s obligations under this Treaty.
5. For the purposes of this Article, “entity” includes any enterprise, agency or other organization or individual.

Article 23: Observance by Sub-National Authorities

1. Each Contracting Party is fully responsible under this Treaty for the observance of all provisions of the Treaty, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its Area.
2. The dispute settlement provisions in Parts II, IV and V of this Treaty may be invoked in respect of measures affecting the observance of the Treaty by a Contracting Party

which have been taken by regional or local governments or authorities within the Area of the Contracting Party.

Article 24: Exceptions

1. This Article shall not apply to Articles 12, 13 and 29.
2. The provisions of this Treaty other than
 - (a) those referred to in paragraph (1); and
 - (b) with respect to subparagraph (i), Part III of the Treaty shall not preclude any Contracting Party from adopting or enforcing any measure
 - i. necessary to protect human, animal or plant life or health;
 - ii. essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that (A) all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and (B) any such measure that is inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist;
 - iii. designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure (A) has no significant impact on that Contracting Party's economy; and (B) does not discriminate between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the measure is intended, provided that no such measure shall constitute a disguised restriction on Economic Activity in the Energy Sector, or arbitrary or unjustifiable discrimination between Contracting Parties or between Investors or other interested persons of Contracting Parties. Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Treaty to an extent greater than is strictly necessary to the stated end.
3. The provisions of this Treaty other than those referred to in paragraph (1) shall not be construed to prevent any Contracting Party from taking any measure which it considers necessary:
 - (a) for the protection of its essential security interests including those
 - i. relating to the supply of Energy Materials and Products to a military establishment;
 - ii. taken in time of war, armed conflict or other emergency in international relations;
 - (b) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to fulfil its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the

Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings; or

(c) for the maintenance of public order. Such measure shall not constitute a disguised restriction on Transit.

4. The provisions of this Treaty which accord most favoured nation treatment shall not oblige any Contracting Party to extend to the Investors of any other Contracting Party any preferential treatment:

(a) resulting from its membership of a free-trade area or customs union; or

(b) which is accorded by a bilateral or multilateral agreement concerning economic cooperation between states that were constituent parts of the former Union of Soviet Socialist Republics pending the establishment of their mutual economic relations on a definitive basis.

Article 25: Economic Integration Agreements

1. The provisions of this Treaty shall not be so construed as to oblige a Contracting Party which is party to an Economic Integration Agreement (hereinafter referred to as "EIA") to extend, by means of most favoured nation treatment, to another Contracting Party which is not a party to that EIA, any preferential treatment applicable between the parties to that EIA as a result of their being parties thereto.
2. For the purposes of paragraph (1), "EIA" means an agreement substantially liberalizing, inter alia, trade and investment, by providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.
3. This Article shall not affect the application of the GATT and Related Instruments according to Article 29.

PART V: DISPUTE SETTLEMENT

Article 26: Settlement of Disputes between an Investor and a Contracting Party

1. Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.
2. If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:
 - (a) to the courts or administrative tribunals of the Contracting Party party to the dispute;

- (b) in accordance with any applicable, previously agreed dispute settlement procedure;
or
- (c) in accordance with the following paragraphs of this Article.

3.

- (a) Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.
- (b)
 - i. The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2)(a) or (b).
 - ii. For the sake of transparency, each Contracting Party that is listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat no later than the date of the deposit of its instrument of ratification, acceptance or approval in accordance with Article 39 or the deposit of its instrument of accession in accordance with Article 41.
- (c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 10(1).

4. In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:

- (a)
 - i. The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the “ICSID Convention”), if the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention;
 - ii. The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the “Additional Facility Rules”), if the Contracting Party of the Investor or the Contracting Party party to the dispute, but not both, is a party to the ICSID Convention;
- (b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as “UNCITRAL”); or
- (c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.

5.

- (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) shall be considered to satisfy the requirement for:
 - i. written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention and for purposes of the Additional Facility Rules;
 - ii. an “agreement in writing” for purposes of article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as the “New York Convention”); and
 - iii. “the parties to a contract [to] have agreed in writing” for the purposes of article 1 of the UNCITRAL Arbitration Rules.
 - (b) Any arbitration under this Article shall at the request of any party to the dispute be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article I of that Convention.
6. A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.
 7. An Investor other than a natural person which has the nationality of a Contracting Party party to the dispute on the date of the consent in writing referred to in paragraph (4) and which, before a dispute between it and that Contracting Party arises, is controlled by Investors of another Contracting Party, shall for the purpose of article 25(2)(b) of the ICSID Convention be treated as a “national of another Contracting State” and shall for the purpose of article 1(6) of the Additional Facility Rules be treated as a “national of another State”.
 8. The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. An award of arbitration concerning a measure of a sub-national government or authority of the disputing Contracting Party shall provide that the Contracting Party may pay monetary damages in lieu of any other remedy granted. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.

Article 27: Settlement of Disputes between Contracting Parties

1. Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.
2. If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and except as concerns the application or interpretation of Article 6 or Article 19 or, for Contracting Parties listed in Annex IA, the last sentence of Article 10(1), upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.
3. Such an ad hoc arbitral tribunal shall be constituted as follows:
 - (a) The Contracting Party instituting the proceedings shall appoint one member of the tribunal and inform the other Contracting Party to the dispute of its appointment

within 30 days of receipt of the notice referred to in paragraph (2) by the other Contracting Party;

- (b) Within 60 days of the receipt of the written notice referred to in paragraph (2), the other Contracting Party party to the dispute shall appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within 90 days of the receipt of the written notice referred to in paragraph (2), request that the appointment be made in accordance with subparagraph (d);
- (c) A third member, who may not be a national or citizen of a Contracting Party party to the dispute, shall be appointed by the Contracting Parties parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the receipt of the notice referred to in paragraph (2), the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with subparagraph (d), at the request of either Contracting Party submitted within 180 days of the receipt of that notice;
- (d) Appointments requested to be made in accordance with this paragraph shall be made by the Secretary-General of the Permanent Court of International Arbitration within 30 days of the receipt of a request to do so. If the Secretary-General is prevented from discharging this task, the appointments shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task, the appointments shall be made by the most senior Deputy;
- (e) Appointments made in accordance with subparagraphs (a) to (d) shall be made with regard to the qualifications and experience, particularly in matters covered by this Treaty, of the members to be appointed;
- (f) In the absence of an agreement to the contrary between the Contracting Parties, the Arbitration Rules of UNCITRAL shall govern, except to the extent modified by the Contracting Parties parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members;
- (g) The tribunal shall decide the dispute in accordance with this Treaty and applicable rules and principles of international law;
- (h) The arbitral award shall be final and binding upon the Contracting Parties parties to the dispute;
- (i) Where, in making an award, a tribunal finds that a measure of a regional or local government or authority within the Area of a Contracting Party listed in Part I of Annex P is not in conformity with this Treaty, either party to the dispute may invoke the provisions of Part II of Annex P;
- (j) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties parties to the dispute;
- (k) Unless the Contracting Parties parties to the dispute agree otherwise, the tribunal shall sit in The Hague, and use the premises and facilities of the Permanent Court of Arbitration;
- (l) A copy of the award shall be deposited with the Secretariat which shall make it generally available.

Article 28: Non-Application of Article 27 to Certain Disputes

A dispute between Contracting Parties with respect to the application or interpretation of Article 5 or 29 shall not be settled under Article 27 unless the Contracting Parties parties to the dispute so agree.

PART VI: TRANSITIONAL PROVISIONS

Article 29: Interim Provisions on Trade-Related Matters

1. The provisions of this Article shall apply to trade in Energy Materials and Products while any Contracting Party is not a party to the GATT and Related Instruments.
2.
 - (a) Trade in Energy Materials and Products between Contracting Parties at least one of which is not a party to the GATT or a relevant Related Instrument shall be governed, subject to subparagraphs (b) and (c) and to the exceptions and rules provided for in Annex G, by the provisions of GATT 1947 and Related Instruments, as applied on 1 March 1994 and practised with regard to Energy Materials and Products by parties to GATT 1947 among themselves, as if all Contracting Parties were parties to GATT 1947 and Related Instruments.
 - (b) Such trade of a Contracting Party which is a state that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFU, by an agreement between two or more such states, until 1 December 1999 or the admission of that Contracting Party to the GATT, whichever is the earlier.
 - (c) As concerns trade between any two parties to the GATT, subparagraph (a) shall not apply if either of those parties is not a party to GATT 1947.
3. Each signatory to this Treaty, and each state or Regional Economic Integration Organization acceding to this Treaty, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all tariff rates and other charges levied on Energy Materials and Products at the time of importation or exportation, notifying the level of such rates and charges applied on such date of signature or deposit. Any changes to such rates or other charges shall be notified to the Secretariat, which shall inform the Contracting Parties of such changes.
4. Each Contracting Party shall endeavour not to increase any tariff rate or other charge levied at the time of importation or exportation:
 - (a) in the case of the importation of Energy Materials and Products described in Part I of the Schedule relating to the Contracting Party referred to in article II of the GATT, above the level set forth in that Schedule, if the Contracting Party is a party to the GATT;
 - (b) in the case of the exportation of Energy Materials and Products, and that of their importation if the Contracting Party is not a party to the GATT, above the level most recently notified to the Secretariat, except as permitted by the provisions made applicable by subparagraph (2)(a).

5. A Contracting Party may increase such tariff rate or other charge above the level referred to in paragraph (4) only if:
 - (a) in the case of a rate or other charge levied at the time of importation, such action is not inconsistent with the applicable provisions of the GATT other than those provisions of GATT 1947 and Related Instruments listed in Annex G and the corresponding provisions of GATT 1994 and Related Instruments; or
 - (b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.
6. Signatories undertake to commence negotiations not later than 1 January 1995 with a view to concluding by 1 January 1998, as appropriate in the light of any developments in the world trading system, a text of an amendment to this Treaty which shall, subject to conditions to be laid down therein, commit each Contracting Party not to increase such tariffs or charges beyond the level prescribed under that amendment.
7. Annex D shall apply to disputes regarding compliance with provisions applicable to trade under this Article and, unless both Contracting Parties agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a party to the GATT, except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:
 - (a) has been notified in accordance with and meets the other requirements of subparagraph (2)(b) and Annex TFU; or
 - (b) establishes a free-trade area or a customs union as described in article XXIV of the GATT.

Article 30: Developments in International Trading Arrangements

Contracting Parties undertake that in the light of the results of the Uruguay Round of Multilateral Trade Negotiations embodied principally in the Final Act thereof done at Marrakesh, 15 April 1994, they will commence consideration not later than 1 July 1995 or the entry into force of this Treaty, whichever is the later, of appropriate amendments to this Treaty with a view to the adoption of any such amendments by the Charter Conference.

Article 31: Energy-Related Equipment

The provisional Charter Conference shall at its first meeting commence examination of the inclusion of energy-related equipment in the trade provisions of this Treaty.

Article 32: Transitional Arrangements

1. In recognition of the need for time to adapt to the requirements of a market economy, a Contracting Party listed in Annex T may temporarily suspend full compliance with its

obligations under one or more of the following provisions of this Treaty, subject to the conditions in paragraphs (3) to (6): Article 6(2) and (5) Article 7(4) Article 9(1) Article 10(7)—specific measures Article 14(1)(d) related only to transfer of unspent earnings Article 20(3) Article 22(1) and (3).

2. Other Contracting Parties shall assist any Contracting Party which has suspended full compliance under paragraph (1) to achieve the conditions under which such suspension can be terminated. This assistance may be given in whatever form the other Contracting Parties consider most effective to respond to the needs notified under subparagraph (4)(c) including, where appropriate, through bilateral or multilateral arrangements.
3. The applicable provisions, the stages towards full implementation of each, the measures to be taken and the date or, exceptionally, contingent event, by which each stage shall be completed and measure taken are listed in Annex T for each Contracting Party claiming transitional arrangements. Each such Contracting Party shall take the measure listed by the date indicated for the relevant provision and stage as set out in Annex T. Contracting Parties which have temporarily suspended full compliance under paragraph (1) undertake to comply fully with the relevant obligations by 1 July 2001. Should a Contracting Party find it necessary, due to exceptional circumstances, to request that the period of such temporary suspension be extended or that any further temporary suspension not previously listed in Annex T be introduced, the decision on a request to amend Annex T shall be made by the Charter Conference.
4. A Contracting Party which has invoked transitional arrangements shall notify the Secretariat no less often than once every 12 months:
 - (a) of the implementation of any measures listed in its Annex T and of its general progress to full compliance;
 - (b) of the progress it expects to make during the next 12 months towards full compliance with its obligations, of any problem it foresees and of its proposals for dealing with that problem;
 - (c) of the need for technical assistance to facilitate completion of the stages set out in Annex T as necessary for the full implementation of this Treaty, or to deal with any problem notified pursuant to subparagraph (b) as well as to promote other necessary market-oriented reforms and modernization of its energy sector;
 - (d) of any possible need to make a request of the kind referred to in paragraph (3).
5. The Secretariat shall: (a) circulate to all Contracting Parties the notifications referred to in paragraph (4); (b) circulate and actively promote, relying where appropriate on arrangements existing within other international organizations, the matching of needs for and offers of technical assistance referred to in paragraph (2) and subparagraph (4)(c); (c) circulate to all Contracting Parties at the end of each six month period a summary of any notifications made under subparagraph (4)(a) or (d).
6. The Charter Conference shall annually review the progress by Contracting Parties towards implementation of the provisions of this Article and the matching of needs and offers of technical assistance referred to in paragraph (2) and subparagraph (4)(c). In the course of that review it may decide to take appropriate action.

PART VII: STRUCTURE AND INSTITUTIONS

Article 33: Energy Charter Protocols and Declarations

1. The Charter Conference may authorize the negotiation of a number of Energy Charter Protocols or Declarations in order to pursue the objectives and principles of the Charter.
2. Any signatory to the Charter may participate in such negotiation.
3. A state or Regional Economic Integration Organization shall not become a party to a Protocol or Declaration unless it is, or becomes at the same time, a signatory to the Charter and a Contracting Party to this Treaty.
4. Subject to paragraph (3) and subparagraph (6)(a), final provisions applying to a Protocol shall be defined in that Protocol.
5. A Protocol shall apply only to the Contracting Parties which consent to be bound by it, and shall not derogate from the rights and obligations of those Contracting Parties not party to the Protocol.
6.
 - (a) A Protocol may assign duties to the Charter Conference and functions to the Secretariat, provided that no such assignment may be made by an amendment to a Protocol unless that amendment is approved by the Charter Conference, whose approval shall not be subject to any provisions of the Protocol which are authorized by subparagraph (b).
 - (b) A Protocol which provides for decisions thereunder to be taken by the Charter Conference may, subject to subparagraph (a), provide with respect to such decisions:
 - i. for voting rules other than those contained in Article 36;
 - ii. that only parties to the Protocol shall be considered to be Contracting Parties for the purposes of Article 36 or eligible to vote under the rules provided for in the Protocol.

Article 34: Energy Charter Conference

1. The Contracting Parties shall meet periodically in the Energy Charter Conference (referred to herein as the "Charter Conference") at which each Contracting Party shall be entitled to have one representative. Ordinary meetings shall be held at intervals determined by the Charter Conference.
2. Extraordinary meetings of the Charter Conference may be held at such times as may be determined by the Charter Conference, or at the written request of any Contracting Party, provided that, within six weeks of the request being communicated to the Contracting Parties by the Secretariat, it is supported by at least onethird of the Contracting Parties.
3. The functions of the Charter Conference shall be to:
 - (a) carry out the duties assigned to it by this Treaty and any Protocols;

- (b) keep under review and facilitate the implementation of the principles of the Charter and of the provisions of this Treaty and the Protocols;
 - (c) facilitate in accordance with this Treaty and the Protocols the coordination of appropriate general measures to carry out the principles of the Charter;
 - (d) consider and adopt programmes of work to be carried out by the Secretariat;
 - (e) consider and approve the annual accounts and budget of the Secretariat;
 - (f) consider and approve or adopt the terms of any headquarters or other agreement, including privileges and immunities considered necessary for the Charter Conference and the Secretariat;
 - (g) encourage cooperative efforts aimed at facilitating and promoting market-oriented reforms and modernization of energy sectors in those countries of Central and Eastern Europe and the former Union of Soviet Socialist Republics undergoing economic transition;
 - (h) authorize and approve the terms of reference for the negotiation of Protocols, and consider and adopt the texts thereof and of amendments thereto;
 - (i) authorize the negotiation of Declarations, and approve their issuance;
 - (j) decide on accessions to this Treaty;
 - (k) authorize the negotiation of and consider and approve or adopt association agreements;
 - (l) consider and adopt texts of amendments to this Treaty;
 - (m) consider and approve modifications of and technical changes to the Annexes to this Treaty;
 - (n) appoint the Secretary-General and take all decisions necessary for the establishment and functioning of the Secretariat including the structure, staff levels and standard terms of employment of officials and employees.
4. In the performance of its duties, the Charter Conference, through the Secretariat, shall cooperate with and make as full a use as possible, consistently with economy and efficiency, of the services and programmes of other institutions and organizations with established competence in matters related to the objectives of this Treaty.
 5. The Charter Conference may establish such subsidiary bodies as it considers appropriate for the performance of its duties.
 6. The Charter Conference shall consider and adopt rules of procedure and financial rules.
 7. In 1999 and thereafter at intervals (of not more than five years) to be determined by the Charter Conference, the Charter Conference shall thoroughly review the functions provided for in this Treaty in the light of the extent to which the provisions of the Treaty and Protocols have been implemented. At the conclusion of each review the Charter Conference may amend or abolish the functions specified in paragraph (3) and may discharge the Secretariat.

Article 35: Secretariat

1. In carrying out its duties, the Charter Conference shall have a Secretariat which shall be composed of a Secretary-General and such staff as are the minimum consistent with efficient performance.

2. The Secretary-General shall be appointed by the Charter Conference. The first such appointment shall be for a maximum period of five years.
3. In the performance of its duties the Secretariat shall be responsible to and report to the Charter Conference.
4. The Secretariat shall provide the Charter Conference with all necessary assistance for the performance of its duties and shall carry out the functions assigned to it in this Treaty or in any Protocol and any other functions assigned to it by the Charter Conference.
5. The Secretariat may enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

Article 36: Voting

1. Unanimity of the Contracting Parties Present and Voting at the meeting of the Charter Conference where such matters fall to be decided shall be required for decisions by the Charter Conference to:
 - (a) adopt amendments to this Treaty other than amendments to Articles 34 and 35 and Annex T;
 - (b) approve accessions to this Treaty under Article 41 by states or Regional Economic Integration Organizations which were not signatories to the Charter as of 16 June 1995;
 - (c) authorize the negotiation of and approve or adopt the text of association agreements;
 - (d) approve modifications to Annexes EM, NI, G and B;
 - (e) approve technical changes to the Annexes to this Treaty; and
 - (f) approve the Secretary-General's nominations of panelists under Annex D, paragraph (7).

The Contracting Parties shall make every effort to reach agreement by consensus on any other matter requiring their decision under this Treaty. If agreement cannot be reached by consensus, paragraphs (2) to (5) shall apply.

2. Decisions on budgetary matters referred to in Article 34(3)(e) shall be taken by a qualified majority of Contracting Parties whose assessed contributions as specified in Annex B represent, in combination, at least three-fourths of the total assessed contributions specified therein.
3. Decisions on matters referred to in Article 34(7) shall be taken by a three-fourths majority of the Contracting Parties.
4. Except in cases specified in subparagraphs (1)(a) to (f), paragraphs (2) and (3), and subject to paragraph (6), decisions provided for in this Treaty shall be taken by a three-fourths majority of the Contracting Parties Present and Voting at the meeting of the Charter Conference at which such matters fall to be decided.
5. For purposes of this Article, "Contracting Parties Present and Voting" means Contracting Parties present and casting affirmative or negative votes, provided that the Charter Conference may decide upon rules of procedure to enable such decisions to be taken by Contracting Parties by correspondence.

6. Except as provided in paragraph (2), no decision referred to in this Article shall be valid unless it has the support of a simple majority of the Contracting Parties.
7. A Regional Economic Integration Organization shall, when voting, have a number of votes equal to the number of its member states which are Contracting Parties to this Treaty; provided that such an Organization shall not exercise its right to vote if its member states exercise theirs, and vice versa.
8. In the event of persistent arrears in a Contracting Party's discharge of financial obligations under this Treaty, the Charter Conference may suspend that Contracting Party's voting rights in whole or in part.

Article 37: Funding Principles

1. Each Contracting Party shall bear its own costs of representation at meetings of the Charter Conference and any subsidiary bodies.
2. The cost of meetings of the Charter Conference and any subsidiary bodies shall be regarded as a cost of the Secretariat.
3. The costs of the Secretariat shall be met by the Contracting Parties assessed according to their capacity to pay, determined as specified in Annex B, the provisions of which may be modified in accordance with Article 36(1)(d).
4. A Protocol shall contain provisions to assure that any costs of the Secretariat arising from that Protocol are borne by the parties thereto.
5. The Charter Conference may in addition accept voluntary contributions from one or more Contracting Parties or from other sources. Costs met from such contributions shall not be considered costs of the Secretariat for the purposes of paragraph (3).

PART VIII: FINAL PROVISIONS

Article 38: Signature

This Treaty shall be open for signature at Lisbon from 17 December 1994 to 16 June 1995 by the states and Regional Economic Integration Organizations which have signed the Charter.

Article 39: Ratification, Acceptance or Approval

This Treaty shall be subject to ratification, acceptance or approval by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 40: Application to Territories

1. Any state or Regional Economic Integration Organization may at the time of signature, ratification, acceptance, approval or accession, by a declaration deposited with the Depositary, declare that the Treaty shall be binding upon it with respect to all the territories for the international relations of which it is responsible, or to one or more of

them. Such declaration shall take effect at the time the Treaty enters into force for that Contracting Party.

2. Any Contracting Party may at a later date, by a declaration deposited with the Depositary, bind itself under this Treaty with respect to other territory specified in the declaration. In respect of such territory the Treaty shall enter into force on the ninetieth day following the receipt by the Depositary of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification to the Depositary. The withdrawal shall, subject to the applicability of Article 47(3), become effective upon the expiry of one year after the date of receipt of such notification by the Depositary.
4. The definition of "Area" in Article 1(10) shall be construed having regard to any declaration deposited under this Article.

Article 41: Accession

This Treaty shall be open for accession, from the date on which the Treaty is closed for signature, by states and Regional Economic Integration Organizations which have signed the Charter, on terms to be approved by the Charter Conference. The instruments of accession shall be deposited with the Depositary.

Article 42: Amendments

1. Any Contracting Party may propose amendments to this Treaty.
2. The text of any proposed amendment to this Treaty shall be communicated to the Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.
3. Amendments to this Treaty, texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary which shall submit them to all Contracting Parties for ratification, acceptance or approval.
4. Instruments of ratification, acceptance or approval of amendments to this Treaty shall be deposited with the Depositary. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the ninetieth day after deposit with the Depositary of instruments of ratification, acceptance or approval by at least three-fourths of the Contracting Parties. Thereafter the amendments shall enter into force for any other Contracting Party on the ninetieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.

Article 43: Association Agreements

1. The Charter Conference may authorize the negotiation of association agreements with states or Regional Economic Integration Organizations, or with international organizations, in order to pursue the objectives and principles of the Charter and the provisions of this Treaty or one or more Protocols.

2. The relationship established with and the rights enjoyed and obligations incurred by an associating state, Regional Economic Integration Organization, or international organization shall be appropriate to the particular circumstances of the association, and in each case shall be set out in the association agreement.

Article 44: Entry into Force

1. This Treaty shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof, or of accession thereto, by a state or Regional Economic Integration Organization which is a signatory to the Charter as of 16 June 1995.
2. For each state or Regional Economic Integration Organization which ratifies, accepts or approves this Treaty or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance or approval, it shall enter into force on the ninetieth day after the date of deposit by such state or Regional Economic Integration Organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organization shall not be counted as additional to those deposited by member states of such Organization.

Article 45: Provisional Application

1. Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.
2.
 - (a) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depositary a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depositary.
 - (b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory may claim the benefits of provisional application under paragraph (1).
 - (c) Notwithstanding subparagraph (a), any signatory making a declaration referred to in subparagraph (a) shall apply Part VII provisionally pending the entry into force of the Treaty for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its laws or regulations.
3.
 - (a) Any signatory may terminate its provisional application of this Treaty by written notification to the Depositary of its intention not to become a Contracting Party to the Treaty. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depositary.

- (b) In the event that a signatory terminates provisional application under subparagraph (a), the obligation of the signatory under paragraph (1) to apply Parts III and V with respect to any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for twenty years following the effective date of termination, except as otherwise provided in subparagraph (c).
 - (c) Subparagraph (b) shall not apply to any signatory listed in Annex PA. A signatory shall be removed from the list in Annex PA effective upon delivery to the Depositary of its request therefor.
4. Pending the entry into force of this Treaty the signatories shall meet periodically in the provisional Charter Conference, the first meeting of which shall be convened by the provisional Secretariat referred to in paragraph (5) not later than 180 days after the opening date for signature of the Treaty as specified in Article 38.
 5. The functions of the Secretariat shall be carried out on an interim basis by a provisional Secretariat until the entry into force of this Treaty pursuant to Article 44 and the establishment of a Secretariat.
 6. The signatories shall, in accordance with and subject to the provisions of paragraph (1) or subparagraph (2)(c) as appropriate, contribute to the costs of the provisional Secretariat as if the signatories were Contracting Parties under Article 37(3). Any modifications made to Annex B by the signatories shall terminate upon the entry into force of this Treaty.
 7. A state or Regional Economic Integration Organization which, prior to this Treaty's entry into force, accedes to the Treaty in accordance with Article 41 shall, pending the Treaty's entry into force, have the rights and assume the obligations of a signatory under this Article.

Article 46: Reservations

No reservations may be made to this Treaty.

Article 47: Withdrawal

1. At any time after five years from the date on which this Treaty has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from the Treaty.
2. Any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification of withdrawal.
3. The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of 20 years from such date.
4. All Protocols to which a Contracting Party is party shall cease to be in force for that Contracting Party on the effective date of its withdrawal from this Treaty.

Article 48: Status of Annexes and Decisions

The Annexes to this Treaty and the Decisions set out in Annex 2 to the Final Act of the European Energy Charter Conference signed at Lisbon on 17 December 1994 are integral parts of the Treaty.

Article 49 Depositary

The Government of the Portuguese Republic shall be the Depositary of this Treaty.

Article 50: Authentic Texts

In witness whereof the undersigned, being duly authorized to that effect, have signed this Treaty in English, French, German, Italian, Russian and Spanish, of which every text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic. Done at Lisbon on the seventeenth day of December in the year one thousand nine hundred and ninety-four.

CHAPTER FIFTY-NINE

Co-operation Agreement between the WIPO and the WTO

Geneva, 22 December 1995

INTRODUCTION

One of the more prominent agreements entered into by the World Intellectual Property Organization (WIPO) was that with the World Trade Organization (WTO). This Agreement deals with co-operation on matters of interest to the two organizations. The most prominent area of co-operation is that relating to laws and regulations. The International Bureau of the WIPO is to make available to WTO members and their nationals copies of laws and regulations, and translations of the same, on terms not different to that applied to requests of similar material from WIPO members and their nationals. The same goes for computer databases of such material; the secretariat of the WTO is to have free and uninhibited access to such computer databases. Furthermore, the International Bureau of the WIPO is to help developing-country members of the WTO, but which are not members of WIPO, with translation of laws and regulations for the purposes of monitoring compliance with article 63(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the WTO (Annex 1C of the Marrakesh Agreement Establishing the WTO—see below). It is difficult to appreciate the need for such arrangements to be subject to, let alone be the main thrust of, a formal international agreement between the WIPO and the WTO. For one thing, laws and regulations of countries should be publicly available, and is it just for the convenience of getting it from a central location that an agreement has to be made?

The second focus of the Agreement deals with the interaction between the 1883 Paris Convention (see above) and the TRIPS Agreement. In particular, the protection of emblems and the communication of objections regarding emblems under the TRIPS Agreement are to be directed to and administered by the International Bureau of the WIPO, under procedures prescribed by article 6 *ter* of the Paris Convention. Objections by a country that is a member of the WTO but not of the Paris Convention, and which are directed to the WIPO secretariat, are to be communicated to the WTO member affected by the objection. Finally, the WIPO is to provide technical legal assistance to developing-country members of the WTO that are not members of WIPO. The secretariats of the two organizations are to liaise in their dealings with and assistance to developing countries

regarding the working of the TRIPS Agreement. This is to support each other and to reduce the possibilities of duplication and confused messages.

The Agreement between the two international organizations entered into force less than two weeks after signature, on 1 January 1996.

AGREEMENT BETWEEN THE WORLD INTELLECTUAL PROPERTY ORGANIZATION AND THE WORLD TRADE ORGANIZATION*

PREAMBLE

The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO),

DESIRING to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

AGREE AS FOLLOWS:

ARTICLE 1 ABBREVIATED EXPRESSIONS

For the purposes of this Agreement:

- (i) “WIPO” means the World Intellectual Property Organization;
- (ii) “WTO” means the World Trade Organization;
- (iii) “International Bureau” means the International Bureau of WIPO;
- (iv) “WTO Member” means a party to the Agreement Establishing the World Trade Organization;
- (v) “the TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;
- (vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;
- (vii) “Paris Convention (1967)” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967;
- (viii) “emblem” means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

ARTICLE 2 LAWS AND REGULATIONS

1. [Accessibility of Laws and Regulations in the WIPO Collection by WTO Members and Their Nationals] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and regulations, and copies of

translations thereof, that exist in its collection, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively.

2. [Accessibility of the Computerized Database] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.
3. [Accessibility of Laws and Regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS]
 - (a) Where, on the date of its initial notification of a law or regulation under Article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give, free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.
 - (b) Furthermore, if, for the purposes of carrying out its obligations under Article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Agreement or providing assistance in the context of dispute settlement procedures, the Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.
 - (c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to Member States of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.
 - (d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).
4. [Laws and Regulations Received by the WTO Secretariat from WTO Members]
 - (a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.
 - (b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

5. [Translation of Laws and Regulations] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

**ARTICLE 3 IMPLEMENTATION OF ARTICLE 6 *TER* OF THE
PARIS CONVENTION FOR THE PURPOSES OF THE TRIPS
AGREEMENT**

1. [General]

- (a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under Article 6ter of the Paris Convention (1967).
- (b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under Article 6ter of the Paris Convention prior to January 1, 1996, or, where that State became a WTO Member after January 1, 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6ter of the Paris Convention by the said State.

2. [Objections] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objection which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

3. [Information to Be Provided to the WTO Secretariat] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

ARTICLE 4 LEGAL-TECHNICAL ASSISTANCE AND TECHNICAL COOPERATION

1. [Availability of Legal-Technical Assistance and Technical Cooperation] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.
2. [Cooperation Between the International Bureau and the WTO Secretariat] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.
3. [Exchange of Information] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange non-confidential information.

ARTICLE 5 FINAL CLAUSES

1. [Entry into Force of this Agreement] This Agreement shall enter into force on January 1, 1996.
2. [Amendment of this Agreement] This Agreement may be amended by common agreement of the parties to this Agreement.
3. [Termination of this Agreement] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

DONE in Geneva on 22 December 1995.

CHAPTER SIXTY

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act 1996 (USA)

Washington, DC, 12 March 1996

INTRODUCTION

Economic sanctions intended to isolate Cuba and, ultimately, to end the communist mode of governance has been in place since the time of US President John F. Kennedy (1961–63). Among the pieces of legislation that pursued this objective are: the FREEDOM Support Act (an amendment, originally passed in 1992, to the Foreign Assistance Act of 1961); the Cuban Assets Control Regulations (originally introduced in 1963); and the Cuban Democracy Act of 1992. Cuba is also excluded from participation in or benefiting from Title V of the 1974 US Trade Act on the Generalized System of Preferences, from the Caribbean Basin Recovery Act of 1983 and from IMF and World Bank support. Various US administrations have toyed with the idea of ending the sanctions, but could not come round to do that. On 24 February 1996 the Cuban air force shot down two aircraft belonging to Cuban exiles in the USA. The aeroplanes were used to provide assistance to Cubans in Cuba and also to support efforts aimed at undermining the Government of President Fidel Castro. This incident provoked outrage among Cuban Americans and, with allies in the US Congress, achieved the passage of the LIBERTAD Act.

The implications of the Act can be categorized into economic and political. The economic aspects of the LIBERTAD Act include the complete embargo of trade in goods and services with Cuba. The USA not only prohibits trade between the USA and Cuba, but also seeks to discourage other countries from having economic relations with Cuba. Congress urged the President of the USA to impose sanctions on countries that have trade and credit relations with Cuba. Capital investment in Cuba is also targeted. Debt equity swaps that would benefit Cuban business are not permitted. Citizens of the USA, permanent residents or any agency of the US Government are not deliberately to extend any loan, credit or other financing to anybody who intends to do business with any property that was nationalized at the inception of the Castro revolution. Investment by US citizens in the telecommunications sector of Cuba is specifically prohibited. What is not prohibited are facilities that would communicate or broadcast into Cuba, including Radio Marti and Television Marti. Broadcasts using Radio Marti have been going on for

decades. The Cuban Government deems it subversive and has protested several times, to no avail.

There is no doubt that the LIBERTAD Act aims to effect political change using mainly economic instruments. At the same time, however, there are overt political tools allowed, or created, by law to hasten political change in Cuba. The USA will not allow the end of the suspension of Cuba from the Organization of American States regional group. This is further to isolate Cuba and to deny it regional political credibility. Furthermore, countries or successor states from the former Soviet bloc are discouraged from maintaining relations or from assisting the Cuban Government, except where such assistance is needed to maintain the safety of nuclear-related facilities in Cuba. The Act authorizes financial, material and other forms of support for opposition elements in Cuba and for human rights groups opposed to the Government. If all these efforts succeed in removing the Castro Government, the legislation empowers the US President to review the situation, to suspend some of the sanction policies and, ultimately, to abolish them, as well as suggesting measures like the return of Guantánamo Bay (a US military base on the island) to Cuba—when a democratic government is effectively in place.

The greatest controversy that the LIBERTAD Act generates is not so much about the shooting down of the two aircraft, but over the issue of sovereignty. The US Government has firmly set its sights on strangling the Cuban economy and toppling, at least, the regime. Is this permissible in international law? There are precedents for economic embargo, which included the UN sanctions on Iraq after the invasion of Kuwait, the Arab oil embargo on Israel and the call for (largely ineffective) sanctions against the apartheid regime in South Africa. Many of these sanctions regime were based on a perceived or real threat to the security of the countries imposing the sanctions or, in the case of apartheid South Africa, savage and systematic violations of human rights. Does the Cuban situation fit this bill? If the property of US citizens was taken without compensation, if there is a flow of refugees to the USA and if the presence of missiles on Cuban territory constitute a threat to the national security of the USA, then using economic means to settle the dispute may not be so easily condemned. What is worrying is not only that the US policy has not received universal or multilateral approval, but also that the Act seeks to force foreign countries into complying with US national policy.

The Act was signed into law by the President of the USA on 12 March 1996, with most provisions becoming effective from 1 August.

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT OF THE UNITED STATES OF AMERICA*

One Hundred Fourth Congress of the United States of America, at the Second Session

Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six

AN ACT

To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1: SHORT TITLE; TABLE OF CONTENTS

(a) Short Title: This Act may be cited as the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996”.

(b) Table of Contents: The table of contents of this Act is as follows:

[The Table of Contents is omitted.]

SECTION 2: FINDINGS

The Congress makes the following findings:

- (1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of:
 - (A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;
 - (B) 36 years of communist tyranny and economic mismanagement by the Castro government;
 - (C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and
 - (D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.
- (2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.
- (3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.
- (4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.
- (5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.
- (6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.
- (7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.
- (8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has

sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

- (9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.
- (10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.
- (11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.
- (12) Amendments to the Foreign Assistance Act of 1961 made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to "terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance".
- (13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.
- (14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.
- (15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.
- (16) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and continues to make clear that he has no intention of tolerating the democratization of Cuban society.
- (17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.
- (18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).
- (19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.
- (20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

- (21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to “implement so much as one comma” of the United Nations Resolutions appointing the Rapporteur.
 - (22) The United Nations General Assembly passed Resolution 47–139 on December 18, 1992, Resolution 48–142 on December 20, 1993, and Resolution 49–200 on December 23, 1994, referencing the Special Rapporteur’s reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.
 - (23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken..., to maintain or restore international peace and security.”.
- * We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about US legislation should be made to the Congress of the United States or via the website of legislative information (thomas.loc.gov).
- (24) The United Nations has determined that massive and systematic violations of human rights may constitute a “threat to peace” under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.
 - (25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.
 - (26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of “all necessary means” to restore the “democratically elected government of Haiti”, and the democratically elected government of Haiti was restored to power on October 15, 1994.
 - (27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.
 - (28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

SECTION 3: PURPOSES

The purposes of this Act are:

- (1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;
- (2) to strengthen international sanctions against the Castro government;
- (3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from

United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

- (4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;
- (5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and
- (6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

SECTION 4: DEFINITIONS

As used in this Act, the following terms have the following meanings:

- (1) **AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE:** The term “agency or instrumentality of a foreign state” has the meaning given that term in section 1603(b) of title 28, United States Code.
- (2) **APPROPRIATE CONGRESSIONAL COMMITTEES:** The term “appropriate congressional committees” means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.
- (3) **COMMERCIAL ACTIVITY:** The term “commercial activity” has the meaning given that term in section 1603(d) of title 28, United States Code.
- (4) **CONFISCATED:** As used in titles I and III, the term “confiscated” refers to:
 - (A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959:
 - (i) without the property having been returned or adequate and effective compensation provided; or
 - (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
 - (B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959:
 - (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
 - (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
 - (iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.
- (5) **CUBAN GOVERNMENT:**

(A) The term “Cuban Government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to “a foreign state” deemed to be a reference to “Cuba”.

(6) **DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA:** The term “democratically elected government in Cuba” means a government determined by the President to have met the requirements of section 206.

(7) **ECONOMIC EMBARGO OF CUBA:** The term “economic embargo of Cuba” refers to:

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) **FOREIGN NATIONAL:** The term “foreign national” means:

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) **KNOWINGLY:** The term “knowingly” means with knowledge or having reason to know.

(10) **OFFICIAL OF THE CUBAN GOVERNMENT OR THE RULING POLITICAL PARTY IN CUBA:** The term “official of the Cuban Government or the ruling political party in Cuba” refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) **PERSON:** The term “person” means any person or entity, including any agency or instrumentality of a foreign state.

(12) **PROPERTY:**

(A) The term “property” means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term “property” does not include real property used for residential purposes unless, as of the date of the enactment of this Act: (i) the claim to the property is held by a United States national and the claim

has been certified under title V of the International Claims Settlement Act of 1949; or (ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) **TRAFFICS:**

(A) As used in title III, and except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally:

- (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
- (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
- (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property.

(B) The term “traffics” does not include:

- (i) the delivery of international telecommunication signals to Cuba;
- (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;
- (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or
- (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) **TRANSITION GOVERNMENT IN CUBA:** The term “transition government in Cuba” means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 205.

(15) **UNITED STATES NATIONAL:** The term “United States national” means:

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

SECTION 5: SEVERABILITY

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the

amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE I: STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

SECTION 101: STATEMENT OF POLICY

It is the sense of the Congress that:

- (1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;
- (2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;
- (3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and
- (4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that:
 - (A) the completion and operation of any nuclear power facility, or
 - (B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States,will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

SECTION 102: ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA

(a) Policy:

- (1) **RESTRICTIONS BY OTHER COUNTRIES:** The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) **SANCTIONS ON OTHER COUNTRIES:** The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

- (b) **Diplomatic Efforts:** The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.
- (c) **Existing Regulations:** The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.
- (d) **Trading with the Enemy Act:**

(1) **CIVIL PENALTIES:** Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102- 484, is amended to read as follows:

“(b)

(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

“(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

“(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

“(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.”.

(2) **CONFORMING AMENDMENT; CRIMINAL FORFEITURE:** Section 16 of the Trading with the Enemy Act is further amended by striking subsection (b), as added by Public Law 102–393.

(3) **CLERICAL AMENDMENTS:** Section 16 of the Trading with the Enemy Act is further amended: (A) by inserting “Sec. 16.” before “(a)”;

and (B) in subsection (a) by striking “participants” and inserting “participates”.

(e) **Denial of Visas to Certain Cuban Nationals:** It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees of the Cuban Government or of the Communist Party of Cuba.

(f) **Coverage of Debt-for-Equity Swaps by Economic Embargo of Cuba:** Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended:

(1) by striking “and” at the end of subparagraph (A);

- (2) by redesignating subparagraph (B) as subparagraph (C); and
- (3) by inserting after subparagraph (A) the following new subparagraph:

“(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and”;

- (4) by adding at the end the following flush sentence:

“As used in this paragraph, the term ‘agency or instrumentality of the Government of Cuba’ means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to ‘a foreign state’ deemed to be a reference to ‘Cuba’.”.

- (g) Telecommunications Services: Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended by adding at the end the following new paragraphs:

“(5) Prohibition on investment in domestic telecommunications services: Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an ‘investment’ in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

“(6) Reports to congress: The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.”.

- (h) Codification of Economic Embargo: The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

SECTION 103: PROHIBITION AGAINST INDIRECT FINANCING OF CUBA

- (a) Prohibition: Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States national owning such claim for a transaction permitted under United States law.
- (b) Suspension and Termination of Prohibition:

- (1) **SUSPENSION:** The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.
- (2) **TERMINATION:** The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.
- (c) **Penalties:** Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.
- (d) **Definitions:** As used in this section:
 - (1) the term “permanent resident alien” means an alien lawfully admitted for permanent residence into the United States; and
 - (2) the term “United States agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.

SECTION 104: UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS

- (a) **Continued Opposition to Cuban Membership in International Financial Institutions:**
 - (1) **IN GENERAL:** Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.
 - (2) **TRANSITION GOVERNMENT:** Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power:
 - (A) the President is encouraged to take steps to support the processing of Cuba’s application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and
 - (B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.
- (b) **Reduction in United States Payments to International Financial Institutions:** If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

- (1) The paid-in portion of the increase in capital stock of the institution.
- (2) The callable portion of the increase in capital stock of the institution.
- (c) Definition: For purposes of this section, the term “international financial institution” means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

**SECTION 105: UNITED STATES OPPOSITION TO
TERMINATION OF THE SUSPENSION OF THE CUBAN
GOVERNMENT FROM PARTICIPATION IN THE
ORGANIZATION OF AMERICAN STATES**

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

**SECTION 106: ASSISTANCE BY THE INDEPENDENT STATES
OF THE FORMER SOVIET UNION FOR THE CUBAN
GOVERNMENT**

- (a) Reporting Requirement: Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.
- (b) Criteria for Assistance: Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking “of military facilities” and inserting “military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos”.
- (c) Ineligibility for Assistance:
 - (1) IN GENERAL: Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended:

- (A) by striking “or” at the end of paragraph (4);
 - (B) by redesignating paragraph (5) as paragraph (6); and
 - (C) by inserting after paragraph (4) the following new paragraph:

“(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket

based trade (as defined in section 498B(k)(3)) with, the Cuban Government; or”

- (2) DEFINITION: Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)) is amended by adding at the end the following new paragraph:

“(3) Nonmarket based trade: As used in section 498A(b)(5), the term ‘nonmarket based trade’ includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including:

“(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

“(B) imports from the Cuban Government at preferential tariff rates;

“(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

“(D) the exchange, reduction, or forgiveness of debt of the Cuban Government in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

“(4) Cuban government:

(A) The term ‘Cuban Government’ includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

“(B) For purposes of subparagraph (A), the term ‘agency or instrumentality of the Government of Cuba’ means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to ‘a foreign state’ deemed to be a reference to ‘Cuba’.”.

- (3) EXCEPTION: Section 498A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295A(c)) is amended by inserting after paragraph (3) the following new paragraph:

“(4) The assistance is provided under the secondary school exchange program administered by the United States Information Agency.”.

(d) Facilities at Lourdes, Cuba:

- (1) DISAPPROVAL OF CREDITS: The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to \$200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.
- (2) REDUCTION IN ASSISTANCE: Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

“(d) Reduction in Assistance for Support of Intelligence Facilities in Cuba:

- “(1) Reduction in assistance: Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this Act an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.
- “(2) Waiver: (A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.
- “(B) At the time of a certification made with respect to Russia under subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.
- “(C) The report required by subparagraph (B) may be submitted in classified form.
- “(D) For purposes of this paragraph, the term ‘appropriate congressional committees’ includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.
- “(3) Exceptions to reductions in assistance: The requirement of paragraph (1) to withhold assistance shall not apply with respect to:
- “(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;
- “(B) democratic political reform or rule of law activities;
- “(C) technical assistance for safety upgrades of civilian nuclear power plants;
- “(D) the creation of private sector or nongovernmental organizations that are independent of government control;
- “(E) the development of a free market economic system;
- “(F) assistance under the secondary school exchange program administered by the United States Information Agency; or
- “(G) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).”.

SECTION 107: TELEVISION BROADCASTING TO CUBA

- (a) Conversion to UHF: The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Martí Service to ultra high frequency (UHF) broadcasting.
- (b) Periodic Reports: Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).
- (c) Termination of Broadcasting Authorities: Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

SECTION 108: REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES

- (a) Reports Required: Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12month period.
- (b) Contents of Reports: Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:
 - (1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.
 - (2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.
 - (3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.
 - (4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.
 - (5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including:
 - (A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and
 - (B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

- (6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.
- (7) An identification of countries that purchase, or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including:
 - (A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries,
 - (B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material, and
 - (C) the terms or conditions of any such agreement.

SECTION 109: AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS

- (a) Authorization: Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:
 - (1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.
 - (2) Humanitarian assistance to victims of political repression, and their families.
 - (3) Support for democratic and human rights groups in Cuba.
 - (4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.
- (b) OAS Emergency Fund:
 - (1) FOR SUPPORT OF HUMAN RIGHTS AND ELECTIONS: The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.
 - (2) ACTION OF OTHER MEMBER STATES: The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.
 - (3) VOLUNTARY CONTRIBUTIONS FOR FUND: Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any

international organization, the President should provide not less than \$5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

- (c) Denial of Funds to the Cuban Government: In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

SECTION 110: IMPORTATION SAFEGUARD AGAINST CERTAIN CUBAN PRODUCTS

- (a) Prohibition on Import of and Dealings in Cuban Products: The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that:
- (1) is of Cuban origin;
 - (2) is or has been located in or transported from or through Cuba; or
 - (3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.
- (b) Effect of NAFTA: The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:
- (1) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program.... Nothing in the NAFTA would operate to override this prohibition."
 - (2) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries."
- (c) Restriction of Sugar Imports: The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.
- (d) Assurances Regarding Sugar Products: Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

**SECTION 111: WITHHOLDING OF FOREIGN ASSISTANCE
FROM COUNTRIES SUPPORTING JURAGUA NUCLEAR
PLANT IN CUBA**

(a) Findings: The Congress makes the following findings:

- (1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.
- (2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.
- (3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.
- (4) In a September 1992 report to the Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including:
 - (A) a lack in Cuba of a nuclear regulatory structure;
 - (B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;
 - (C) the inadequacy of training of plant operators;
 - (D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;
 - (E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and
 - (F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.
- (5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.
- (6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.
- (7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.
- (8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the

Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

- (9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.
- (10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.
- (11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) Withholding of Foreign Assistance:

- (1) IN GENERAL: Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.
- (2) EXCEPTIONS: The requirement of paragraph (1) to withhold assistance shall not apply with respect to:
 - (A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;
 - (B) democratic political reform or rule of law activities;
 - (C) the creation of private sector or nongovernmental organizations that are independent of government control;
 - (D) the development of a free market economic system;
 - (E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160); or
 - (F) assistance under the secondary school exchange program administered by the United States Information Agency.
- (3) DEFINITION: As used in paragraph (1), the term "assistance" means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law.

SECTION 112: REINSTITUTION OF FAMILY REMITTANCES AND TRAVEL TO CUBA

It is the sense of the Congress that the President should:

(1)

- (A) before considering the reinstitution of general licenses for family remittances to Cuba, insist that, prior to such reinstitution, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and
- (B) if licenses described in subparagraph (A) are reinstituted, require a specific license for remittances described in subparagraph (A) in amounts of more than \$500; and

(2) before considering the reinstitution of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.

SECTION 113: EXPULSION OF CRIMINALS FROM CUBA

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

SECTION 114: NEWS BUREAUS IN CUBA

- (a) Establishment of News Bureaus: The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:
- (1) The exchange is fully reciprocal.
 - (2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of any United States-based news organizations, including Radio Marti and Television Marti.
 - (3) The Cuban Government agrees not to interfere with decisions of United States-based news organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.
 - (4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.
 - (5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of

publications of any United States-based news organization that has a news bureau in Cuba.

- (b) Assurance Against Espionage: In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.
- (c) Fully Reciprocal: As used in subsection (a)(1), the term “fully reciprocal” means that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

SECTION 115: EFFECT OF ACT ON LAWFUL UNITED STATES GOVERNMENT ACTIVITIES

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

SECTION 116: CONDEMNATION OF CUBAN ATTACK ON AMERICAN AIRCRAFT

(a) Findings: The Congress makes the following findings:

- (1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.
- (2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.
- (3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.
- (4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.
- (5) International law provides a nation with airspace over the 12- mile territorial sea.
- (6) The response of Fidel Castro’s dictatorship to Saturday’s afternoon flight was to scramble 2 fighter jets from a Havana airfield.
- (7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.
- (8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue

airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

- (9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft, could have and should have pursued other peaceful options as required by international law.
- (10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder.
- (11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.
- (12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.
- (13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.
- (14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents, independent economists, and independent journalists, among others.
- (15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) Statements by the Congress:

- (1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.
- (2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, the victims of the attack.
- (3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

TITLE II: ASSISTANCE TO A FREE AND INDEPENDENT CUBA

SECTION 201: POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA

The policy of the United States is as follows:

- (1) To support the self-determination of the Cuban people.
- (2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

- (3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.
- (4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.
- (5) In solidarity with the Cuban people, to provide appropriate forms of assistance:
 - (A) to a transition government in Cuba;
 - (B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and
 - (C) to support such a democratically elected government.
- (6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.
- (7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.
- (8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.
- (9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.
- (10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.
- (11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.
- (12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.
- (13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.
- (14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.
- (15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.
- (16) To pursue trade relations with a free, democratic, and independent Cuba.

SECTION 202: ASSISTANCE FOR THE CUBAN PEOPLE

(a) Authorization:

- (1) In general: The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.
- (2) Effect on other laws: Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) Plan for Assistance:

- (1) DEVELOPMENT OF PLAN: The President shall develop a plan for providing assistance under this section:

- (A) to Cuba when a transition government in Cuba is in power; and
- (B) to Cuba when a democratically elected government in Cuba is in power.

- (2) TYPES OF ASSISTANCE: Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) Transition government:

- (i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to:
 - (I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and
 - (II) assistance described in subparagraph (C).
- (ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.
- (iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

- (B) Democratically elected government: Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include:

- (i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

- (ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;
 - (iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;
 - (iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;
 - (v) assistance provided by the Trade and Development Agency;
 - (vi) Peace Corps programs; and
 - (vii) other appropriate assistance to carry out the policy of section 201.
- (C) Military adjustment assistance: Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.
- (c) Strategy for Distribution: The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.
- (d) Distribution: Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.
- (e) International Efforts: The President shall take the necessary steps:
- (1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and
 - (2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.
- (f) Communication With the Cuban People: The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.
- (g) Report to Congress: Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.
- (h) Report on Trade and Investment Relations:
- (1) REPORT TO CONGRESS: The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes:
- (A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;
 - (B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible:

- (i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);
- (ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and
- (iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;
- (C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and
- (D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.
- (2) CONSULTATION: The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

SECTION 203: COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING

- (a) Coordinating Official: The President shall designate a coordinating official who shall be responsible for:
 - (1) implementing the strategy for distributing assistance described in section 202(b);
 - (2) ensuring the speedy and efficient distribution of such assistance; and
 - (3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.
- (b) United States-Cuba Council: Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council:
 - (1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and
 - (2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.
- (c) Implementation of Plan; Reports to Congress:

(1) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT:

Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) REPORTS TO CONGRESS:

(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED

GOVERNMENT: The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) ANNUAL REPORTS TO CONGRESS: Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) Reprogramming: Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SECTION 204: TERMINATION OF THE ECONOMIC EMBARGO OF CUBA

(a) Presidential Actions: Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action

created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) Suspension of Certain Provisions of Law: In carrying out subsection (a), the President may suspend the enforcement of:

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the "Republic of Cuba";
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);
- (4) section 902(c) of the Food Security Act of 1985; and
- (5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) Additional Presidential Actions: Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) Conforming Amendments: On the date on which the President submits a determination under section 203(c)(3):

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking "Republic of Cuba";
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and
- (4) section 902(c) of the Food Security Act of 1985 is repealed,

(e) Review of Suspension of Economic Embargo:

(1) REVIEW: If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS: For purposes of this subsection, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on.", with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES: Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) PROCEDURES:

(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601 (b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

SECTION 205: REQUIREMENTS AND FACTORS FOR DETERMINING A TRANSITION GOVERNMENT

(a) Requirements: For the purposes of this Act, a transition government in Cuba is a government that:

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government:

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in:

(A) establishing an independent judiciary;

- (B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;
 - (C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;
 - (7) does not include Fidel Castro or Raul Castro; and
 - (8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.
- (b) Additional Factors: In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government:
- (1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;
 - (2) has made public commitments to, and is making demonstrable progress in:
 - (A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;
 - (B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;
 - (C) assuring the right to private property; and
 - (D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;
 - (3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and
 - (4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

SECTION 206: REQUIREMENTS FOR DETERMINING A DEMOCRATICALLY ELECTED GOVERNMENT

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which:

- (1) results from free and fair elections:
 - (A) conducted under the supervision of internationally recognized observers; and
 - (B) in which:
 - (i) opposition parties were permitted ample time to organize and campaign for such elections; and

- (ii) all candidates were permitted full access to the media;
- (2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;
- (3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;
- (4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;
- (5) has made demonstrable progress in establishing an independent judiciary; and
- (6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

SECTION 207: SETTLEMENT OF OUTSTANDING UNITED STATES CLAIMS TO CONFISCATED PROPERTY IN CUBA

- (a) Report to Congress: Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including:
 - (1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949;
 - (2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;
 - (3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;
 - (4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and
 - (5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.
- (d) Sense of Congress: It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba.

TITLE III: PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

SECTION 301: FINDINGS

The Congress makes the following findings:

- (1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.
- (2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.
- (3) Since Fidel Castro seized power in Cuba in 1959:
 - (A) he has trampled on the fundamental rights of the Cuban people; and
 - (B) through his personal despotism, he has confiscated the property of:
 - (i) millions of his own citizens;
 - (ii) thousands of United States nationals; and
 - (iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.
- (4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.
- (5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.
- (6) This “trafficking” in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States:
 - (A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and
 - (B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.
- (7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government “would complicate any attempt to return them to their original owners”.
- (8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.
- (9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

- (10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.
- (11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.

**SECTION 302: LIABILITY FOR TRAFFICKING IN
CONFISCATED PROPERTY CLAIMED BY UNITED STATES
NATIONALS**

(a) Civil Remedy:

(1) LIABILITY FOR TRAFFICKING:

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of:

(i) the amount which is the greater of:

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest;
or

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater;
and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) PRESUMPTION IN FAVOR OF THE CERTIFIED CLAIMS: There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) INCREASED LIABILITY:

- (A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).
- (B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to:
 - (i) a person against whom the action is to be initiated, or
 - (ii) a person who is to be joined as a defendant in the action,
 at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).
- (C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of:
 - (i) the amount determined under paragraph (1)(A)(ii), and
 - (ii) 3 times the amount determined applicable under paragraph (1)(A)(i).
- (D) Notice to a person under subparagraph (B):
 - (i) shall be in writing;
 - (ii) shall be posted by certified mail or personally delivered to the person; and
 - (iii) shall contain:
 - (I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;
 - (II) a demand that the unlawful trafficking in the claimant's property cease immediately; and
 - (III) a copy of the summary statement published under paragraph (8).

(4) APPLICABILITY:

- (A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.
- (B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment.

- (C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) TREATMENT OF CERTAIN ACTIONS:

- (A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.
- (B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.
- (C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.
- (D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

- (6) INAPPLICABILITY OF ACT OF STATE DOCTRINE: No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) LICENSES NOT REQUIRED:

- (A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.
- (B) Notwithstanding any other provision of law, and for purposes of this title only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required

before the enactment of this Act, or requires after the enactment of this Act, a license issued by, or the permission of, any agency of the United States.

(8) **PUBLICATION BY ATTORNEY GENERAL:** Not later than 60 days after the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

- (b) **Amount in Controversy:** An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of \$50,000, exclusive of interest, costs, and attorneys' fees. In calculating \$50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).
- (c) **Procedural Requirements:**

(1) **In general:** Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28, United States Code.

(2) **Service of process:** In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28, United States Code.

(d) **Enforceability of Judgments Against Cuban Government:** In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) **Certain Property Immune From Execution:** Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

“(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.”.

(f) **Election of Remedies:**

(1) **ELECTION:** Subject to paragraph (2):

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS:

(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949:

- (i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;
- (ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and
- (iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) Deposit of Excess Payments by Cuba Under Claims Agreement: Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) Termination of Rights:

(1) In general: All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government:

(A) may be suspended under section 204(a); and

- (B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power.
- (2) Pending suits: The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.
- (i) Imposition of Filing Fees: The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under title 28, United States Code.

SECTION 303: PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY

(a) Evidence of Ownership:

- (1) **CONCLUSIVENESS OF CERTIFIED CLAIMS:** In any action brought under this title, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).
- (2) **CLAIMS NOT CERTIFIED:** If in an action under this title a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this title and do not constitute certifications under title V of the International Claims Settlement Act of 1949.
- (3) **EFFECT OF DETERMINATIONS OF FOREIGN OR INTERNATIONAL ENTITIES:** In determining the amount or ownership of a claim in an action under this title, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.
- (b) Amendment of the International Claims Settlement Act of 1949: Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

“DETERMINATION OF OWNERSHIP OF CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

“Sec. 514. Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.”.

(c) Rule of Construction: Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed:

- (1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or
- (2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.

SECTION 304: EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section:

“EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

“Sec. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any person who was ineligible to file a claim under section 503, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

“(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507.”.

SECTION 305: LIMITATION OF ACTIONS

An action under section 302 may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

SECTION 306: EFFECTIVE DATE

(a) In General: Subject to subsections (b) and (c), this title and the amendments made by this title shall take effect on August 1, 1996.

(b) Suspension Authority:

(1) **SUSPENSION AUTHORITY:** The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) **ADDITIONAL SUSPENSIONS:** The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension, is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(c) Other Authorities:

(1) **SUSPENSION:** After this title and the amendments of this title have taken effect:

(A) no person shall acquire a property interest in any potential or pending action under this title; and

(B) the President may suspend the right to bring an action under this title with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) **ADDITIONAL SUSPENSIONS:** The President may suspend the right to bring an action under this title for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the

date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(3) **PENDING SUITS:** The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

(d) **Rescission of Suspension:** The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

TITLE IV: EXCLUSION OF CERTAIN ALIENS

SECTION 401: EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY

(a) **Grounds for Exclusion:** The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act:

- (1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;
- (2) traffics in confiscated property, a claim to which is owned by a United States national;
- (3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or
- (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) **Definitions:** As used in this section, the following terms have the following meanings:

(1) **CONFISCATED; CONFISCATION:** The terms “confiscated” and “confiscation” refer to:

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property:

- (i) without the property having been returned or adequate and effective compensation provided; or
- (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay:

- (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
- (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
- (iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) TRAFFICS:

(A) Except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally:

- (i)
 - (I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,
 - (II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or
 - (III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,
- (ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or
- (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property.

(B) The term “traffics” does not include:

- (i) the delivery of international telecommunication signals to Cuba;
- (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;
- (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or
- (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(c) Exemption: This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise

be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) Effective Date:

- (1) In general: This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.
- (2) Trafficking: This section applies only with respect to acts within the meaning of “traffics” that occur on or after the date of the enactment of this Act.

CHAPTER SIXTY-ONE

UNCITRAL Model Law on Electronic Commerce

New York, NY, 16 December 1996

INTRODUCTION

This is one of the General Assembly resolutions aimed at bringing business transactions to the level of technological advancement. Issued in 1996, it may be contended that the Model Law is now old or dated. Nevertheless, it housed a lot of foresight and imagination, to the extent that it still serves as a very important basis for national measures in the field of electronic commerce.

The Model Law proposed by the UN Commission on International Trade Law (UNCITRAL) applies to all kinds of information configured as data messages in the course of commercial dealings. In essence, no information is to be refused legal effect or legal consequences because it is in the form of data message or that the data message only referred to it. Where any material or information is to be in writing, the said writing requirement must be considered satisfied if the information is in the form of data message accessible for the expected or required purposes. The position is almost the same for signatures. Where the law requires a personal signature on any document, it is sufficient if a data message has a reliable method for identifying the person and an indication of the person's approval. Furthermore, where a piece of information is required to be presented in an original form, that requirement is met if the data message assures the integrity of the information from the time when the data message was abstracted. That is, the information has remained complete and unaltered, save for any endorsements or changes carried out in normal commercial transactions. Also, where the information is to be presented in its original form, the data message is capable of being exhibited to the person to whom it must be presented.

The revolutionary provision in the Model Law is in the area of evidence. Although the hearsay rule has largely been abolished or fallen into desuetude in a number of jurisdictions, it is still considered an important plank of legal practice in many countries. The Model Law shows the way in updating the law on hearsay and best evidence. No objection should be raised against the tendering in evidence of data message simply because it is data message or that it is not original. It is when it comes to the weight to be attributed to the evidence that account must be taken of the manner in which it was

generated, preserved, transmitted, etc. Another important reform is in relation to ‘the postal rule’. Offer and acceptance, as important first steps to contract formation, can be expressed by data message unless the parties agreed otherwise. A party to the exchange of data communication is identified by the source of the communication. So, the data is from the originator if it came from him or was sent by a person under his authority or was by means of a pre-programmed system or a procedure previously agreed to by the parties. This is an area that is underpinned by a number of assumptions. Article 16 of the Model Law lists a number of subjects that have particular affinity to electronic data messaging and must be covered by any domestic legislation on the matter. Contracts of carriage of goods and transportation are the focus here. If the Model is followed, the resulting legislation would provide an immense boost to efforts towards paperless transactions, especially the Bill of Lading Electronic Registry Organization (BOLERO) system.

The Model Law was issued in a December 1996 resolution of the UN General Assembly. In 1998 the Commission added in article 5 *bis*. By 2004 legislation based on the Model Law had been adopted in 23 countries, including the United Kingdom, which had overseen similar legislation in a number of its dependencies and territories. Hong Kong, a Special Administrative Region of the People’s Republic of China, also enacted such provisions. In the federal countries of Canada and the USA uniform legislation had been prepared and adopted, respectively: in nine provinces and territories (with a similar law in Quebec too), in 1999–2001; and in 43 states and the District of Columbia in 1999–2004 (with Illinois having already introduced the Model Law in 1998).

UN COMMISSION ON INTERNATIONAL TRADE LAW
(UNCITRAL) MODEL LAW ON ELECTRONIC COMMERCE
(RESOLUTION 51/162 OF THE GENERAL ASSEMBLY OF THE
UNITED NATIONS)*

PART ONE: ELECTRONIC COMMERCE IN GENERAL

Chapter I: General Provisions

Article 1: Sphere of application*

This Law** applies to any kind of information in the form of a data message used in the context*** of commercial**** activities.

* The Commission suggests the following text for States that might wish to limit the applicability of this Law to international data messages:

“This Law applies to a data message as defined in paragraph (1) of article 2 where the data message relates to international commerce.”

** This Law does not override any rule of law intended for the protection of consumers.

*** The Commission suggests the following text for States that might wish to extend the applicability of this Law: “This Law applies to any kind of information in the form of a data message, except in the following situations: [...]”

**** The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

Article 2: Definitions

For the purposes of this Law:

- (a) “Data message” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;
- (b) “Electronic data interchange (EDI)” means the electronic transfer from computer to computer of information using an agreed standard to structure the information;
- (c) “Originator” of a data message means a person by whom, or on whose behalf, the data message purports to have been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that data message;
- (d) “Addressee” of a data message means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message;
- (e) “Intermediary”, with respect to a particular data message, means a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message;
- (f) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages.

Article 3: Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 4: Variation by agreement

1. As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.
2. Paragraph (1) does not affect any right that may exist to modify by agreement any rule of law referred to in chapter II.

Chapter II: Application of Legal Requirements to Data Messages

Article 5: Legal recognition of data messages

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

Article 5 bis: Incorporation by reference (as adopted by the Commission at its thirty-first session, in June 1998)

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such Legal effect, but is merely referred to in that data message.

Article 6: Writing

1. Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.
2. Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.
3. The provisions of this article do not apply to the following: [...].

Article 7: Signature

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if:
 - (a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and
 - (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
2. Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.
3. The provisions of this article do not apply to the following: [...].

Article 8: Original

1. Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if:
 - (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and

- (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.
 - 2. Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.
 - 3. For the purposes of subparagraph (a) of paragraph (1):
 - (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and
- * The document above is printed with kind permission of the UN Commission on International Trade Law. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to UNCITRAL (<http://www.uncitral.org/>).
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.
 - 4. The provisions of this article do not apply to the following: [...].

Article 9: Admissibility and evidential weight of data messages

- 1. In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:
 - (a) on the sole ground that it is a data message; or,
 - (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
- 2. Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Article 10: Retention of data messages

- 1. Where the law requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:
 - (a) the information contained therein is accessible so as to be usable for subsequent reference; and

- (b) the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and
 - (c) such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.
2. An obligation to retain documents, records or information in accordance with paragraph (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received.
 3. A person may satisfy the requirement referred to in paragraph (1) by using the services of any other person, provided that the conditions set forth in subparagraphs (a), (b) and (c) of paragraph (1) are met.

Chapter III: Communication of Data Messages

Article 11: Formation and validity of contracts

1. In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.
2. The provisions of this article do not apply to the following: [...].

Article 12: Recognition by parties of data messages

1. As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.
2. The provisions of this article do not apply to the following: [...].

Article 13: Attribution of data messages

1. A data message is that of the originator if it was sent by the originator itself.
2. As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:
 - (a) by a person who had the authority to act on behalf of the originator in respect of that data message; or
 - (b) by an information system programmed by, or on behalf of, the originator to operate automatically.
3. As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

- (a) in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

4. Paragraph (3) does not apply:

- (a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly; or
- (b) in a case within paragraph (3)(b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.

5. Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the data message as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the data message as received.

6. The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

Article 14: Acknowledgement of receipt

1. Paragraphs (2) to (4) of this article apply where, on or before sending a data message, or by means of that data message, the originator has requested or has agreed with the addressee that receipt of the data message be acknowledged.

2. Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by

- (a) any communication by the addressee, automated or otherwise, or
- (b) any conduct of the addressee, sufficient to indicate to the originator that the data message has been received.

3. Where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

4. Where the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the

originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator:

- (a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and
- (b) if the acknowledgement is not received within the time specified in subparagraph (a), may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights it may have.

5. Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the related data message was received by the addressee. That presumption does not imply that the data message corresponds to the message received.
6. Where the received acknowledgement states that the related data message met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.
7. Except in so far as it relates to the sending or receipt of the data message, this article is not intended to deal with the legal consequences that may flow either from that data message or from the acknowledgement of its receipt.

Article 15: Time and place of dispatch and receipt of data messages

1. Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.
2. Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:
 - (a) if the addressee has designated an information system for the purpose of receiving data messages, receipt occurs:
 - i. at the time when the data message enters the designated information system; or
 - ii. if the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is retrieved by the addressee;
 - (b) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.
3. Paragraph (2) applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received under paragraph (4).
4. Unless otherwise agreed between the originator and the addressee, a data message is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business. For the purposes of this paragraph:

- (a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;
- (b) if the originator or the addressee does not have a place of business, reference is to be made to its habitual residence.

5. The provisions of this article do not apply to the following: [...].

PART TWO: ELECTRONIC COMMERCE IN SPECIFIC AREAS

Chapter I: Carriage of Goods

Article 16: Actions related to contracts of carriage of goods

Without derogating from the provisions of part one of this Law, this chapter applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

- (a)
 - i. furnishing the marks, number, quantity or weight of goods;
 - ii. stating or declaring the nature or value of goods;
 - iii. issuing a receipt for goods;
 - iv. confirming that goods have been loaded;
- (b)
 - i. notifying a person of terms and conditions of the contract;
 - ii. giving instructions to a carrier;
- (c)
 - i. claiming delivery of goods;
 - ii. authorizing release of goods;
 - iii. giving notice of loss of, or damage to, goods;
- (d) giving any other notice or statement in connection with the performance of the contract;
- (e) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (g) acquiring or transferring rights and obligations under the contract.

Article 17: Transport documents

1. Subject to paragraph (3), where the law requires that any action referred to in article 16 be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more data messages.
2. Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.
3. If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that a reliable method is used to render such data message or messages unique.
4. For the purposes of paragraph (3), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.
5. Where one or more data messages are used to effect any action in subparagraphs (f) and (g) of article 16, no paper document used to effect any such action is valid unless the use of data messages has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.
6. If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods which is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or messages instead of by a paper document.
7. The provisions of this article do not apply to the following: [...].

[The Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce is not reproduced here.]

CHAPTER SIXTY-TWO

WIPO Copyright Treaty

Geneva, 20 December 1996

INTRODUCTION

Article 20 of the Berne Convention (see above) reserves the right of members of the union to enter into special agreements among themselves to grant more extensive protection rights than those granted by the Convention. In pursuance of this provision, the World Intellectual Property Organization (WIPO) treaty on copyright was entered into by the contracting parties. The WIPO Copyright Treaty accords protection to expressions and not ideas, to procedures and to mathematical concepts. In appreciation of the advent and upsurge in computer programmes and works, this 1996 treaty protected computer programmes as literary work. Computer and other databases, which, by the method of their compilation, constitute intellectual creation, are also protected. This does not in any way prejudice any pre-existing copyright in the material compiled.

The rights to distribute, rent and communicate the original work to the public by means of sale or other means are all vested exclusively in the author. The only exception relates to computer programmes, which, by themselves, are not the essential reason for a rental. There could be further limitations, but that must be prescribed by national legislation, provided such limitations and exceptions do not run counter to normal exploitation of the work nor adversely affect the legitimate interests of the author. Individual countries are also to provide effective legal protection against circumvention of technological means that authors use to communicate, distribute and protect their products.

To enforce these rights, there must be civil legal remedies provided for within the domestic legal system of a contracting party for deliberate violations of copyrights under this Treaty. This places an enormous burden on the copyright owner, since he or she may have to police the distribution and use of the work. It would also be very expensive and, ultimately, ineffective. The good thing is that this is not exclusive of other enforcement measures that can and must be taken by governments. In fact, article 14 urges governments to adopt measures to implement the terms of the Treaty. The drawback may be the proviso that all such measures must be in accordance with the domestic legal system. So, a legal system that is slow to recognize copyright in modern terms may be excused for slow implementation of the spirit and letter of the Treaty. This has been a

continuing problem in the economic relations between technologically advanced countries and less industrialized countries.

The Treaty came into force on 6 March 2002. By early 2005 there were 51 countries party to the accord.

WORLD INTELLECTUAL PROPERTY ORGANIZATION COPYRIGHT TREATY*

Preamble

THE CONTRACTING PARTIES,

DESIRING to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

RECOGNIZING the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

RECOGNIZING the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

EMPHASIZING the outstanding significance of copyright protection as an incentive for literary and artistic creation,

RECOGNIZING the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

HAVE AGREED as follows:

Article 1 Relation to the Berne Convention

1. This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.
2. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.
3. Hereinafter, "Berne Convention" shall refer to the Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works.
4. Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.

Article 2 Scope of Copyright Protection

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 3 Application of Articles 2 to 6 of the Berne Convention

Contracting Parties shall apply mutatis mutandis the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.

Article 4 Computer Programs

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.

Article 5 Compilations of Data (Databases)

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.

Article 6 Right of Distribution

1. Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.
2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.

Article 7 Right of Rental

1. Authors of
 - (i) computer programs;
 - (ii) cinematographic works; and
 - (iii) works embodied in phonograms, as determined in the national law of Contracting Parties,shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.
2. Paragraph (1) shall not apply
 - (i) in the case of computer programs, where the program itself is not the essential object of the rental; and
 - (ii) in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.

3. Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms is not giving rise to the material impairment of the exclusive right of reproduction of authors.

Article 8 Right of Communication to the Public

Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Article 9 Duration of the Protection of Photographic Works

In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention.

Article 10 Limitations and Exceptions

1. Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
2. Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

Article 11 Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the World Intellectual Property Organization (<http://www.wipo.int/>).

their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Article 12 Obligations concerning Rights Management Information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:
 - (i) to remove or alter any electronic rights management information without authority;
 - (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.
2. As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

Article 13 Application in Time

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

Article 14 Provisions on Enforcement of Rights

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

Article 15 Assembly

1.
 - (a) The Contracting Parties shall have an Assembly.
 - (b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.
 - (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as “WIPO”) to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General

Assembly of the United Nations or that are countries in transition to a market economy.

2.

- (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
- (b) The Assembly shall perform the function allocated to it under Article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
- (c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3.

- (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
 - (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 16 International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 17 Eligibility for Becoming Party to the Treaty

- 1. Any Member State of WIPO may become party to this Treaty.
- 2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
- 3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 18 Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 19 Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

Article 20 Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 21 Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (i) the 30 States referred to in Article 20, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 20, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 22 No Reservations to the Treaty

No reservation to this Treaty shall be admitted.

Article 23 Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 24 Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 25 Depositary

The Director General of WIPO is the depositary of this Treaty.

CHAPTER SIXTY-THREE

EC-US Agreement on the Application of their Competition Laws

Brussels and Washington, DC, 4 June 1998

INTRODUCTION

This Agreement was originally concluded in September 1991, by the US Government and the European Commission (on behalf of the European Communities or Community—EC). However, the European Court of Justice ruled that the Commission was not the competent organ to enter into the Agreement with the USA. Following that ruling, in August 1994, the Agreement was re-entered into by the Council on behalf of the EC.

The terms of the Agreement is not very different from that reached by the EC and Japan. The focus is on the area of co-operation in taking enforcement measures against anti-competitive practices. Each party is to notify the other at any time that its competition authorities become aware that their enforcement activities may affect the important interests of the other party. The activity in question is planned for or is being carried out on the territory of the party concerned, or a party to the transaction in question is registered in or controlled by a company incorporated under the laws of a party to the Agreement. This is even more serious when it is perceived that a party to this Agreement encouraged, required or approved of the practice complained of or is exacting remedies that would require prohibitive conduct in the other party's territory. The notification requirement is triggered for the USA where its authorities ask for additional information or further material concerning a proposed transaction, or where the authorities decide to challenge the transaction in court. In the case of the EC, the notification requirement is triggered by the publication of the transaction in the *Official Journal* or, as with the USA, when the authorities decide to challenge the transaction as not being favourable to competition.

The two sides are also to exchange information that would enhance the effectiveness of their respective laws on competition. In this regard, officials from the competition authorities of the parties are to meet at least twice per year. They are to discuss the philosophical underpinnings of competition law and policy, to inform and to exchange ideas on their respective policies and on proposed changes to those laws and policies. Requests may be made for information on suspected anti-competitive practice, but such

requests must be honoured in accordance with the laws of the country concerned. Serious cognizance must be taken of confidentiality and evidential rules. As noted in the case of the EC-Japan accord, this is an area of potential conflict. It is more difficult in this Agreement, because of the explicit provision in article VII that: 'Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the United States of America or the European Communities or of their respective states or Member States/

In January 2004 the EC issued a new regulation on mergers, which came into effect on 1 May, the same day that 10 new countries joined the European Union (EU). The objective was to broaden the basis of appraisal mergers in the EU, in order to take on the more widely established, US 'substantial lessening of competition' test, instead of the previous, more narrow, EU 'dominance' test. With the adoption of the new test, the conflict manifest in cases like the GE/ Honeywell failed merger (between US and European companies) would be reduced, if not averted.

The Agreement, which was initially signed for the EC on 3 June 1998, entered into force upon completion of the signatures on 4 June 1998.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE EUROPEAN COMMUNITIES ON THE APPLICATION OF POSITIVE COMITY PRINCIPLES IN THE ENFORCEMENT OF THEIR COMPETITION LAWS*

THE GOVERNMENT OF THE UNITED STATES OF AMERICA of the one part, and THE EUROPEAN COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY of the other part (hereinafter "the European Communities"):

HAVING REGARD to the September 23, 1991 Agreement between the Government of the United States of America and the European Communities Regarding the Application of Their Competition Laws, and the exchange of interpretative letters dated May 31 and July 31, 1995 in relation to that Agreement (together hereinafter "the 1991 Agreement");

RECOGNIZING that the 1991 Agreement has contributed to coordination, cooperation, and avoidance of conflicts in competition law enforcement;

NOTING in particular Article V of the 1991 Agreement, commonly referred to as the "Positive Comity" Article, which calls for cooperation regarding anticompetitive activities occurring in the territory of one Party that adversely affect the interests of the other Party;

BELIEVING that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1991 Agreement's effectiveness in relation to such conduct; and

NOTING that nothing in this Agreement or its implementation shall be construed as prejudicing either Party's position on issues of competition law jurisdiction in the international context,

HAVE AGREED AS FOLLOWS:

ARTICLE I Scope and Purpose of this Agreement

1. This Agreement applies where a Party satisfies the other that there is reason to believe that the following circumstances are present:
 - (a) anticompetitive activities are occurring in whole or in substantial part in the territory of one of the Parties and are adversely affecting the interests of the other Party; and
 - (b) the activities in question are impermissible under the competition laws of the Party in the territory of which the activities are occurring.
2. The purposes of this Agreement are to:
 - (a) help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the Parties are not impeded by anticompetitive activities for which the competition laws of one or both Parties can provide a remedy, and
 - (b) establish cooperative procedures to achieve the most effective and efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to dealing with anticompetitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the other Party are able and prepared to examine and take effective sanctions under their law to deal with those activities.

ARTICLE II Definitions

As used in this Agreement:

1. "Adverse effects" and "adversely affected" mean harm caused by anticompetitive activities to:
 - (a) the ability of firms in the territory of a Party to export to, invest in, or otherwise compete in the territory of the other Party, or
 - (b) competition in a Party's domestic or import markets.
2. "Requesting Party" means a Party that is adversely affected by anticompetitive activities occurring in whole or in substantial part in the territory of the other Party.
3. "Requested Party" means a Party in the territory of which such anticompetitive activities appear to be occurring.
4. "Competition law(s)" means
 - (a) for the European Communities, Articles 85, 86, and 89 of the Treaty establishing the European Community (EC), Articles 65 and 66(7) of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing instruments, to the exclusion of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and
 - (b) for the United States of America, the Sherman Act (15 U.S.C. §§1-7), the Clayton Act (15 U.S.C. §§12-27, except as it relates to investigations pursuant to Title II of

the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a), the Wilson Tariff Act (15 U.S.C. §§8–11), and the Federal Trade Commission Act (15 U.S.C. §§41–58, except as these sections relate to consumer protection functions), as well as such other laws or regulations as the Parties shall jointly agree in writing to be a “competition law” for the purposes of this Agreement.

5. “Competition authorities” means:

- (a) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and
- (b) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission.

6. “Enforcement activities” means any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party.

7. “Anticompetitive activities” means any conduct or transaction that is impermissible under the competition laws of a Party.

ARTICLE III Positive Comity

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anticompetitive activities in accordance with the Requested Party’s competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party’s competition laws, and regardless of whether the competition authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

ARTICLE IV Deferral or Suspension of Investigations in Reliance on Enforcement Activity by the Requested Party

1. The competition authorities of the Parties may agree that the competition authorities of the Requesting Party will defer or suspend pending or contemplated enforcement activities during the pendency of enforcement activities of the Requested Party.
2. The competition authorities of a Requesting Party will normally defer or suspend their own enforcement activities in favor of enforcement activities by the competition authorities of the Requested Party when the following conditions are satisfied:

(a) The anticompetitive activities at issue:

- i. do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party’s territory, or
- ii. where the anticompetitive activities do have such an impact on the Requesting Party’s consumers, they occur

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be relied upon for legal purposes. Only European Community legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic. Enquiries about the official document should be made to the EC Office for Official Publications or via the EU portal (europa.eu.int).

principally in and are directed principally towards the other Party's territory;

- (b) The adverse effects on the interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures, and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and
- (c) The competition authorities of the Requested Party agree that in conducting their own enforcement activities, they will:
 - i. devote adequate resources to investigate the anticompetitive activities and, where appropriate, promptly pursue adequate enforcement activities;
 - ii. use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;
 - iii. inform the competition authorities of the Requesting Party, on request or at reasonable intervals, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information if consent has been obtained from the source concerned. The use and disclosure of such information shall be governed by Article V;
 - iv. promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;
 - v. use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within six months, or such other time as agreed to by the competition authorities of the Parties, of the deferral or suspension of enforcement activities by the competition authorities of the Requesting Party;
 - vi. fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and
 - vii. comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

When the above conditions are satisfied, a Requesting Party which chooses not to defer or suspend its enforcement activities shall inform the competition authorities of the Requested Party of its reasons.

- 3. The competition authorities of the Requesting Party may defer or suspend their own enforcement activities if fewer than all of the conditions set out in paragraph 2 are satisfied.

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or reinstituting such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall, where appropriate, coordinate their respective investigations under the criteria and procedures of Article IV of the 1991 Agreement.

ARTICLE V Confidentiality and Use of Information

Where pursuant to this Agreement the competition authorities of one Party provide information to the competition authorities of the other Party for the purpose of implementing this Agreement, that information shall be used by the latter competition authorities only for that purpose. However, the competition authorities that provided the information may consent to another use, on condition that where confidential information has been provided pursuant to Article IV.2 (c) (iii) on the basis of the consent of the source concerned, that source also agrees to the other use. Disclosure of such information shall be governed by the provisions of Article VIII of the 1991 Agreement and the exchange of interpretative letters dated May 31 and July 31, 1995.

ARTICLE VI Relationship to the 1991 Agreement

This Agreement shall supplement and be interpreted consistently with the 1991 Agreement, which remains fully in force.

ARTICLE VII Existing Law

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the United States of America or the European Communities or of their respective states or Member States.

ARTICLE VIII Entry Into Force and Termination

1. This Agreement shall enter into force upon signature.
2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington and Brussels, in duplicate, in the English language.

[Signatures are not reproduced here.]

CHAPTER SIXTY-FOUR

International Convention on Arrest of Ships

Geneva, 12 March 1999

INTRODUCTION

This Convention aims for uniformity and at updating the processes of arresting ships. Effecting the arrest of a ship must be based solely on maritime claims. These are exhaustively listed as: loss or damage caused by the operation of the ship; loss of life or personal injury in direct connection with the operation of the ship; salvage operations; damage or threat of damage to the environment by the ship; agreements relating to the hire of the ship; carriage of goods or persons; general average; towage; pilotage; goods or materials supplied or services rendered for the operation or maintenance of the ship; construction or equipping of the ship; port and related charges; payments or expenses, including insurance premiums for the ship and commissions or agency fees incurred on behalf of the owners; wages; and related costs of crew working on the ship. Other forms of maritime claims relate to disputes as to ownership or possession of the ship, the particular use of the ship or sharing of the earnings from the ship between co-owners, mortgage or other charges on the ship and disputes arising from the contract to sell or otherwise dispose of the ship. The list is specific and exhaustive, meaning that, if a matter is not defined here as a maritime claim, it would not be an acceptable reason to arrest a ship.

At first glance, it would appear that maritime claims relate exclusively to the vessel and not to the cargo that it may carry. However, there are references to the cost of salvage operations, where the ship itself or its cargo threatened damage to the environment. More clearly, clause 1(g) directly refers to ‘any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise/ The overwhelming emphasis on matters relating to the ship as maritime claims is justified, not only because the Convention is about the arrest of the ship, but also because there are laws and more settled avenues for dealing with issues relating to the cargo of a ship. At any rate, the difficulty in extricating the cargo from the ship as a basis for arrest is acknowledged by clause 1(g).

The order to arrest a ship must be by a court process in the state having jurisdiction over the ship. Where the arrest concerns payments, the application for the order of arrest can be made where the owner or demise charterer is liable for the payments claimed. A ship that is arrested can be released lawfully when security that satisfies the court has been provided. The release of a ship on the basis of security shall not be prejudicial to the merits of the underlying dispute and its settlement. Besides, in order to protect the ship owners or demise charterers of the ship, the person applying for the arrest to be effected may be required by the court to provide a security as an ‘insurance’ against wrongful arrest or the demand for and provision of excessive security from the ship owner or operator.

The Convention is not yet in force, needing 10 parties to take effect. At early 2005 there were seven parties and a further six signatories.

INTERNATIONAL CONVENTION ON ARREST OF SHIPS*

THE STATES PARTIES to this Convention,

RECOGNIZING the desirability of facilitating the harmonious and orderly development of world seaborne trade,

CONVINCED of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

HAVE AGREED as follows:

ARTICLE 1 Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:

- (a) loss or damage caused by the operation of the ship;
- (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- (d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
- (e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- (f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- (g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- (h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- (i) general average;
- (j) towage;
- (k) pilotage;

- (l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
 - (m) construction, reconstruction, repair, converting or equipping of the ship;
 - (n) port, canal, dock, harbour and other waterway dues and charges;
 - (o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
 - (p) disbursements incurred on behalf of the ship or its owners;
 - (q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
 - (r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
 - (s) any dispute as to ownership or possession of the ship;
 - (t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
 - (u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
 - (v) any dispute arising out of a contract for the sale of the ship.
2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
 3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
 4. "Claimant" means any person asserting a maritime claim.
 5. "Court" means any competent judicial authority of a State.

ARTICLE 2 Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.
4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

ARTICLE 3 Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

- (a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or
 - (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
 - (c) the claim is based upon a mortgage or a “hypothèque” or a charge of the same nature on the ship; or
 - (d) the claim relates to the ownership or possession of the ship; or
 - (e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.
2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:
- (a) owner of the ship in respect of which the maritime claim arose; or
 - (b) demise charterer, time charterer or voyage charterer of that ship.
- This provision does not apply to claims in respect of ownership or possession of a ship.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

ARTICLE 4 Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in

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- which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1(s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.
2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.
3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.
5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:
 - (a) the claim for which the ship has been arrested, or
 - (b) the value of the ship, whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.
6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

ARTICLE 5 Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:
 - (a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
 - (b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
 - (c) the ship arrested or the security previously provided was released either:
 - i. upon the application or with the consent of the claimant acting on reasonable grounds, or
 - ii. because the claimant could not by taking reasonable steps prevent the release.
2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:
 - (a) the nature or amount of the security already provided in respect of the same claim is inadequate; or
 - (b) the provisions of paragraph 1 (b) or (c) of this article are applicable.
3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

ARTICLE 6 Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of: (a) the arrest having been wrongful or unjustified; or (b) excessive security having been demanded and provided.
2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:
 - (a) the arrest having been wrongful or unjustified, or
 - (b) excessive security having been demanded and provided.
3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.
4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.
5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

ARTICLE 7 Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.
2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.
3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:
 - (a) does not have jurisdiction to determine the case upon its merits; or
 - (b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.
5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:
 - (a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and
 - (b) such recognition is not against public policy (ordre public).
6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

ARTICLE 8 Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.
2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.
3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.
4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.
5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.
6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

ARTICLE 9 Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

ARTICLE 10 Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following:
 - (a) ships which are not seagoing;
 - (b) ships not flying the flag of a State Party;
 - (c) claims under article 1, paragraph 1(s).
2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

ARTICLE 11 Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

ARTICLE 12 Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

ARTICLE 13 States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to

the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

ARTICLE 14 Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

ARTICLE 15 Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.
2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

ARTICLE 16 Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

ARTICLE 17 Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention [signatures not reproduced].

CHAPTER SIXTY-FIVE

Food Aid Convention

London, 13 April 1999

INTRODUCTION

This is the second Food Aid Convention. It replaces the 1995 Convention, which aimed to secure 10m. metric tons (tonnes) of food aid annually. There is no set target for the current Convention, but seven member states plus the European Union (which is a signatory in its economic capacity as the European Community—15 members at the time) committed themselves to providing more than 5m. tons of wheat equivalent of food aid. According to Annex B, the eligible recipient countries are: 48 least developed countries; 24 low-income countries; and 52 lower middle-income countries and territories, including the Palestinian Administered Areas. Four countries listed by the World Trade Organization (WTO) as net food-importing developing countries at 1 March 1999 may also be eligible for food aid under the Convention.

An interesting feature of the Food Aid Convention, which is negotiated under the aegis of the International Grains Council, is the goal of eliminating the need for food aid in the first place. To this extent, the Convention goes beyond the physical delivery of food to the provision of technical assistance. Besides, the aid need not be food, but can be cash and equipment. In other words, food aid is to be one of the tools of facilitating food security. The provision of the food aid need not be directly from the developed country parties to the Convention. Cash contributions are, to whatever extent possible, to be directed to the purchase of food from other developing countries (which have not been in need for at least year and, presumably, have bumper stores to be supplied to the country in need) or of food bought in one part of the country to distributed in other, needy parts of the same country. This is what is termed 'triangular transactions or local purchases'. The supply of food aid must take into account the nutritional needs and preferences of the country or people and must prioritize attention to women and children. Without prejudice to the competence and arrangements of the recipient government in receiving and distributing food aid, multilateral and non-governmental organizations are to be included in the systems for distributing food aid. The World Food Programme is to be given preference in this regard. Members are to gather and maintain information on the food situation generally, in order to predict effectively the requirements of aid. Regular reports must also be made to the Food Aid Committee on the quantity, contents, channelling, costs and terms of contributions. Food aid is to be freely distributed, but, where it is sold

within the recipient country, the sale must be by the private sector or on the free market. Proceeds from any such sale must be directed at projects that could improve food security.

The Convention is administered by the Food Aid Committee, originally established under the International Grains Arrangement (originally negotiated in 1967). All parties to the Convention serve as members of the Committee. The decisions of the Committee are to be reached by consensus. This may be a difficult procedure in view of the large number of parties to the Convention, as well as the possibly varying needs and capacities of members.

The Convention was renewed on 30 June 2002 for a further two years. Any renewal, of not more than two years on each occasion, must be by unanimous vote of the members. However, the validity of any renewal is tied to the validity of the Grains Trade Convention. The future of both these international agreements was to be formally decided in mid-2005, although the Food Aid Committee had agreed in the previous year to begin preparations for a renegotiated Food Aid Convention. Meanwhile, the terms of the current Convention remained effective.

An important issue that is largely glossed over by the Convention is the relationship between food production and trade in developing countries. Article XIII(f) vaguely provides that 'Members shall endeavour to ensure coherence between food aid policies and policies in other sectors such as development, agriculture and trade'. Many developing countries encounter significant tariff and technical barriers when selling their surplus production in developed countries. In addition, even when they enter such a market, the products face stiff competition from heavily subsidized agricultural products from the developed countries, especially in the USA and Europe. As security cannot be obtained in revenue from surplus production, there is no genuine guarantee that the cycle of food aid can be broken.

The Convention came into force on 1 July 1999—a subsequent correction of the text (to the first sentence of Annex A) was made in October. There were 23 signatories: 22 countries, including the 15 members of the European Union, plus that organization itself.

SECOND FOOD AID CONVENTION (AS RECTIFIED IN NEW YORK ON 22 OCTOBER 1999)*

PREAMBLE

THE PARTIES TO THIS CONVENTION,

HAVING reviewed the Food Aid Convention, 1995 and its objective of securing at least 10 million tonnes of food aid annually in the form of grain suitable for human consumption, and wishing to confirm their desire to maintain international cooperation on food aid matters among member governments;

RECALLING the Declaration on World Food Security and the World Food Summit Plan of Action adopted in Rome in 1996, in particular the commitment to achieve food security for all and to an ongoing effort to eradicate hunger;

DESIRING to enhance the capacity of the international community to respond to food emergency situations and to improve world food security, through the assurance of supplies of food aid irrespective of world food price and supply fluctuations;

RECALLING that, in their 1994 Marrakesh decision on measures concerning least-developed countries and net food-importing developing countries, Ministers of WTO member countries agreed to review the level of food aid established under the Food Aid Convention as further elaborated at the 1996 Singapore Ministerial Conference;

RECOGNISING that the recipients and members have their own policies on food aid and related matters, and that the ultimate objective of food aid is the elimination of the need for food aid itself;

DESIRING to improve the effectiveness and quality of food aid as a tool in support of food security in developing countries, particularly to alleviate poverty and hunger of the most vulnerable groups, and to improve member coordination and cooperation in the field of food aid;

HAVE AGREED on the following:

PART I: OBJECTIVES AND DEFINITIONS

Article I Objectives

The objectives of this Convention are to contribute to world food security and to improve the ability of the international community to respond to emergency food situations and other food needs of developing countries by:

- (a) making appropriate levels of food aid available on a predictable basis, as determined by the provisions of this Convention;
- (b) encouraging members to ensure that the food aid provided is aimed particularly at the alleviation of poverty and hunger of the most vulnerable groups, and is consistent with agricultural development in those countries,
- (c) including principles for maximising the impact, the effectiveness and quality of the food aid provided as a tool in support of food security; and,
- (d) providing a framework for cooperation, coordination and information-sharing among members on food aid related matters to achieve greater efficiency in all aspects of food aid operations and better coherence between food aid and other policy instruments.

Article II Definitions

(a) Under this Convention, unless the context otherwise requires, any reference to:

- (i) “c.i.f.” means cost, insurance and freight;
- (ii) “Commitment” means the minimum amount of food aid to be provided annually by a member under Article III(e);
- (iii) “Committee” means the Food Aid Committee referred to in Article XV;

- (iv) "Contribution" means the amount of food aid provided and reported to the Committee by a member annually in accordance with the provisions of this Convention;
- (v) "Convention" means the Food Aid Convention, 1999;
- (vi) "DAC" means the Development Assistance Committee of OECD;
- (vii) "Developing country" means any country or territory eligible to receive food aid under Article VII;
- (viii) "Eligible product" means a product, referred to in Article IV, which may be provided as food aid by a member as its contribution under this Convention;
- (ix) "Executive Director" means the Executive Director of the International Grains Council;
- (x) "f.o.b." means free on board;
- (xi) "Food" or "food aid" includes, as appropriate, a reference to seed for food crops;
- (xii) "Member" means a party to this Convention;
- (xiii) "Micronutrients" means vitamins and minerals used to fortify or complement food aid products which are eligible, under Article IV(c), to be counted as a member's contribution;
- (xiv) "OECD" means the Organisation for Economic Co-operation and Development;
- (xv) "Products of primary processing" include:
 - cereal flours;
 - cereal groats and cereal meal;
 - other worked cereal grains (eg, rolled, flaked, polished, pearled and kibbled, but not further prepared) except husked, glazed, polished or broken rice;
 - germ of cereals, whole, rolled, flaked or ground;
 - bulgur; and
 - any other similar grain product which the Committee may decide;
- (xvi) "Products of secondary processing" include:
 - macaroni, spaghetti and similar products; and
 - any other product, whose manufacture involves the use of a product of primary processing, which the Committee may decide;
- (xvii) "Rice" includes husked, glazed, polished or broken rice;
- (xviii) "Secretariat" means the Secretariat of the International Grains Council;
- (xix) "Tonne" means a metric ton of 1,000 kilograms;
- (xx) "Transport and other operational costs", as listed in Annex A, mean costs beyond the f.o.b. stage or, in the case of local purchases, beyond the point of purchase, associated with a food aid operation, which may be counted in whole or in part towards a member's contribution;
- (xxi) "Value" means the commitment of a member in a convertible currency;
- (xxii) "Wheat equivalent" means the amount of a member's commitment or contribution as evaluated in accordance with Article V;
- (xxiii) "WTO" means the World Trade Organization;
- (xxiv) "Year" means the period from 1 July to the following 30 June, unless otherwise stated.

(b) Any reference in this Convention to a "Government" or "Governments" or "member" shall be construed as including a reference to the European Community (hereinafter

referred to as the EC). Accordingly, any reference in this Convention to “signature” or to the “deposit of instruments of ratification, acceptance or approval” or “an instrument of accession” or “a declaration of provisional application” by a Government shall, in the case of the EC, be construed as including signature or declaration of provisional application on behalf of the EC by its competent authority and the deposit of the instrument required by the institutional procedures of the EC to be deposited for the conclusion of an international agreement.

* The document above is printed with kind permission of the Food Aid Committee and the International Grains Council. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document of the Food Aid Convention, and of the International Grains Agreement with which it is linked, should be made to the International Grains Council or via its website (<http://www.igc.org.uk/>).

- (c) Any reference in this Convention to a “Government”, or “Governments”, or “member”, shall be understood, where appropriate, to include a reference to any separate customs territory within the meaning of the General Agreement on Tariffs and Trade or of the Agreement establishing the World Trade Organization.

PART II: CONTRIBUTIONS AND NEEDS

Article III Quantities and quality

- (a) Members agree to provide food aid to developing countries or the cash equivalent thereof in the minimum annual amounts specified in paragraph (e) below (hereinafter referred to as “the commitment”).
- (b) The commitment of each member shall be expressed in either tonnes of wheat equivalent or in value or in a combination of tonnage and value. Members expressing their commitment in value terms shall also specify a guaranteed annual tonnage.
- (c) In the case of members expressing their commitment in value terms or in a combination of tonnage and value, the value may include the transport and other operational costs associated with the food aid operations.
- (d) Whether its commitment is expressed in tonnage, in value, or in a combination of tonnage and value, a member may also include an indicative value representing its total estimated cost, including the transport and other operational costs associated with the food aid operations.
- (e) Subject to the provisions of Article VI, the commitment of each member shall be:

Member	Tonnage ¹	Value ¹	Total Indicative Value
	(wheat equivalent)	(millions)	(millions)
Argentina	35,000	–	
Australia	250,000	–	A\$90 ²

Canada	420,000	–	C\$150 ²
European Community and its member states	1,320,000	€130 ²	€422 ²
Japan	300,000	–	
Norway	30,000	–	NOK 59 ²
Switzerland	40,000	–	
United States of America	2,500,000	–	US\$900–1,000 ²
¹ Members shall report their food aid operations in line with the relevant Rules of Procedure.			
² Includes transport and other operational costs.			

- (f) Transport and other operational costs, when counted towards a member's commitment, must be incurred as part of a food aid operation which is also eligible to be counted towards a member's commitment.
- (g) In respect of transport and other operational costs, a member cannot count more than the acquisition cost of eligible products towards its commitment, except in the case of internationally recognised emergency situations.
- (h) Any member which has acceded to this Convention under paragraph (b) of Article XXIII shall be deemed to be listed in paragraph (e) of this Article, together with its commitment.
- (i) The commitment of an acceding member referred to in paragraph (h) of this Article shall not be less than 20,000 tonnes or an appropriate value as the Committee may approve. This will normally apply in full starting in the first year during which the country is deemed by the Committee to have acceded to the Convention. However, to facilitate the accession of Governments other than those referred to in paragraph (e) of this Article, the Committee may agree that an acceding member's commitment should be phased in over a period of not more than three years, provided that the commitment is at least 10,000 tonnes or an appropriate value in the first year, and increases by at least 5,000 tonnes a year or an appropriate value in each succeeding year.
- (j) All products provided as food aid shall meet international quality standards, be consistent with the dietary habits and nutritional needs of recipients and, with the exception of seeds, shall be suitable for human consumption.

Article IV Products

- (a) The following products are eligible to be supplied under this Convention, subject to the specifications set out in the relevant Rules of Procedure:
 - (i) grains (wheat, barley, maize, millet, oats, rye, sorghum or triticale) or rice;
 - (ii) grain and rice products of primary or secondary processing;
 - (iii) pulses;
 - (iv) edible oil;
 - (v) root crops (cassava, round potatoes, sweet potatoes, yams or taro), where these are supplied in triangular transactions or in local purchases;
 - (vi) skimmed milk powder;

- (vii) sugar;
- (viii) seed for eligible products; and,
- (ix) within the limits of paragraph (b) below, products which are a component of the traditional diet of vulnerable groups, or a component of supplementary feeding programmes, and which meet the requirements set out in Article III(j) of this Convention.

- (b) The amount of food aid provided by a member in any year in fulfilling its commitment in the form of:
 - (i) all products included in paragraph (a)(vi) to (viii) of this Article shall not together exceed 15%, and no product category may individually exceed 7%, of its commitment excluding transport and other operational costs;
 - (ii) all products included in paragraph (a)(ix) of this Article shall not together exceed 5%, and no product may individually exceed 3%, of its commitment excluding transport and other operational costs;
 - (iii) in the case of commitments expressed as a combination of tonnage and value, the percentages in subparagraphs (i) and (ii) above shall be calculated separately for tonnage and value, excluding transport and other operational costs.
- (c) For the purposes of fulfilment of their commitments, members may provide micro-nutrients in conjunction with eligible products. They are encouraged to provide, when appropriate, fortified food aid products, particularly in emergency situations and targeted development projects.

Article V Equivalence

- (a) Contributions shall be counted in terms of their wheat equivalent, as follows:
 - (i) grain for human consumption shall be equal to wheat;
 - (ii) rice shall be determined by the international export price relationship between rice and wheat, in accordance with the methods set out in the Rules of Procedure;
 - (iii) products of primary or secondary processing of grains or of rice shall be determined by their respective grain or rice content, in accordance with the specifications set out in the Rules of Procedure;
 - (iv) pulses, seed of grain, rice or other food crops, and all other eligible products, shall be based on the costs of acquisition in accordance with the methods set out in the Rules of Procedure.
- (b) In the case of contributions in the form of blends or mixtures of products, only the proportion of the blend or mixture which is made from eligible products shall be counted towards a member's contribution.
- (c) The Committee shall establish a Rule of Procedure to determine the wheat equivalent of fortified products and micro-nutrients.
- (d) Contributions of cash for the purchase of eligible products supplied as food aid shall be evaluated either in accordance with the wheat equivalent of these products, or at prevailing international market prices of wheat, in accordance with the methods laid down in the Rules of Procedure.

Article VI Carryover and carryforward

- (a) Each member shall ensure that operations in respect of its commitment for one year are made to the maximum extent possible within that year.
- (b) If a member is unable to provide the amount specified in paragraph (e) of Article III in a particular year, it shall report the circumstances to the Committee as soon as possible and, in any case, no later than the first session held after the end of that year. Unless the Committee decides otherwise, the unfulfilled amount shall be added to the member's commitment for the following year.
- (c) If a member's contribution exceeds its commitment for any year, up to 5% of its overall commitment, or the amount of the excess, whichever is the smaller, may be counted as part of the member's commitment for the following year.

Article VII Eligible recipients

- (a) Food aid under this Convention may be provided to the developing countries and territories which are listed in Annex B, namely:
 - (i) least-developed countries;
 - (ii) low-income countries;
 - (iii) lower middle-income countries, and other countries included in the WTO list of Net Food-Importing Developing Countries at the time of negotiation of this Convention, when experiencing food emergencies or internationally recognised financial crises leading to food shortage emergencies, or when food aid operations are targeted on vulnerable groups.
- (b) For purposes of paragraph (a) above, any changes made to the DAC list of Developing Countries and Territories in Annex B (a) to (c) shall also apply to the list of eligible recipients under this Convention.
- (c) When allocating their food aid, members shall give priority to least-developed countries and low-income countries.

Article VIII Needs

- (a) Food aid should only be provided when it is the most effective and appropriate means of assistance.
- (b) Food aid should be based on an evaluation of needs by the recipient and the members, within their own respective policies, and should be aimed at enhancing food security in recipient countries. In responding to those needs, members shall pay attention to meeting the particular nutritional needs of women and children.
- (c) Food aid for free distribution should be targeted on vulnerable groups.
- (d) The provision of food aid in emergency situations should take particular account of longer-term rehabilitation and development objectives in the recipient countries and should respect basic humanitarian principles. Members shall aim to ensure that the food aid provided reaches the intended recipients in a timely manner.
- (e) To the maximum extent possible, non-emergency food aid shall be provided by members on a forward planning basis, so that recipient countries may be able to take

account, in their development programmes, of the likely flow of food aid they will receive during each year of this Convention.

- (f) If it appears that, because of a substantial production shortfall or other circumstances, a particular country, region or regions is faced with exceptional food needs, the matter shall be considered by the Committee. The Committee may recommend that members should respond to the situation by increasing the amount of food aid provided.
- (g) At the time of the identification of food aid needs, members or their partners shall endeavour to consult with each other at the regional and recipient country level, with a view to developing a common approach to needs analysis.
- (h) Members agree, where appropriate, to identify priority countries and regions under their food aid programmes. Members will ensure transparency as to their priorities, policies and programmes, by providing information for other donors.
- (i) Members will consult with each other, directly or through their relevant partners, on the possibilities for the establishment of common action plans for priority countries, if possible on a multi-annual basis.

Article IX Forms and terms of aid

- (a) Food aid under this Convention may be supplied as:
 - (i) grants of food or of cash to be used to purchase food for or by the recipient country;
 - (ii) sales of food for the currency of the recipient country, which is not transferable and is not convertible into currency or goods and services for use by the donor members;
 - (iii) sales of food on credit, with payment to be made in reasonable annual amounts over periods of 20 years or more and with interest at rates which are below commercial rates prevailing in world markets.
- (b) With respect only to food aid counted against a member's commitment, all food aid provided to least-developed countries shall be made in the form of grants.
- (c) Food aid under this Convention provided in the form of grants shall represent not less than 80 percent of a member's contribution and, to the extent possible, members will seek progressively to exceed this percentage.
- (d) Members shall undertake to conduct all food aid transactions under this Convention in such a way as to avoid harmful interference with normal patterns of production and international commercial trade.
- (e) Members shall ensure that:
 - (i) the provision of food aid is not tied directly or indirectly, formally or informally, explicitly or implicitly, to commercial exports of agricultural products or other goods and services to recipient countries;
 - (ii) food aid transactions, including bilateral food aid which is monetised, are carried out in a manner consistent with the FAO "Principles of Surplus Disposal and Consultative Obligations".

Article X Transport and delivery

- (a) The costs of transporting and delivering food aid beyond the f.o.b. stage shall, to the extent possible, be borne by the donors, particularly in the case of emergency food aid or food aid provided to priority recipient countries.
- (b) In planning food aid operations, due account shall be taken of potential difficulties which may affect transport, processing or storage of food aid, and the effects that the delivery of the aid may have on marketing of local harvests in the recipient country.
- (c) In order to make optimum use of available logistical capacity, members shall establish, as far as possible, with other food aid donors, recipient countries, and any other parties involved in the delivery of the food aid, a coordinated timetable for the delivery of their aid.
- (d) Due reference to the payment of transport and other operational costs shall be made in any review of the performance of members under this Convention.
- (e) Transport and other operational costs must be incurred as part of a food aid operation which is also eligible to be reported as part of a member's contribution.

Article XI Channelling

- (a) Members may provide their food aid bilaterally, through intergovernmental or other international organisations, or non-governmental organisations.
- (b) Members shall give full consideration to the advantages of directing food aid through multilateral channels, in particular the World Food Programme.
- (c) In developing and implementing their food aid operations, members shall make use, whenever possible, of information and competencies available within the relevant international organisations, whether intergovernmental or non-governmental, active in the field of food aid.
- (d) Members are encouraged to coordinate their food aid policies and activities in relation to international organisations active in the field of food aid, with a view to strengthening the coherence of food aid operations.

Article XII Local purchases and triangular transactions

- (a) In order to promote local agricultural development, strengthen regional and local markets and enhance the longer-term food security of recipient countries, members shall give consideration to using or directing their cash contributions for the purchase of food:
 - (i) for supply to the recipient country from other developing countries ("triangular transactions"); or,
 - (ii) in one part of a developing country for supply to a deficit area in that country ("local purchases").
- (b) Cash contributions shall not normally be made to purchase food which is of the same type that the country which is the source of supply has received as bilateral or multilateral food aid in the same year as the purchase, or in a previous year if the food aid then received is still being used.

- (c) To facilitate the purchase of food from developing countries, members shall, to the extent possible, provide to the Secretariat such information as is available to them on food surpluses that may exist, or are anticipated, in developing countries.
- (d) Members shall pay particular attention to avoiding harmful effects on low-income consumers due to price changes resulting from local purchases.

Article XIII Effectiveness and impact

- (a) In all food aid transactions, members shall pay particular attention to:
 - (i) avoiding harmful effects on local harvests, production and marketing structures, by appropriately timing the distribution of food aid;
 - (ii) respecting local food habits and nutritional needs of the beneficiaries and minimising any possible negative effects on their eating habits; and
 - (iii) facilitating the participation of women in the decisionmaking process and in the implementation of food aid operations, thus strengthening food security at the household level.
- (b) Members shall endeavour to support the efforts of governments in recipient countries to develop and implement food aid programmes in a manner consistent with this Convention.
- (c) Members should support and, where appropriate, contribute to strengthening the capacity and competence of recipient governments and the respective civil societies to develop and implement food security strategies to enhance the impact of food aid programmes.
- (d) When food aid is sold within a recipient country, the sale shall be carried out, as far as possible, through the private sector and be based on market analysis. In targeting proceeds from such sales, priority shall be given to projects aiming to improve the food security of beneficiaries.
- (e) Consideration should be given to reinforcing food aid by other means (financial aid, technical assistance etc) in order to strengthen its capacity to enhance food security and to increase the capacity of governments and civil society to develop food security strategies at all levels.
- (f) Members shall endeavour to ensure coherence between food aid policies and policies in other sectors such as development, agriculture and trade.
- (g) Members agree to consult to the extent possible with all partners concerned at the level of each recipient country to ensure monitoring of the coordination of food aid programmes and operations.
- (h) Members shall endeavour to carry out joint evaluations of their food aid programmes and operations. Such evaluation should be based on agreed international principles.
- (i) When carrying out evaluations of their food aid programmes and operations, members shall take into consideration the provisions of this Convention relating to the effectiveness and impact of those food aid programmes and operations.
- (j) Members are encouraged to assess the impact of their food aid programmes, channelled bilaterally or multilaterally or through non-governmental organisations, using appropriate indicators such as the nutritional status of the beneficiaries and other indicators related to world food security.

Article XIV Information and coordination

- (a) Members shall provide regular and timely reports to the Committee on the amount, content, channelling, costs including transport and other operational costs, forms and terms of their contributions in accordance with the Rules of Procedure.
- (b) Members undertake to supply such statistical and other information that may be required for the operation of this Convention, in particular regarding their:
 - (i) aid deliveries, including the purchase of products made as the result of cash contributions, local purchases or triangular operations, and those channelled through international organisations;
 - (ii) arrangements entered into for the future supply of food aid;
 - (iii) policies affecting the provision and distribution of food aid. To the extent possible, these reports shall be submitted in writing to the Executive Director before each regular session of the Committee.
- (c) Members who make contributions in the form of multilateral cash contributions to international organisations shall report the fulfilment of their obligations in accordance with the Rules of Procedure.
- (d) Members shall exchange information on their food aid policies and programmes and the results of their evaluations of these policies and programmes, and shall endeavour to ensure the coherence of their food aid programmes with food security strategies at national, regional, local and household levels.
- (e) Members shall indicate to the Committee, in advance, the amount of their commitment which is not made in the form of grants and the terms of any such aid.

PART III: ADMINISTRATION

Article XV Food Aid Committee

- (a) The Food Aid Committee, established by the Food Aid Convention of the International Grains Arrangement, 1967, shall continue in being for the purpose of administering this Convention, with the powers and functions provided in this Convention.
- (b) The membership of the Committee shall consist of all parties to this Convention.
- (c) Each member shall designate a representative resident at the seat of the Committee to whom the Secretariat's notices and other communications related to the work of the Committee shall normally be addressed. Other arrangements may be adopted by any member in agreement with the Executive Director.

Article XVI Powers and functions

- (a) The Committee shall take such decisions and perform such functions as are required to carry out the provisions of this Convention. It shall establish such Rules of Procedure as are necessary for this purpose.
- (b) The decisions of the Committee shall be reached by consensus.

- (c) The Committee shall keep the requirements for food aid in developing countries and the ability of members to respond to those requirements under review.
- (d) The Committee shall keep under review the progress made in attaining the objectives set out in Article I of this Convention, and the fulfilment of the provisions of this Convention.
- (e) The Committee may receive information from recipient countries and consult with them.

Article XVII Chairman and Vice-Chairman

- (a) At the last statutory session held in each year, the Committee shall appoint a Chairman and a Vice-Chairman for the following year.
- (b) The duties of the Chairman shall be:
 - (i) to approve the draft agenda for each session;
 - (ii) to preside at sessions;
 - (iii) to declare the opening and closing of each meeting and of each session;
 - (iv) to submit the draft agenda to the Committee for adoption at the beginning of each session;
 - (v) to direct the discussions and to ensure observance of the Rules of Procedure;
 - (vi) to accord the right to speak and to decide all questions of order in accordance with the relevant Rules of Procedure;
 - (vii) to put questions and announce decisions; and,
 - (viii) to rule on points of order that delegates may raise.
- (c) If the Chairman is absent from a session or any part thereof, or is temporarily unable to fill the office of Chairman, the Vice-Chairman shall act as Chairman. In the absence of the Chairman and the Vice-Chairman, the Committee shall appoint a temporary Chairman.
- (d) If, for any reason, the Chairman is unable to continue to fill the office of Chairman, the Vice-Chairman shall act as Chairman pending the appointment of a new Chairman by the Committee.
- (e) The Vice-Chairman, when acting as Chairman, or the temporary Chairman, shall have the same powers and duties as the Chairman.

Article XVIII Sessions

- (a) The Committee shall meet at least twice a year in conjunction with the statutory sessions of the International Grains Council. The Committee shall meet also at such other times either as the Chairman shall decide, at the request of three members, or as otherwise required by this Convention.
- (b) The presence of delegates representing two thirds of the membership of the Committee shall be necessary to constitute a quorum at any session of the Committee.
- (c) The Committee may, when appropriate, invite any non-member government and representatives from other international intergovernmental organisations to attend its open meetings as observers.
- (d) The seat of the Committee shall be in London.

Article XIX Secretariat

- (a) The Committee shall use the services of the Secretariat of the International Grains Council for the performance of such administrative duties as the Committee may request, including the processing and distribution of documentation and reports.
- (b) The Executive Director shall carry out the directions of the Committee and shall perform such duties as are laid down in the Convention and the Rules of Procedure.

Article XX Defaults and disputes

- (a) In the case of a dispute concerning the interpretation or application of this Convention, or of a default in obligations under this Convention, the Committee shall meet and take appropriate action.
- (b) Members shall take account of the recommendations and conclusions reached by consensus by the Committee in cases of disagreement as to the application of the provisions of this Convention.

PART IV: FINAL PROVISIONS

Article XXI Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article XXII Signature and ratification

- (a) This Convention shall be open for signature from 1 May 1999 until and including 30 June 1999 by the Governments referred to in paragraph (e) of Article III.
- (b) This Convention shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 June 1999, except that the Committee may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.
- (c) Any signatory Government may deposit with the depositary a declaration of provisional application of this Convention. Any such Government shall provisionally apply this Convention in accordance with its laws and regulations and be provisionally regarded as a party thereto.
- (d) The depositary shall notify all signatory and acceding Governments of each signature, ratification, acceptance, approval, provisional application of, and accession to, this Convention.

Article XXIII Accession

- (a) This Convention shall be open for accession by any Government referred to in paragraph (e) of Article III that has not signed this Convention. Instruments of

accession shall be deposited with the depositary not later than 30 June 1999, except that the Committee may grant one or more extensions of time to any Government that has not deposited its instrument of accession by that date.

- (b) Once this Convention has entered into force in accordance with Article XXIV, it shall be open for accession by any Government other than those referred to in paragraph (e) of Article III, upon such conditions as the Committee considers appropriate. Instruments of accession shall be deposited with the depositary.
- (c) Any Government acceding to this Convention under paragraph (a) of this Article, or whose accession has been agreed by the Committee under paragraph (b) of this Article, may deposit with the depositary a declaration of provisional application of this Convention pending the deposit of its instrument of accession. Any such Government shall provisionally apply this Convention in accordance with its laws and regulations and be provisionally regarded as a party thereto.

Article XXIV Entry into force

- (a) This Convention shall enter into force on 1 July 1999 if by 30 June 1999 the Governments, whose combined commitments, as listed in paragraph (e) of Article III, equal at least 75% of the total commitments of all governments listed in that paragraph, have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, and provided that the Grains Trade Convention, 1995 is in force.
- (b) If this Convention does not enter into force in accordance with paragraph (a) of this Article, the Governments which have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, may decide by unanimous consent that it shall enter into force among themselves provided that the Grains Trade Convention, 1995 is in force.

Article XXV Duration and withdrawal

- (a) This Convention shall remain in force until and including 30 June 2002, unless extended under paragraph (b) of this Article or terminated earlier under paragraph (f) of this Article, provided that the Grains Trade Convention, 1995, or a new Grains Trade Convention replacing it, remains in force until and including that date.
- (b) The Committee may extend this Convention beyond 30 June 2002 for successive periods not exceeding two years on each occasion, provided that the Grains Trade Convention, 1995, or a new Grains Trade Convention replacing it, remains in force during the period of the extension.
- (c) If this Convention is extended under paragraph (b) of this Article, the commitments of members under paragraph (e) of Article III may be subject to review by members before the entry into force of each extension. Their respective commitments, as reviewed, shall remain unchanged for the duration of each extension.
- (d) The operation of this Convention shall be kept under review, in particular with reference to the results of any multilateral negotiations bearing on the provision of food aid, including especially on concessional credit terms, and the need to apply the results thereof.

- (e) The situation with respect to all food aid operations and, in particular, those under concessional credit terms, shall be reviewed before deciding on any extension of this Convention or any new convention.
- (f) In the event of this Convention being terminated, the Committee shall continue in being for such time as may be required to carry out its liquidation, and shall have such powers, and exercise such functions, as may be necessary for that purpose.
- (g) Any member may withdraw from this Convention at the end of any year by giving written notice of withdrawal to the depositary at least ninety days prior to the end of that year. That member shall not thereby be released from any obligations incurred under this Convention which have not been discharged by the end of that year. The member shall simultaneously inform the Committee of the action it has taken.
- (h) Any member which withdraws from this Convention may thereafter rejoin by giving written notice to the Committee and to the depositary. It shall be a condition of rejoining the Convention that the member shall be responsible for fulfilling its commitment with effect from the year in which it rejoins.

Article XXVI International Grains Agreement

This Convention shall replace the Food Aid Convention, 1995, as extended, and shall be one of the constituent instruments of the International Grains Agreement, 1995.

Article XXVII Authentic texts

The texts of this Convention in the English, French, Russian and Spanish languages shall all be equally authentic.

DONE at London, 13 April Nineteen Ninety-Nine.

[Signatures not reproduced here.]

ANNEX A: TRANSPORT AND OTHER OPERATIONAL COSTS

The following transport and other operational costs associated with food aid contributions are included under Articles II(a)(xx), III, X and XIV of this Convention:

- a) Transport costs
 - freight, including loading and discharge
 - demurrage and dispatch
 - trans-shipment
 - bagging
 - insurance and superintendence
 - port charges and storage fees in port
 - temporary warehouse facilities and fees in port and on-route
 - in-country transport, vehicle hire, tolls and escort, convoy and border fees
 - equipment hire
 - aircraft, airlifts
- (b) Other operational costs

non-food items (NFIs) utilised by beneficiaries (tools, utensils, agricultural inputs)
 NFIs provided to implementing partners (vehicles, storage facilities)
 costs of counterpart training
 implementing partners' operational costs, not otherwise covered as transport costs
 milling and other special costs
 in-country NGO costs
 technical support services and logistics management
 project preparation, appraisal, monitoring and evaluation
 beneficiary registration
 in-country technical services

ANNEX B: ELIGIBLE RECIPIENTS

Eligible food aid recipients under Article VII of this Convention refer to Developing Countries and Territories listed as aid recipients by the Development Assistance Committee (DAC) of the OECD, effective as of 1 January 1997, and to countries included in the WTO list of Net Food-Importing Developing Countries, effective as of 1 March 1999.

(a) Least-developed countries

Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Congo Dem Rep, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Sudan, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Western Samoa, Yemen, Zambia.

(b) Low-income countries

Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cameroon, China, Congo Rep, Côte d'Ivoire, Georgia, Ghana, Guyana, Honduras, India, Kenya, Kyrgyz Rep, Mongolia, Nicaragua, Nigeria, Pakistan, Senegal, Sri Lanka, Tajikistan, Vietnam and Zimbabwe.

(c) Lower middle-income countries

Algeria, Belize, Bolivia, Botswana, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Grenada, Guatemala, Indonesia, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Korea (Democratic Republic of), Lebanon, Macedonia (former Yugoslav Republic), Marshall Islands, Micronesia Federated States, Moldova, Morocco, Namibia, Niue, Palau Islands, Palestinian Administered Areas, Panama, Papua New Guinea, Paraguay, Peru, Philippines, St Vincent and Grenadines, Suriname, Swaziland, Syria, Thailand, Timor, Tokelau, Tonga, Tunisia, Turkey, Turkmenistan, Uzbekistan, Venezuela, Wallis and Futuna, and Yugoslavia Federal Republic.

(d) WTO net food-importing developing countries (not included above) Barbados, Mauritius, St Lucia, Trinidad and Tobago.

CHAPTER SIXTY-SIX

International Convention for the Suppression of the Financing of Terrorism

New York, NY, 9 December 1999

INTRODUCTION

The pedigree of this Convention is dominated by UN General Assembly activities. In the five years before the Convention, the General Assembly passed resolutions and declarations that, at the very minimum, mentioned measures for suppressing terrorism. For example, General Assembly resolution 51/210 of December 1996, in paragraph 3(f), urged all states to take steps to prevent and deal with the financing of terrorists and terrorist organizations.

The resolution acknowledges the crucial role played by money in the operations of terrorists and the ineffectiveness of existing multilateral instruments in containing the situation. There is, therefore, now a broader definition of the offence of financing terrorist activity. Any person who 'by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part' to commit terrorism is guilty of an offence under the Convention. Funds include both tangible and intangible, movable and immovable, assets, as well as covering all documents or instruments related to liquid or non-liquid assets. It is not a condition of the offence that the funds must have been used to execute the act. Parties to the agreement should have measures that can detect, identify and freeze any funds that are used or could be used to finance terrorist activity, as well as returns from any such activity. Such measures should include: proper and detailed identification of usual and occasional customers of financial institutions, including companies; the reporting of suspicious or unusual transactions; licensing of money transmission agencies; and the keeping of records for up to a minimum of five years. States parties are to co-operate and to exchange mutual legal assistance in the course of implementing the Convention. Countries or territories should not refuse a request for assistance on the basis of bank secrecy or solely on the grounds that it is a fiscal or political offence.

Signatories of the Convention are also to ensure that they have laws in their domestic jurisprudence that would make companies liable under the terms of the Convention if they, by acts of omission or commission, are accused of an offence under the Convention. The liability of the company should not prejudice the criminal responsibility of individuals working for the said company. There should also be laws that deny any justification—political, philosophical, racial, ethnic, or religious or similar persuasions—

for terrorist activity. It will be difficult, therefore, for organizations like the Irish Republican Army and the Unionist paramilitary organizations in Northern Ireland (United Kingdom) or rebel organizations in many parts of Africa and Latin America to justify their existence and activities. Any body or government that provides funds or facilitates the provision of funds and support for organizations fighting for freedom, ethnic justice, religious purity, etc., can be said to be in violation of the Convention. There is an exception where the terrorist group or its activities are limited to one state, and the state concerned is expected to have the means and capacity to deal with the situation. Besides, a request for an extradition or for mutual legal assistance may be refused if the requested state party has substantial grounds to believe that the request was for the purpose of prosecuting or punishing the 'extraditee' because of his or her race, ethnicity, political opinion or religion.

The Convention was open for signature after the resolution of the General Assembly and came into force on 10 April 2002. Within a year, of the 132 signatories, 73 had become full parties to the Convention.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM (ANNEX TO RESOLUTION 54/109 OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS)*

Preamble

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations,

RECALLING the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

RECALLING ALSO all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and the annex thereto on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

RECALLING paragraph 3(f) of General Assembly resolution 51/210 of 17 December 1996, in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and

terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

RECALLING ALSO General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210,

RECALLING FURTHER General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

CONSIDERING that the financing of terrorism is a matter of grave concern to the international community as a whole,

NOTING that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

NOTING ALSO that existing multilateral legal instruments do not expressly address such financing,

BEING CONVINCED of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
2. "State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
 - (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
 - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.
2.
 - (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
 - (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
 - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
 - (c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
 - ii. Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document

should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences as set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence as set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals who have committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
 - (a) The offence is committed in the territory of that State;
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
- (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
- (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
- (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

- 3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
- 4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.
- 5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.
- 6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

- 1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
- 2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
- 3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled:
 - (a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) To be visited by a representative of that State;
 - (c) To be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the

offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.
3. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.
4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.
5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification,

testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
- (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

- i. Adopting regulations prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
- ii. With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
- iii. Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
- iv. Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

- (a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
- (b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

- i. The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
- ii. The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties:

- (a) That are open to the participation of all States;
- (b) That have entered into force;
- (c) That have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of

paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties that have deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or

accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

[Signatures are not reproduced.]

Annex

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

CHAPTER SIXTY-SEVEN

Trade and Development Act 2000 (USA)

Washington, DC, 18 May 2000

INTRODUCTION

The Trade and Development Act of 2000 includes the Africa Growth and Opportunity Act (AGOA), the US-Caribbean Basin Trade Partnership Act and measures for the Normalization of Trade Relations and for Trade Adjustment Assistance. President Bill Clinton (1993–2001) initiated and ensured the passage of an Act that authorized a new trade policy for sub-Saharan Africa, reviewed the Generalized System of Preferences for Caribbean and other countries and reauthorized programmes to assist US workers to adjust to the consequences of the opening of US markets to trade from African and other poor countries. However, the Trade and Development Act of 2000 is more widely known for the name of Title I, which deals with African trade (AGOA). This may be because it was the first time that African economic matters received significant attention from the US President and Congress. The Act excludes Algeria, Egypt, Libya, Morocco and Tunisia, mainly because of the relative prosperity of those countries, facilitated by fossil-fuel resources and the large US assistance to Egypt.

The policy behind the AGOA was: to encourage increased trade and investment between the USA and sub-Saharan Africa; to reduce tariff and non-tariff barriers to trade; to give US support for the integration of African economies; to encourage those countries committed to the rule of law, economic reform, privatization and political freedoms; and to establish a forum for discussing US-Africa trade and economic co-operation. In general, the Act authorized the President of the USA to allow specific products from designated African countries to enter the USA free of any duties, provided he determined, based on the advice of the US International Trade Commission, that such would not damage US production of that product. There are stringent rules relating to the origin of the product from the specified African country or countries. Any abuse of the policy by transshipment or re-routing of products through Africa is strictly prohibited and can result in the suspension of the African country involved from the benefits of the legislation. Textile and apparel products are singled out for special treatment in the Act. Apparel products assembled in one or more beneficiary African countries, from fabrics completely formed and cut from the USA, or from fabric wholly formed in one or more beneficiary African countries from yarn originating from the USA, or from one or more designated African countries, are to enter the USA duty free. There are limitations to these market openings. The textile and apparel opening is limited to seven years, renewable annually, and the total amount allowed annually must not exceed ‘the

applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available'. These imports are to be monitored strictly and, if the Secretary of Commerce makes a determination that there is a surge in imports from Africa that is a threat to or damaging US domestic industry producing a like product, then the President must suspend the duty-free status of that product.

For an African country to be eligible for participation under the terms of the Act, the President of the USA must be satisfied that the said country: has established or is making serious efforts at establishing a free-market economy; protects private rights; has respect for human rights; co-operates in combating the abuse of human rights and terrorism; minimizes government participation in the economy, including the removal of subsidies and price controls; has the rule of law and political pluralism; eliminates barriers to US trade and investment; combats corruption; and must not engage in activities that undermine US national security or foreign policy interests. These eligibility criteria are subject to continuing review and a country may be taken off the list if it reverses the basis of its eligibility. It is, perhaps, these eligibility conditions that have attracted the most criticism against the AGOA. Be that as it may, these conditions reflect the US post-Cold War posture. Besides, many of the conditions—such as respect for human rights, the encouragement of education, infrastructure development and trade—are in the interest of the African countries themselves. The AGOA must be seen as the beginning of US engagement with Africa on the issues that matter most to Africans—economic and political prosperity.

The passing of the AGOA provided opportunity for Congress to review and expand trade opportunities to countries in the Caribbean basin, with the exception of the US dependencies in Puerto Rico and the Virgin Islands. Title II is known as the United States-Caribbean Basin Trade Partnership Act. It took account of the disasters visited by hurricanes Mitch and Georges, for example, in 1998, as well as the affinity of people in the Caribbean for US goods, which widens the market for those goods, and in return offered duty-free status for specified goods produced or assembled in Caribbean countries and territories. Many of the terms—conditions for eligibility, reporting requirements, monitoring and renewals—are not very different from those for the African countries. In the case of the Caribbean, the comparison of principle and status is more akin to that of Mexico under the North American Free Trade Agreement (NAFTA—see above).

Title III of the Trade and Development Act restored normal trade relations with Albania and Kyrgyzstan. This was in acknowledgement of the efforts made by the two countries towards political freedom, freedom of emigration, the establishment of a market economy, and a friendly and co-operative relationship with the USA and, in the case of Albania, also with the North Atlantic Treaty Organisation (NATO) during the Kosovo conflict in Yugoslavia.

The Act was signed into law by the President on 18 May 2000. It progressively came into effect thereafter.

TRADE AND DEVELOPMENT ACT OF THE UNITED STATES OF
AMERICA*

One Hundred Sixth Congress of the United States of America, at the Second Session
Begun and held at the City of Washington on Monday, the twenty-fourth day of
January, two thousand

AN ACT

To authorize a new trade and investment policy for sub-Saharan Africa, expand trade
benefits to the countries in the Caribbean Basin, renew the generalized system of
preferences, and reauthorize the trade adjustment assistance programs.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF
THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1: SHORT TITLE; TABLE OF CONTENTS

(a) Short Title: This Act may be cited as the “Trade and Development Act of 2000”.

(b) Table of Contents: The table of contents for this Act is as follows:

[The Table of Contents is omitted.]

**TITLE I: EXTENSION OF CERTAIN TRADE BENEFITS TO SUB-
SAHARAN AFRICA**

Subtitle A: Trade Policy for Sub-Saharan Africa

SECTION 101: SHORT TITLE

This title may be cited as the “African Growth and Opportunity Act”.

SECTION 102: FINDINGS

Congress finds that:

- (1) it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa;
- (2) the 48 countries of sub-Saharan Africa form a region richly endowed with both natural and human resources;
- (3) sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States;
- (4) the region has experienced the strengthening of democracy as countries in sub-Saharan Africa have taken steps to encourage broader participation in the political process;
- (5) certain countries in sub-Saharan Africa have increased their economic growth rates, taken significant steps towards liberalizing their economies, and made progress toward regional economic integration that can have positive benefits for the region;

- (6) despite those gains, the per capita income in sub-Saharan Africa averages approximately \$500 annually;
- (7) trade and investment, as the American experience has shown, can represent powerful tools both for economic development and for encouraging broader participation in a political process in which political freedom can flourish;
- (8) increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families;
- (9) offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct investment in support of the positive economic and political developments under way throughout the region; and
- (10) encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

SECTION 103: STATEMENT OF POLICY

Congress supports:

- (1) encouraging increased trade and investment between the United States and sub-Saharan Africa;
- (2) reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade;
- (3) expanding United States assistance to sub-Saharan Africa's regional integration efforts;
- (4) negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa;
- (5) focusing on countries committed to the rule of law, economic reform, and the eradication of poverty;
- (6) strengthening and expanding the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses;
- (7) facilitating the development of civil societies and political freedom in sub-Saharan Africa;
- (8) establishing a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum; and
- (9) the accession of the countries in sub-Saharan Africa to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

SECTION 104: ELIGIBILITY REQUIREMENTS

- (a) In General: The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country:

(1) has established, or is making continual progress toward establishing:

- (A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;
- (B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;
- (C) the elimination of barriers to United States trade and investment, including by:

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about US legislation should be made to the Congress of the United States or via the website of legislative information (thomas.loc.gov).

- (i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;
- (ii) the protection of intellectual property; and
- (iii) the resolution of bilateral trade and investment disputes;

- (D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;
- (E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and
- (F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(2) does not engage in activities that undermine United States national security or foreign policy interests; and

(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of inter-national terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) Continuing Compliance: If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).

SECTION 105: UNITED STATES-SUB-SAHARAN AFRICA TRADE AND ECONOMIC COOPERATION FORUM

- (a) Declaration of Policy: The President shall convene annual high-level meetings between appropriate officials of the United States Government and officials of the governments of sub-Saharan African countries in order to foster close economic ties between the United States and sub-Saharan Africa.
- (b) Establishment: Not later than 12 months after the date of the enactment of this Act, the President, after consulting with Congress and the governments concerned, shall establish a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum (in this section referred to as the “Forum”).
- (c) Requirements: In creating the Forum, the President shall meet the following requirements:
 - (1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps towards meeting the eligibility requirements in section 104. The purpose of the meeting shall be to discuss expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this title including encouraging joint ventures between small and large businesses. The President shall also direct the Secretaries and the United States Trade Representative to invite to the meeting representatives from appropriate sub-Saharan African regional organizations and government officials from other appropriate countries in sub-Saharan Africa.
 - (2)
 - (A) The President, in consultation with the Congress, shall encourage United States nongovernmental organizations to host annual meetings with nongovernmental organizations from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).
 - (B) The President, in consultation with the Congress, shall encourage United States representatives of the private sector to host annual meetings with representatives of the private sector from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).
 - (3) The President shall, to the extent practicable, meet with the heads of governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 104, not less than once every 2 years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than 12 months after the date of the enactment of this Act.

- (d) Dissemination of Information by USIS: In order to assist in carrying out the purposes of the Forum, the United States Information Service shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this title.
- (e) HIV/AIDS Effect on the Sub-Saharan African Workforce: In selecting issues of common interest to the United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, the President shall instruct the United States delegates to the Forum to promote a review by the Forum of the HIV/AIDS epidemic in each sub-Saharan African country and the effect of the HIV/ AIDS epidemic on economic development in each country.

SECTION 106: REPORTING REQUIREMENT

The President shall submit to the Congress, not later than 1 year after the date of the enactment of this Act, and annually thereafter through 2008, a comprehensive report on the trade and investment policy of the United States for sub-Saharan Africa, and on the implementation of this title and the amendments made by this title.

SECTION 107: SUB-SAHARAN AFRICA DEFINED

For purposes of this title, the terms “sub-Saharan Africa”, “sub-Saharan African country”, “country in sub-Saharan Africa”, and “countries in sub-Saharan Africa” refer to the following or any successor political entities:

- Republic of Angola (Angola)
- Republic of Benin (Benin)
- Republic of Botswana (Botswana)
- Burkina Faso (Burkina)
- Republic of Burundi (Burundi)
- Republic of Cameroon (Cameroon)
- Republic of Cape Verde (Cape Verde)
- Central African Republic
- Republic of Chad (Chad)
- Federal Islamic Republic of the Comoros (Comoros)
- Democratic Republic of Congo
- Republic of the Congo (Congo)
- Republic of Côte d’Ivoire (Côte d’Ivoire)
- Republic of Djibouti (Djibouti)
- Republic of Equatorial Guinea (Equatorial Guinea)
- State of Eritrea (Eritrea)

Ethiopia

Gabonese Republic (Gabon)

Republic of the Gambia (Gambia)

Republic of Ghana (Ghana)

Republic of Guinea (Guinea)

Republic of Guinea-Bissau (Guinea-Bissau)

Republic of Kenya (Kenya)

Kingdom of Lesotho (Lesotho)

Republic of Liberia (Liberia)

Republic of Madagascar (Madagascar)

Republic of Malawi (Malawi)

Republic of Mali (Mali)

Islamic Republic of Mauritania (Mauritania)

Republic of Mauritius (Mauritius)

Republic of Mozambique (Mozambique)

Republic of Namibia (Namibia)

Republic of Niger (Niger)

Federal Republic of Nigeria (Nigeria)

Republic of Rwanda (Rwanda)

Democratic Republic of Sao Tomé and Príncipe (Sao Tomé and Príncipe)

Republic of Senegal (Senegal)

Republic of Seychelles (Seychelles)

Republic of Sierra Leone (Sierra Leone)

Somalia

Republic of South Africa (South Africa)

Republic of Sudan (Sudan)

Kingdom of Swaziland (Swaziland)

United Republic of Tanzania (Tanzania)

Republic of Togo (Togo)

Republic of Uganda (Uganda)

Republic of Zambia (Zambia)

Republic of Zimbabwe (Zimbabwe)

Subtitle B: Trade Benefits

SECTION 111: ELIGIBILITY FOR CERTAIN BENEFITS

(a) In General: Title V of the Trade Act of 1974 is amended by inserting after section 506 the following new section:

“SECTION 506A: DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS

“(a) AUTHORITY TO DESIGNATE:

“(1) IN GENERAL: Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b):

“(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act; and

“(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

“(2) MONITORING AND REVIEW OF CERTAIN COUNTRIES:

The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President’s determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act.

“(3) CONTINUING COMPLIANCE: If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

“(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES:

“(1) IN GENERAL: The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in sub-section (a), if, after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines

that such article is not importsensitive in the context of imports from beneficiary sub-Saharan African countries.

“(2) RULES OF ORIGIN: The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 503(a)(2), except that:

“(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

“(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining such percentage,

“(c) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC:

For purposes of this title, the terms ‘beneficiary sub-Saharan African country’ and ‘beneficiary sub-Saharan African countries’ mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.”,

(b) Waiver of Competitive Need Limitation: Section 503(c)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2463(c)(2)(D)) is amended to read as follows:

“(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES: Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.”.

SECTION 112: TREATMENT OF CERTAIN TEXTILES AND APPAREL

(a) Preferential Treatment: Textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the Trade Act of 1974, shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113.

(b) Products Covered: The preferential treatment described in subsection (a) shall apply only to the following textile and apparel products:

(1) APPAREL ARTICLES ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES: Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of

the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are:

- (A) entered under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or
 - (B) entered under chapter 61 or 62 of the Harmonized Tariff Schedule of the United States, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.
- (2) APPAREL ARTICLES CUT AND ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES: Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States) if such articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States.
- (3) APPAREL ARTICLES ASSEMBLED FROM REGIONAL AND OTHER FABRIC: Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to the following:

(A) LIMITATIONS ON BENEFITS:

- (i) IN GENERAL: Preferential treatment under this paragraph shall be extended in the 1-year period beginning on October 1, 2000, and in each of the seven succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.
- (ii) APPLICABLE PERCENTAGE: For purposes of this subparagraph, the term “applicable percentage” means 1.5 percent for the 1-year period beginning October 1, 2000, increased in each of the seven succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2007, the applicable percentage does not exceed 3.5 percent.

(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES:

- (i) IN GENERAL: Subject to subparagraph (A), preferential treatment shall be extended through September 30, 2004, for apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make such articles.
- (ii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY: For purposes of this subparagraph the term “lesser developed beneficiary sub-Saharan African country” means a beneficiary sub-Saharan African country that had a per capita gross national product of less than \$1,500 a year in 1998, as measured by the World Bank.

(C) SURGE MECHANISM:

- (i) IMPORT MONITORING: The Secretary of Commerce shall monitor imports of articles described in this paragraph on a monthly basis to determine if there has been a surge in imports of such articles.
 In order to permit public access to preliminary international trade data and to facilitate the early identification of potentially disruptive import surges, the Director of the Office of Management and Budget may grant an exception to the publication dates established for the release of data on United States international trade in covered articles, if the Director notifies Congress of the early release of the data.
- (ii) DETERMINATION OF DAMAGE OR THREAT THEREOF:
 Whenever the Secretary of Commerce determines, based on the data described in clause (i), or pursuant to a written request made by an interested party, that there has been a surge in imports of an article described in this paragraph from a beneficiary sub-Saharan African country, the Secretary shall determine whether such article from such country is being imported in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing a like or directly competitive article. If the Secretary’s determination is affirmative, the President shall suspend the duty-free treatment provided for such article under this paragraph. If the inquiry is initiated at the request of an interested party, the Secretary shall make the determination within 60 days after the date of the request.
- (iii) FACTORS TO CONSIDER: In determining whether a domestic industry has been seriously damaged, or is threatened with serious damage, the Secretary shall examine the effect of the imports on relevant economic indicators such as domestic production, sales, market share, capacity utilization, inventories, employment, profits, exports, prices, and investment,
- (iv) PROCEDURE:
 - (I) INITIATION: The Secretary of Commerce shall initiate an inquiry within 10 days after receiving a written request and

supporting information for an inquiry from an interested party. Notice of initiation of an inquiry shall be published in the Federal Register.

- (II) PARTICIPATION BY INTERESTED PARTIES: The Secretary of Commerce shall establish procedures to ensure participation in the inquiry by interested parties.
- (III) NOTICE OF DETERMINATION: The Secretary shall publish the determination described in clause (ii) in the Federal Register.
- (IV) INFORMATION AVAILABLE: If relevant information is not available on the record or any party withholds information that has been requested by the Secretary, the Secretary shall make the determination on the basis of the facts available. When the Secretary relies on information submitted in the inquiry as facts available, the Secretary shall, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Secretary.

(v) INTERESTED PARTY: For purposes of this subparagraph, the term “interested party” means any producer of a like or directly competitive article, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles, a certified union or group of workers which is representative of an industry engaged in the manufacture, production, or sale of essential inputs for the like or directly competitive article, or a trade or business association representing companies engaged in the manufacture, production, or sale of such essential inputs.

(4) SWEATERS KNIT-TO-SHAPE FROM CASHMERE OR MERINO WOOL:

- (A) CASHMERE: Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the Harmonized Tariff Schedule of the United States.
- (B) MERINO WOOL: Sweaters, 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

(5) APPAREL ARTICLES WHOLLY ASSEMBLED FROM FABRIC OR YARN NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE UNITED STATES:

- (A) IN GENERAL: Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a

beneficiary sub-Saharan African country, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA.

(B) ADDITIONAL APPAREL ARTICLES: At the request of any interested party and subject to the following requirements, the President is authorized to proclaim the treatment provided under subparagraph (A) for yarns or fabrics not described in subparagraph (A) if:

- (i) the President determines that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner;
- (ii) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;
- (iii) within 60 calendar days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth:

(I) the action proposed to be proclaimed and the reasons for such action; and

(II) the advice obtained under clause (ii);

- (iv) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclauses (I) and (II) of clause (iii), has expired; and
- (v) the President has consulted with such committees regarding the proposed action during the period referred to in clause (iii).

(6) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES: A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this paragraph, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles.

(c) Treatment of Quotas on Textile and Apparel Imports from Kenya and Mauritius: The President shall eliminate the existing quotas on textile and apparel articles imported into the United States:

- (1) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States; and
- (2) from Mauritius within 30 days after that country adopts such a visa system.

The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of the visa systems.

(d) Special Rules:

(1) FINDINGS AND TRIMMINGS:

(A) GENERAL RULE: An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if the value of such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled article.

Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, “bow buds”, decorative lace trim, elastic strips, and zippers, including zipper tapes and labels. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

(B) CERTAIN INTERLININGS:

(i) GENERAL RULE: An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(ii) INTERLININGS DESCRIBED: Interlinings eligible for the treatment described in clause (i) include only a chest type plate, a “hymo” piece, or “sleeve header”, of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(iii) TERMINATION OF TREATMENT: The treatment described in this subparagraph shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(C) EXCEPTION: In the case of an article described in subsection (b)(2), sewing thread shall not be treated as findings or trimmings under subparagraph (A).

(2) DE MINIMIS RULE: An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibers and yarns is not more than 7 percent of the total weight of the article.

(e) Definitions: In this section and section 113:

(1) AGREEMENT ON TEXTILES AND CLOTHING: The term “Agreement on Textiles and Clothing” means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

- (2) **BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY, ETC:** The terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” have the same meaning as such terms have under section 506A(c) of the Trade Act of 1974.
- (3) **NAFTA:** The term “NAFTA” means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.
- (f) **Effective Date:** This section takes effect on October 1, 2000, and shall remain in effect through September 30, 2008.

SECTION 113: PROTECTIONS AGAINST TRANSSHIPMENT

(a) Preferential Treatment Conditioned on Enforcement Measures:

- (1) **IN GENERAL:** The preferential treatment under section 112(a) shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country:
 - (A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;
 - (B) has enacted legislation or promulgated regulations that would permit United States Customs Service verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country;
 - (C) agrees to report, on a timely basis, at the request of the United States Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;
 - (D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;
 - (E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and
 - (F) agrees to report, on a timely basis, at the request of the United States Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.
- (2) **COUNTRY OF ORIGIN DOCUMENTATION:** For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) Customs Procedures and Enforcement:

(1) IN GENERAL:

(A) REGULATIONS: Any importer that claims preferential treatment under section 112 shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) DETERMINATION:

(i) IN GENERAL: In order to qualify for the preferential treatment under section 112 and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii):

(I) has implemented and follows; or

(II) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) COUNTRY DESCRIBED: A country is described in this clause if it is a beneficiary sub-Saharan African country:

(I) from which the article is exported; or

(II) in which materials used in the production of the article originate or in which the article or such materials, undergo production that contributes to a claim that the article is eligible for preferential treatment.

(2) CERTIFICATE OF ORIGIN: The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 112 if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(3) PENALTIES FOR EXPORTERS: If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 112 to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) TRANSSHIPMENT DESCRIBED: Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this Act has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 112.

(5) **MONITORING AND REPORTS TO CONGRESS:** The Customs Service shall monitor and the Commissioner of Customs shall submit to Congress, not later than March 31 of each year, a report on the effectiveness of the visa systems and the implementation of legislation and regulations described in sub-section (a) and on measures taken by countries in sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in Article 5 of the Agreement on Textiles and Clothing.

(c) **Customs Service Enforcement:** The Customs Service shall:

(1) make available technical assistance to the beneficiary sub-Saharan African countries:

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A); and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

(d) **Authorization of Appropriations:** There is authorized to be appropriated to carry out subsection (c) the sum of \$5,894,913.

SECTION 114: TERMINATION

Title V of the Trade Act of 1974 is amended by inserting after section 506A the following new section:

“SECTION 506B: TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES

“In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2008.”.

SECTION 115: CLERICAL AMENDMENTS

The table of contents for title V of the Trade Act of 1974 is amended by inserting after the item relating to section 506 the following new items:

“SECTION 506A: Designation of sub-Saharan African countries for certain benefits.

“SECTION 506B: Termination of benefits for sub-Saharan African countries.”.

SECTION 116: FREE TRADE AGREEMENTS WITH SUB-SAHARAN AFRICAN COUNTRIES

(a) **Declaration of Policy:** Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to

serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) Plan Requirement:

(1) IN GENERAL: The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) ELEMENTS OF PLAN: The plan shall include the following:

- (A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.
- (B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.
- (C) A mutually agreed-upon timetable for the negotiations.
- (D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.
- (E) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.
- (F) Procedures to ensure the following:

- (i) Adequate consultation with the Congress and the private sector during the negotiations.
- (ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.
- (iii) Approval by the Congress of the agreement or agreements.
- (iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiation of the agreement or agreements.

(c) Reporting Requirement: Not later than 12 months after the date of the enactment of this Act, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

SECTION 117: ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR AFRICAN AFFAIRS

It is the sense of the Congress that:

- (1) the position of Assistant United States Trade Representative for African Affairs is integral to the United States commitment to increasing United States-sub-Saharan African trade and investment;

- (2) the position of Assistant United States Trade Representative for African Affairs should be maintained within the Office of the United States Trade Representative to direct and coordinate interagency activities on United States-Africa trade policy and investment matters and serve as:
- (A) a primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa; and
 - (B) the chief advisor to the United States Trade Representative on issues of trade and investment with Africa; and
- (3) the United States Trade Representative should have adequate funding and staff to carry out the duties of the Assistant United States Trade Representative for African Affairs described in paragraph (2), subject to the availability of appropriations.

Subtitle C: Economic Development Related Issues

**SECTION 121: SENSE OF THE CONGRESS REGARDING
COMPREHENSIVE DEBT RELIEF FOR THE WORLD'S
POOREST COUNTRIES**

- (a) Findings: Congress makes the following findings:
- (1) The burden of external debt has become a major impediment to economic growth and poverty reduction in many of the world's poorest countries.
 - (2) Until recently, the United States Government and other official creditors sought to address this problem by rescheduling loans and in some cases providing limited debt reduction.
 - (3) Despite such efforts, the cumulative debt of many of the world's poorest countries continued to grow beyond their capacity to repay.
 - (4) In 1997, the Group of Seven, the World Bank, and the International Monetary Fund adopted the Heavily Indebted Poor Countries Initiative (HIPC), a commitment by the international community that all multilateral and bilateral creditors, acting in a coordinated and concerted fashion, would reduce poor country debt to a sustainable level.
 - (5) The HIPC Initiative is currently undergoing reforms to address concerns raised about country conditionality, the amount of debt forgiven, and the allocation of savings realized through the debt forgiveness program to ensure that the Initiative accomplishes the goals of economic growth and poverty alleviation in the world's poorest countries.
- (b) Sense of the Congress: It is the sense of the Congress that:
- (1) Congress and the President should work together, without undue delay and in concert with the international community, to make comprehensive debt relief available to the world's poorest countries in a manner that promotes economic growth and poverty alleviation;

- (2) this program of bilateral and multilateral debt relief should be designed to strengthen and expand the private sector, encourage increased trade and investment, support the development of free markets, and promote broad-scale economic growth in beneficiary countries;
- (3) this program of debt relief should also support the adoption of policies to alleviate poverty and to ensure that benefits are shared widely among the population, such as through initiatives to advance education, improve health, combat AIDS, and promote clean water and environmental protection;
- (4) these debt relief agreements should be designed and implemented in a transparent manner and with the broad participation of the citizenry of the debtor country and should ensure that country circumstances are adequately taken into account;
- (5) no country should receive the benefits of debt relief if that country does not cooperate with the United States on terrorism or narcotics enforcement, is a gross violator of the human rights of its citizens, or is engaged in conflict or spends excessively on its military; and
- (6) in order to prevent adverse impact on a key industry in many developing countries, the International Monetary Fund must mobilize its own resources for providing debt relief to eligible countries without allowing gold to reach the open market, or otherwise adversely affecting the market price of gold.

SECTION 122: EXECUTIVE BRANCH INITIATIVES

- (a) Statement of the Congress: The Congress recognizes that the stated policy of the executive branch in 1997, the “Partnership for Growth and Opportunity in Africa” initiative, is a step toward the establishment of a comprehensive trade and development policy for sub-Saharan Africa. It is the sense of the Congress that this Partnership is a companion to the policy goals set forth in this title.
- (b) Technical Assistance to Promote Economic Reforms and Development: In addition to continuing bilateral and multilateral economic and development assistance, the President shall target technical assistance toward:
 - (1) developing relationships between United States firms and firms in sub-Saharan Africa through a variety of business associations and networks;
 - (2) providing assistance to the governments of sub-Saharan African countries to:
 - (A) liberalize trade and promote exports;
 - (B) bring their legal regimes into compliance with the standards of the World Trade Organization in conjunction with membership in that Organization;
 - (C) make financial and fiscal reforms; and
 - (D) promote greater agribusiness linkages;
 - (3) addressing such critical agricultural policy issues as market liberalization, agricultural export development, and agribusiness investment in processing and transporting agricultural commodities;
 - (4) increasing the number of reverse trade missions to growth-oriented countries in sub-Saharan Africa;
 - (5) increasing trade in services; and

- (6) encouraging greater sub-Saharan African participation in future negotiations in the World Trade Organization on services and making further commitments in their schedules to the General Agreement on Trade in Services in order to encourage the removal of tariff and non-tariff barriers.

SECTION 123: OVERSEAS PRIVATE INVESTMENT CORPORATION INITIATIVES

- (a) **Initiation of Funds:** It is the sense of the Congress that the Overseas Private Investment Corporation should exercise the authorities it has to initiate an equity fund or equity funds in support of projects in the countries in sub-Saharan Africa, in addition to the existing equity fund for sub-Saharan Africa created by the Corporation.
- (b) **Structure and Types of Funds:**
- (1) **STRUCTURE:** Each fund initiated under subsection (a) should be structured as a partnership managed by professional private sector fund managers and monitored on a continuing basis by the Corporation.
 - (2) **CAPITALIZATION:** Each fund should be capitalized with a combination of private equity capital, which is not guaranteed by the Corporation, and debt for which the Corporation provides guaranties.
 - (3) **INFRASTRUCTURE FUND:** One or more of the funds, with combined assets of up to \$500,000,000, should be used in support of infrastructure projects in countries of sub-Saharan Africa.
 - (4) **EMPHASIS:** The Corporation shall ensure that the funds are used to provide support in particular to women entrepreneurs and to innovative investments that expand opportunities for women and maximize employment opportunities for poor individuals.
- (c) **Overseas Private Investment Corporation:**
- (1) **INVESTMENT ADVISORY COUNCIL:** Section 233 of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

“(e) **INVESTMENT ADVISORY COUNCIL:** The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the investment advisory council shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The investment advisory council shall terminate 4 years after the date of the enactment of this subsection.”.
 - (2) **REPORTS TO CONGRESS:** Within 6 months after the date of the enactment of this Act, and annually for each of the 4 years thereafter, the Board of Directors of the Overseas Private Investment Corporation shall submit to Congress a report on the steps that the Board has taken to implement section 233(e) of the Foreign

Assistance Act of 1961 (as added by paragraph (1)) and any recommendations of the investment advisory council established pursuant to such section.

SECTION 124: EXPORT-IMPORT BANK INITIATIVES

- (a) Sense of the Congress: It is the sense of the Congress that the Board of Directors of the Bank shall continue to take comprehensive measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank's financial commitments in sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank.
- (b) Sub-Saharan Africa Advisory Committee: The sub-Saharan Africa Advisory Committee (SAAC) is to be commended for aiding the Bank in advancing the economic partnership between the United States and the nations of sub-Saharan Africa by doubling the number of sub-Saharan African countries in which the Bank is open for traditional financing and by increasing by tenfold the Bank's support for sales to sub-Saharan Africa from fiscal year 1998 to fiscal year 1999. The Board of Directors of the Bank and its staff shall continue to review carefully the sub-Saharan Africa Advisory Committee recommendations on the development and implementation of new and innovative policies and programs designed to promote the Bank's expansion in sub-Saharan Africa.

SECTION 125: EXPANSION OF THE UNITED STATES AND FOREIGN COMMERCIAL SERVICE IN SUB-SAHARAN AFRICA

- (a) Findings: The Congress makes the following findings:
 - (1) The United States and Foreign Commercial Service (hereafter in this section referred to as the "Commercial Service") plays an important role in helping United States businesses identify export opportunities and develop reliable sources of information on commercial prospects in foreign countries.
 - (2) During the 1980s, the presence of the Commercial Service in sub-Saharan Africa consisted of 14 professionals providing services in eight countries. By early 1997, that presence had been reduced by half to seven professionals in only four countries.
 - (3) Since 1997, the Department of Commerce has slowly begun to increase the presence of the Commercial Service in sub-Saharan Africa, adding five full-time officers to established posts.
 - (4) Although the Commercial Service Officers in these countries have regional responsibilities, this kind of coverage does not adequately service the needs of United States businesses attempting to do business in sub-Saharan Africa.
 - (5) The Congress has, on several occasions, encouraged the Commercial Service to focus its resources and efforts in countries or regions in Europe or Asia to promote greater United States export activity in those markets, and similar encouragement should be provided for countries in sub-Saharan Africa as well.
 - (6) Because market information is not widely available in many sub-Saharan African countries, the presence of additional Commercial Service Officers and resources

can play a significant role in assisting United States businesses in markets in those countries.

- (b) Appointments: Subject to the availability of appropriations, by not later than December 31, 2001, the Secretary of Commerce, acting through the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service, shall take steps to ensure that:
 - (1) at least 20 full-time Commercial Service employees are stationed in sub-Saharan Africa; and
 - (2) full-time Commercial Service employees are stationed in not less than 10 different sub-Saharan African countries.
- (c) Initiative for Sub-Saharan Africa: In order to encourage the export of United States goods and services to sub-Saharan African countries, the International Trade Administration shall make a special effort to:
 - (1) identify United States goods and services which are the best prospects for export by United States companies to sub-Saharan Africa;
 - (2) identify, where appropriate, tariff and nontariff barriers that are preventing or hindering sales of United States goods and services to, or the operation of United States companies in, sub-Saharan Africa;
 - (3) hold discussions with appropriate authorities in sub-Saharan Africa on the matters described in paragraphs (1) and (2) with a view to securing increased market access for United States exporters of goods and services;
 - (4) identify current resource allocations and personnel levels in sub-Saharan Africa for the Commercial Service and consider plans for the deployment of additional resources or personnel to that region; and
 - (5) make available to the public, through printed and electronic means of communication, the information derived pursuant to paragraphs (1) through (4) for each of the 4 years after the date of the enactment of this Act.

SECTION 126: DONATION OF AIR TRAFFIC CONTROL EQUIPMENT TO ELIGIBLE SUB-SAHARAN AFRICAN COUNTRIES

It is the sense of the Congress that, to the extent appropriate, the United States Government should make every effort to donate to governments of sub-Saharan African countries determined to be eligible under section 104 air traffic control equipment that is no longer in use, including appropriate related reimbursable technical assistance.

SECTION 127: ADDITIONAL AUTHORITIES AND INCREASED FLEXIBILITY TO PROVIDE ASSISTANCE UNDER THE DEVELOPMENT FUND FOR AFRICA

- (a) Use of Sustainable Development Assistance to Support Further Economic Growth: It is the sense of the Congress that sustained economic growth in sub-Saharan Africa depends in large measure upon the development of a receptive environment for trade

and investment, and that to achieve this objective the United States Agency for International Development should continue to support programs which help to create this environment. Investments in human resources, development, and implementation of free market policies, including policies to liberalize agricultural markets and improve food security, and the support for the rule of law and democratic governance should continue to be encouraged and enhanced on a bilateral and regional basis.

(b) Declarations of Policy: The Congress makes the following declarations:

- (1) The Development Fund for Africa established under chapter 10 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2293 et seq.) has been an effective tool in providing development assistance to sub-Saharan Africa since 1988.
- (2) The Development Fund for Africa will complement the other provisions of this title and lay a foundation for increased trade and investment opportunities between the United States and sub-Saharan Africa.
- (3) Assistance provided through the Development Fund for Africa will continue to support programs and activities that promote the long term economic development of sub-Saharan Africa, such as programs and activities relating to the following:
 - (A) Strengthening primary and vocational education systems, especially the acquisition of middle-level technical skills for operating modern private businesses and the introduction of college level business education, including the study of international business, finance, and stock exchanges.
 - (B) Strengthening health care systems.
 - (C) Supporting democratization, good governance and civil society and conflict resolution efforts.
 - (D) Increasing food security by promoting the expansion of agricultural and agriculture-based industrial production and productivity and increasing real incomes for poor individuals.
 - (E) Promoting an enabling environment for private sector-led growth through sustained economic reform, privatization programs, and market-led economic activities.
 - (F) Promoting decentralization and local participation in the development process, especially linking the rural production sectors and the industrial and market centers throughout Africa.
 - (G) Increasing the technical and managerial capacity of sub-Saharan African individuals to manage the economy of sub-Saharan Africa.
 - (H) Ensuring sustainable economic growth through environmental protection.
- (4) The African Development Foundation has a unique congressional mandate to empower the poor to participate fully in development and to increase opportunities for gainful employment, poverty alleviation, and more equitable income distribution in sub-Saharan Africa. The African Development Foundation has worked successfully to enhance the role of women as agents of change, strengthen the informal sector with an emphasis on supporting micro and small sized enterprises, indigenous technologies, and mobilizing local financing. The African Development Foundation should develop and implement strategies for promoting participation in the socioeconomic development process of grassroots and informal

sector groups such as nongovernmental organizations, cooperatives, artisans, and traders into the programs and initiatives established under this title,

(c) Additional Authorities:

(1) IN GENERAL: Section 496(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2293(h)) is amended:

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following:

“(3) DEMOCRATIZATION AND CONFLICT RESOLUTION CAPABILITIES: Assistance under this section may also include program assistance:

“(A) to promote democratization, good governance, and strong civil societies in sub-Saharan Africa; and

“(B) to strengthen conflict resolution capabilities of governmental, intergovernmental, and non-governmental entities in sub-Saharan Africa.”.

(2) CONFORMING AMENDMENT: Section 496(h)(4) of such Act, as amended by paragraph (1), is further amended by striking “paragraphs (1) and (2)” in the first sentence and inserting “paragraphs (1), (2), and (3)”.

SECTION 128: ASSISTANCE FROM UNITED STATES PRIVATE SECTOR TO PREVENT AND REDUCE HIV/AIDS IN SUB-SAHARAN AFRICA

It is the sense of the Congress that United States businesses should be encouraged to provide assistance to sub-Saharan African countries to prevent and reduce the incidence of HIV/AIDS in sub-Saharan Africa. In providing such assistance, United States businesses should be encouraged to consider the establishment of an HIV/AIDS Response Fund in order to provide for coordination among such businesses in the collection and distribution of the assistance to sub-Saharan African countries.

SECTION 129: SENSE OF THE CONGRESS RELATING TO HIV/AIDS CRISIS IN SUB-SAHARAN AFRICA

(a) Findings: The Congress finds the following:

- (1) Sustained economic development in sub-Saharan Africa depends in large measure upon successful trade with and foreign assistance to the countries of sub-Saharan Africa.
- (2) The HIV/AIDS crisis has reached epidemic proportions in sub-Saharan Africa, where more than 21,000,000 men, women, and children are infected with HIV.
- (3) Eighty-three percent of the estimated 11,700,000 deaths from HIV/AIDS worldwide have been in sub-Saharan Africa.

(4) The HIV/AIDS crisis in sub-Saharan Africa is weakening the structure of families and societies.

(5)

(A) The HIV/AIDS crisis threatens the future of the workforce in sub-Saharan Africa.

(B) Studies show that HIV/AIDS in sub-Saharan Africa most severely affects individuals between the ages of 15 and 49: the age group that provides the most support for the economies of sub-Saharan African countries.

(6) Clear evidence demonstrates that HIV/AIDS is destructive to the economies of sub-Saharan African countries.

(7) Sustained economic development is critical to creating the public and private sector resources in sub-Saharan Africa necessary to fight the HIV/AIDS epidemic.

(b) Sense of the Congress: It is the sense of the Congress that:

(1) addressing the HIV/AIDS crisis in sub-Saharan Africa should be a central component of United States foreign policy with respect to sub-Saharan Africa;

(2) significant progress needs to be made in preventing and treating HIV/AIDS in sub-Saharan Africa in order to sustain a mutually beneficial trade relationship between the United States and sub-Saharan African countries; and

(3) the HIV/AIDS crisis in sub-Saharan Africa is a global threat that merits further attention through greatly expanded public, private, and joint public-private efforts, and through appropriate United States legislation.

SECTION 130: STUDY ON IMPROVING AFRICAN AGRICULTURAL PRACTICES

(a) In General: The Secretary of Agriculture, in consultation with American Land Grant Colleges and Universities and not-for-profit international organizations, is authorized to conduct a 2-year study on ways to improve the flow of American farming techniques and practices to African farmers. The study shall include an examination of ways of improving or utilizing:

(1) knowledge of insect and sanitation procedures;

(2) modern farming and soil conservation techniques;

(3) modern farming equipment (including maintaining the equipment);

(4) marketing crop yields to prospective purchasers; and

(5) crop maximization practices.

The Secretary of Agriculture shall submit the study to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than September 30, 2001.

(b) Land Grant Colleges and Not-For-Profit Institutions: In conducting the study under subsection (a), the Secretary of Agriculture is encouraged to consult with American Land Grant Colleges and not-for-profit international organizations that have firsthand knowledge of current African farming practices.

SECTION 131: SENSE OF THE CONGRESS REGARDING EFFORTS TO COMBAT DESERTIFICATION IN AFRICA AND OTHER COUNTRIES

(a) Findings: The Congress finds that:

- (1) desertification affects approximately one-sixth of the world's population and one-quarter of the total land area;
- (2) over 1,000,000 hectares of Africa are affected by desertification;
- (3) dryland degradation is an underlying cause of recurrent famine in Africa;
- (4) the United Nations Environment Programme estimates that desertification costs the world \$42,000,000,000 a year, not including incalculable costs in human suffering; and
- (5) the United States can strengthen its partnerships throughout Africa and other countries affected by desertification, help alleviate social and economic crises caused by misuse of natural resources, and reduce dependence on foreign aid, by taking a leading role to combat desertification.

(b) Sense of the Congress: It is the sense of the Congress that the United States should expeditiously work with the international community, particularly Africa and other countries affected by desertification, to:

- (1) strengthen international cooperation to combat desertification;
- (2) promote the development of national and regional strategies to address desertification and increase public awareness of this serious problem and its effects;
- (3) develop and implement national action programs that identify the causes of desertification and measures to address it; and
- (4) recognize the essential role of local governments and non-governmental organizations in developing and implementing measures to address desertification.

TITLE II: TRADE BENEFITS FOR CARIBBEAN BASIN

Subtitle A: Trade Policy for Caribbean Basin Countries

SECTION 201: SHORT TITLE

This title may be cited as the "United States-Caribbean Basin Trade Partnership Act".

SECTION 202: FINDINGS AND POLICY

(a) Findings: Congress makes the following findings:

- (1) The Caribbean Basin Economic Recovery Act (in this title referred to as "CBERA") represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin.

- (2) In 1998, Hurricane Mitch and Hurricane Georges devastated areas in the Caribbean Basin region, killing more than 10,000 people and leaving 3,000,000 homeless.
- (3) The total direct impact of Hurricanes Mitch and Georges on Honduras, Nicaragua, the Dominican Republic, El Salvador, and Guatemala amounts to \$4,200,000,000, representing a severe loss to income levels in this underdeveloped region.
- (4) In addition to short term disaster assistance, United States policy toward the region should focus on expanding international trade with the Caribbean Basin region as an enduring solution for successful economic growth and recovery.
- (5) Thirty-four democratically elected leaders agreed at the 1994 Summit of the Americas to conclude negotiation of a Free Trade Area of the Americas (in this title referred to as "FTAA") by the year 2005.
- (6) The economic security of the countries in the Caribbean Basin will be enhanced by the completion of the FTAA.
- (7) Offering temporary benefits to Caribbean Basin countries will preserve the United States commitment to Caribbean Basin beneficiary countries, promote the growth of free enterprise and economic opportunity in these neighboring countries, and thereby enhance the national security interests of the United States.
- (8) Given the greater propensity of countries located in the Western Hemisphere to use United States components and to purchase United States products compared to other countries, increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.

(b) Policy: It is the policy of the United States:

- (1) to offer Caribbean Basin beneficiary countries willing to prepare to become a party to the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA; and
- (2) to seek the participation of Caribbean Basin beneficiary countries in the FTAA or another free trade agreement at the earliest possible date, with the goal of achieving full participation in such agreement not later than 2005.

SECTION 203: DEFINITIONS

In this title:

- (1) **NAFTA:** The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.
- (2) **NAFTA COUNTRY:** The term "NAFTA country" means any country with respect to which the NAFTA is in force.
- (3) **WTO AND WTO MEMBER:** The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

Subtitle B: Trade Benefits for Caribbean Basin Countries

**SECTION 211: TEMPORARY PROVISIONS TO PROVIDE
ADDITIONAL TRADE BENEFITS TO CERTAIN BENEFICIARY
COUNTRIES**

(a) Temporary Provisions: Section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)) is amended to read as follows:

“(b) IMPORT-SENSITIVE ARTICLES:

“(1) IN GENERAL: Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to:

“(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

“(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

“(C) tuna, prepared or preserved in any manner, in airtight containers;

“(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

“(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

“(F) articles to which reduced rates of duty apply under subsection (h).

“(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES:

“(A) ARTICLES COVERED: During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

“(i) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES: Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are:

“(I) entered under subheading 9802.00.80 of the HTS; or

“(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under

subheading 9802.00.80 of the HTS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, permapressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

- “(ii) APPAREL ARTICLES CUT AND ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES: Apparel articles cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States), if such articles are assembled in one or more such countries with thread formed in the United States,
- “(iii) CERTAIN KNIT APPAREL ARTICLES: (I) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than t-shirts described in sub-clause (III)) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more CBTPA beneficiary countries), in an amount not exceeding the amount set forth in subclause (II).
- “(II) The amount referred to in sub-clause (I) is: “(aa) 250,000,000 square meter equivalents during the 1-year period beginning on October 1, 2000, increased by 16 percent, compounded annually, in each succeeding 1-year period through September 30, 2004; and
- “(bb) in each 1-year period thereafter through September 30, 2008, the amount in effect for the 1-year period ending on September 30, 2004, or such other amount as may be provided by law.
- “(III) T-shirts, other than underwear, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (IV).
- “(IV) the amount referred to in sub-clause (III) is:
- “(aa) 4,200,000 dozen during the 1-year period beginning on October 1, 2000, increased by 16 percent, compounded

annually, in each succeeding 1-year period through September 30, 2004; and

“(bb) in each 1-year period thereafter, the amount in effect for the 1-year period ending on September 30, 2004, or such other amount as may be provided by law.

“(V) It is the sense of the Congress that the Congress should determine, based on the record of expansion of exports from the United States as a result of the preferential treatment of articles under this clause, the percentage by which the amount provided in sub clauses (II) and (IV) should be compounded for the 1-year periods occurring after the 1-year period ending on September 30, 2004.

“(iv) CERTAIN OTHER APPAREL ARTICLES: (I) Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.

“(II) During the 1-year period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

“(III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

“(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL

QUANTITIES: (I) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA.

- “(II) At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under subclause (I) if:
- “(aa) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;
- “(bb) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;
- “(cc) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under division (bb);
- “(dd) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of division (cc), has expired; and
- “(ee) the President has consulted with such committees regarding the proposed action during the period referred to in division (cc).

“(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES: A handloomed, handmade, or folklore article of a CBTPA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country,

“(vii) SPECIAL RULES:

“(I) EXCEPTION FOR FINDINGS AND TRIMMINGS: (aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, ‘bow buds’, decorative lace, trim, elastic strips,

zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

“(bb) In the case of an article described in clause (ii) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

“(II) CERTAIN INTERLINING: (aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

“(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, ‘hymo’ piece, or ‘sleeve header’, of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments,

“(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

“(III) DE MINIMIS RULE: An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries shall not be ineligible for such treatment if the total weight of all such fibers or yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

“(IV) SPECIAL ORIGIN RULE: An article otherwise eligible for preferential treatment under clause (i) or (ii) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

“(viii) TEXTILE LUGGAGE: Textile luggage:

“(I) assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

“(II) assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

“(B) PREFERENTIAL TREATMENT: Except as provided in subparagraph (E), during the transition period, the articles to which this subparagraph applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

“(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES: For purposes of subparagraph (A)(vi), the President shall consult with representatives of the CBTPA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

“(D) PENALTIES FOR TRANSSHIPMENTS:

“(i) PENALTIES FOR EXPORTERS: If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from a CBTPA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years,

“(ii) PENALTIES FOR COUNTRIES: Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the CBTPA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the trans-shipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

“(iii) TRANSSHIPMENT DESCRIBED: Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if

disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

“(E) BILATERAL EMERGENCY ACTIONS:

“(i) IN GENERAL: The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from a CBTPA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

“(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION: For purposes of applying bilateral emergency action under this subparagraph:

“(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

“(II) the term ‘transition period’ in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

“(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the CBTPA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

“(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES:

“(A) EQUIVALENT TARIFF TREATMENT:

“(i) IN GENERAL: Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a CBTPA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States,

“(ii) EXCEPTION: Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

“(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS: If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period)

apply with respect to any article under subsection (h) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

“(4) CUSTOMS PROCEDURES:

“(A) IN GENERAL:

“(i) REGULATIONS: Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury,

“(ii) DETERMINATION:

“(I) IN GENERAL: In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II):

“(aa) has implemented and follows; or

“(bb) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

“(II) COUNTRY DESCRIBED: A country is described in this subclause if it is a CBTPA beneficiary country:

“(aa) from which the article is exported; or

“(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

“(B) CERTIFICATE OF ORIGIN: The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

“(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION: The United States Commissioner of Customs shall conduct a study analyzing the extent to which each CBTPA beneficiary country:

- “(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, trans-shipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;
- “(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and
- “(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2001, a report on the study conducted under this subparagraph.

“(5) DEFINITIONS AND SPECIAL RULES: For purposes of this subsection:

“(A) ANNEX: The term ‘the Annex’ means Annex 300-B of the NAFTA.

“(B) CBTPA BENEFICIARY COUNTRY: The term ‘CBTPA beneficiary country’ means any ‘beneficiary country’, as defined in section 212(a)(1)(A) of this title, which the President designates as a CBTPA beneficiary country, taking into account the criteria contained in subsections (b) and (c) of section 212 and other appropriate criteria, including the following:

“(i) Whether the beneficiary country has demonstrated a commitment to:

“(I) undertake its obligations under the WTO, including those agreements listed in section 101 (d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

“(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

“(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

“(iii) The extent to which the country provides internationally recognized worker rights, including:

- “(I) the right of association;
- “(II) the right to organize and bargain collectively;
- “(III) a prohibition on the use of any form of forced or compulsory labor;
- “(IV) a minimum age for the employment of children; and
- “(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;
- “(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.
- “(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.
- “(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption,
- “(vii) The extent to which the country:
- “(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and
- “(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

“(C) CBTPA ORIGINATING GOOD:

- “(i) IN GENERAL: The term ‘CBTPA originating good’ means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.
- “(ii) APPLICATION OF CHAPTER 4: In applying chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of this subsection:
- “(I) no country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;
- “(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a CBTPA beneficiary country;
- “(III) any reference to a party shall be deemed to refer to a CBTPA beneficiary country or the United States; and

“(IV) any reference to parties shall be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination thereof).

“(D) TRANSITION PERIOD: The term ‘transition period’ means, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of:

“(i) September 30, 2008; or

“(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the CBTPA beneficiary country.

“(E) CBTPA: The term ‘CBTPA’ means the United States-Caribbean Basin Trade Partnership Act.

“(F) FTAA: The term ‘FTAA’ means the Free Trade Area of the Americas.”.

(b) Determination Regarding Retention of Designation: Section 212(e) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(e)) is amended:

(1) in paragraph (1):

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting “(A)” after “(1)”; and

(C) by adding at the end the following:

“(B) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met:

“(i) withdraw or suspend the designation of any country as a CBTPA beneficiary country; or

“(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b)(2) and (3) to any article of any country, if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(B).”; and

(2) by adding after paragraph (2) the following new paragraph:

“(3) If preferential treatment under section 213(b)(2) and (3) is withdrawn, suspended, or limited with respect to a CBTPA beneficiary country, such country shall not be deemed to be a ‘party’ for the purposes of applying section 213(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.”.

(c) Reporting Requirements:

- (1) Section 212(f) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(f)) is amended to read as follows:

“(f) REPORTING REQUIREMENTS:

“(1) IN GENERAL: Not later than December 31, 2001, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including:

“(A) with respect to subsections (b) and (c), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

“(B) the performance of each beneficiary country or CBTPA beneficiary country, as the case may be, under the criteria set forth in section 213(b)(5)(B).

“(2) PUBLIC COMMENT: Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 213(b)(5)(B).”.

- (2) Section 203(f) of the Andean Trade Preference Act (19 U.S.C. 3202(f)) is amended:

(A) by striking “TRIENNIAL REPORT” in the heading and inserting “REPORT”; and

(B) by striking “On or before” and all that follows through “enactment of this title” and inserting “Not later than January 31, 2001”.

(d) International Trade Commission Reports:

- (1) Section 215(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2704(a)) is amended to read as follows:

“(a) REPORTING REQUIREMENT:

“(1) IN GENERAL: The United States International Trade Commission (in this section referred to as the ‘Commission’) shall submit to Congress and the President biennial reports regarding the economic impact of this title on United States industries and consumers and on the economy of the beneficiary countries.

“(2) FIRST REPORT: The first report shall be submitted not later than September 30, 2001.

“(3) TREATMENT OF PUERTO RICO, ETC: For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular

possessions of the United States are considered to be United States industries.”.

- (2) Section 206(a) of the Andean Trade Preference Act (19 U.S.C. 3204(a)) is amended to read as follows:

“(a) REPORTING REQUIREMENTS:

- “(1) IN GENERAL: The United States International Trade Commission (in this section referred to as the ‘Commission’) shall submit to Congress and the President biennial reports regarding the economic impact of this title on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries.
- “(2) SUBMISSION: During the period that this title is in effect, the report required by paragraph (1) shall be submitted on December 31 of each year that the report required by section 215 of the Caribbean Basin Economic Recovery Act is not submitted.
- “(3) TREATMENT OF PUERTO RICO, ETC: For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are considered to be United States industries.”,

(e) Technical and Conforming Amendments:

(1) IN GENERAL:

- (A) Section 211 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701) is amended by inserting “(or other preferential treatment)” after “treatment”.
- (B) Section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)) is amended by inserting “and except as provided in subsection (b)(2) and (3),” after “Tax Reform Act of 1986,”.

- (2) DEFINITIONS: Section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)) is amended by adding at the end the following new subparagraphs:

- “(D) The term ‘NAFTA’ means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.
- “(E) The terms ‘WTO’ and ‘WTO member’ have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).”.

**SECTION 212: DUTY-FREE TREATMENT FOR CERTAIN
BEVERAGES MADE WITH CARIBBEAN RUM**

Section 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) is amended:

- (1) in paragraph (5), by striking “chapter” and inserting “title”; and
- (2) by adding at the end the following new paragraph:

“(6) Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if:

- “(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;
- “(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;
- “(C) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and
- “(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.”.

SECTION 213: MEETINGS OF TRADE MINISTERS AND USTR

- (a) Schedule of Meetings: The President shall take the necessary steps to convene a meeting with the trade ministers of the CBTPA beneficiary countries in order to establish a schedule of regular meetings, to commence as soon as is practicable, of the trade ministers and the Trade Representative, for the purpose set forth in subsection (b).
- (b) Purpose: The purpose of the meetings scheduled under subsection (a) is to reach agreement between the United States and CBTPA beneficiary countries on the likely timing and procedures for initiating negotiations for CBTPA beneficiary countries to enter into mutually advantageous free trade agreements with the United States that contain provisions comparable to those in the NAFTA and would make substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)).
- (c) Definition: In this section, the term “CBTPA beneficiary country” has the meaning given that term in section 213(b)(5)(B) of the Caribbean Basin Economic Recovery Act.

TITLE III: NORMAL TRADE RELATIONS

SECTION 301: NORMAL TRADE RELATIONS FOR ALBANIA

(a) Findings: Congress makes the following findings:

- (1) Albania has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.
- (2) Since its emergence from communism, Albania has made progress toward democratic rule and the creation of a free-market economy.
- (3) Albania has concluded a bilateral investment treaty with the United States.
- (4) Albania has demonstrated a strong desire to build a friendly relationship with the United States and has been very cooperative with NATO and the international community during and after the Kosova crisis.
- (5) The extension of unconditional normal trade relations treatment to the products of Albania will enable the United States to avail itself of all rights under the World Trade Organization with respect to Albania when that country becomes a member of the World Trade Organization.

(b) Termination of Application of Title IV of the Trade Act of 1974 to Albania:

- (1) **PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT:** Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may:
 - (A) determine that such title should no longer apply to Albania; and
 - (B) after making a determination under subparagraph (A) with respect to Albania, proclaim the extension of non-discriminatory treatment (normal trade relations treatment) to the products of that country.
- (2) **TERMINATION OF APPLICATION OF TITLE IV:** On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Albania, title IV of the Trade Act of 1974 shall cease to apply to that country.

SECTION 302: NORMAL TRADE RELATIONS FOR KYRGYZSTAN

(a) Findings: Congress makes the following findings:

- (1) Kyrgyzstan has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.
- (2) Since its independence from the Soviet Union in 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system.
- (3) Kyrgyzstan concluded a bilateral investment treaty with the United States in 1994.
- (4) Kyrgyzstan has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

- (5) The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will enable the United States to avail itself of all rights under the World Trade Organization with respect to Kyrgyzstan.

(b) Termination of Application of Title IV of the Trade Act of 1974 to Kyrgyzstan:

- (1) **PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT:** Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may:

- (A) determine that such title should no longer apply to Kyrgyzstan; and
- (B) after making a determination under subparagraph (A) with respect to Kyrgyzstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

- (2) **TERMINATION OF APPLICATION OF TITLE IV:** On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kyrgyzstan, title IV of the Trade Act of 1974 shall cease to apply to that country.

TITLE IV: OTHER TRADE PROVISIONS

SECTION 401: REPORT ON EMPLOYMENT AND TRADE ADJUSTMENT ASSISTANCE

- (a) **In General:** Not later than 9 months after the date of the enactment of this section, the Comptroller General of the United States shall submit to Congress a report regarding the efficiency and effectiveness of Federal and State coordination of employment and retraining activities associated with the following programs and legislation:
 - (1) Trade adjustment assistance (including NAFTA trade adjustment assistance) provided for under title II of the Trade Act of 1974.
 - (2) The Job Training Partnership Act.
 - (3) The Workforce Investment Act of 1998.
 - (4) Unemployment insurance.
- (b) **Period Covered:** The report shall cover the activities involved in the programs and legislation listed in subsection (a) from January 1, 1994, to December 31, 1999.
- (c) **Data and Recommendations:** The report shall at a minimum include specific data and recommendations regarding:
 - (1) the compatibility of program requirements related to the employment and retraining of dislocated workers in the United States, with particular emphasis on the trade adjustment assistance programs provided for under title II of the Trade Act of 1974;
 - (2) the compatibility of application procedures related to the employment and retraining of dislocated workers in the United States;

- (3) the capacity of the programs in addressing foreign trade and the transfer of production to other countries on workers in the United States measured in terms of loss of employment and wages;
- (4) the capacity of the programs in addressing foreign trade and the transfer of production to other countries on secondary workers in the United States measured in terms of loss of employment and wages;
- (5) how the impact of foreign trade and the transfer of production to other countries would have changed the number of beneficiaries covered under the trade adjustment assistance program if the trade adjustment assistance program covered secondary workers in the United States; and
- (6) the effectiveness of the programs described in subsection (a) in achieving reemployment of United States workers and maintaining wage levels of United States workers who have been dislocated as a result of foreign trade and the transfer of production to other countries.

SECTION 402: TRADE ADJUSTMENT ASSISTANCE

- (a) Certification of Eligibility for Workers Required for Decommissioning or Closure of Facility:
 - (1) IN GENERAL: Notwithstanding any other provision of law or any decision by the Secretary of Labor denying certification or eligibility for certification for adjustment assistance under title II of the Trade Act of 1974, a qualified worker described in paragraph (2) shall be certified by the Secretary as eligible to apply for adjustment assistance under such title II.
 - (2) QUALIFIED WORKER: For purposes of this subsection, a “qualified worker” means a worker who:
 - (A) was determined to be covered under Trade Adjustment Assistance Certification TA-W-28,438; and
 - (B) was necessary for the decommissioning or closure of a nuclear power facility.
- (b) Effective Date: The amendment made by this section shall take effect on the date of the enactment of this Act.

SECTION 403: RELIQUIDATION OF CERTAIN NUCLEAR FUEL ASSEMBLIES

- (a) In General: Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Secretary of the Treasury not later than 90 days after the date of the enactment of this Act, the Secretary shall:
 - (1) reliquidate as free of duty the entries listed in sub-section (b); and
 - (2) refund any duties paid with respect to such entries as shown on Customs Service Collection Receipt Number 527006753.
- (b) Entries: The entries referred to in subsection (a) are as follows:

ENTRY NUMBER	DATE OF ENTRY
062-2320014-5	January 16, 1996
062-2320085-5	February 13, 1996
839-4030989-7	November 25, 1996
839-4031053-1	December 2, 1996
839-4031591-0	January 21, 1997.

SECTION 404: REPORTS TO THE FINANCE AND WAYS AND MEANS COMMITTEES

- (a) Reports Regarding Initiatives to Update the International Monetary Fund: Section 607 of the Foreign Operations, Export Financing, and Related Appropriations Act, 1999 (as contained in section 101 (d) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105-277; 112 Stat. 2681-224), relating to international financial programs and reform, is amended:
- (1) by inserting “Finance,” after “Foreign Relations,”; and
 - (2) by inserting “, Ways and Means,” before “and Banking and Financial Services”.
- (b) Reports on Financial Stabilization Programs: Section 1704(b) of the International Financial Institutions Act (22 U.S.C. 262r-3(b)) is amended to read as follows:
- “(b) TIMING: Not later than March 15, 1999, and semiannually thereafter, the Secretary of the Treasury shall submit to the Committees on Banking and Financial Services, Ways and Means, and International Relations of the House of Representatives and the Committees on Finance, Foreign Relations, and Banking, Housing, and Urban Affairs of the Senate a report on the matters described in subsection (a).”.
- (c) Annual Report on the State of the International Financial System, IMF Reform, and Compliance with IMF Agreements: Section 1705(a) of the International Financial Institutions Act (22 U.S.C. 262r-4(a)) is amended by striking “Committee on Banking and Financial Services of the House of Representatives and the Committee on Foreign Relations of the Senate” and inserting “Committees on Banking and Financial Services and on Ways and Means of the House of Representatives and the Committees on Finance and on Foreign Relations of the Senate”.
- (d) Audits of the IMF: Section 1706(a) of the International Financial Institutions Act (22 U.S.C. 262r-5(a)) is amended by striking “Committee on Banking and Financial Services of the House of Representatives and the Committee on Foreign Relations of the Senate” and inserting “Committees on Banking and Financial Services and on Ways and Means of the House of Representatives and the Committees on Finance and on Foreign Relations of the Senate”.
- (e) Report on Protection of Borders against Drug Traffic: Section 629 of the Treasury and General Government Appropriations Act, 1999 (as contained in section 101(h) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations

Act, 1999) (Public Law 105–277; 112 Stat. 2681– 522), relating to general provisions, is amended by adding at the end the following new paragraph:

“(3) For purposes of paragraph (1), the term ‘appropriate congressional committees’ includes the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”.

SECTION 405: CLARIFICATION OF SECTION 334 OF THE URUGUAY ROUND AGREEMENTS ACT

(a) In General: Section 334(b)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3592(b)(2)) is amended:

- (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;
- (2) in the matter preceding clause (i) (as redesignated), by striking “Notwithstanding paragraph (1)(D)” and inserting “(A) Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (B) and (C)”;
- (3) by adding at the end the following:

“(B) Notwithstanding paragraph (1)(C), fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

“(C) Notwithstanding paragraph (1)(D), goods classified under HTS heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.”.

(b) Effective Date: The amendments made by this section apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.

SECTION 406: CHIEF AGRICULTURAL NEGOTIATOR

Section 141 of the Trade Act of 1974 (19 U.S.C. 2171) is amended:

- (1) by amending subsection (b)(2) to read as follows:

“(2) There shall be in the Office three Deputy United States Trade Representatives and one Chief Agricultural Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rule-making power of the Senate, any nomination of a Deputy United States Trade Representative or the Chief Agricultural Negotiator submitted to the Senate for its advice and consent, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative and the Chief Agricultural Negotiator shall hold office at the pleasure of the President and shall have the rank of Ambassador.”; and

(2) in subsection (c), by adding at the end the following new paragraph:

“(5) The principal function of the Chief Agricultural Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States agricultural products and services. The Chief Agricultural Negotiator shall be a vigorous advocate on behalf of United States agricultural interests. The Chief Agricultural Negotiator shall perform such other functions as the United States Trade Representative may direct.”.

SECTION 407: REVISION OF RETALIATION LIST OR OTHER REMEDIAL ACTION

Section 306(b)(2) of the Trade Act of 1974 (19 U.S.C. 2416(b)(2)) is amended:

(1) by striking “If the” and inserting the following:

“(A) FAILURE TO IMPLEMENT RECOMMENDATION: If the”; and

(2) by adding at the end the following:

“(B) REVISION OF RETALIATION LIST AND ACTION:

“(i) IN GENERAL: Except as provided in clause (ii), in the event that the United States initiates a retaliation list or takes any other action described in section 301(c)(1)(A) or (B) against the goods of a foreign country or countries because of the failure of such country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

“(ii) EXCEPTION: The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if:

“(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

“(II) the Trade Representative together with the petitioner involved in the initial investigation under this chapter (or if no petition was filed, the

affected United States industry) agree that it is unnecessary to revise the retaliation list.

- “(C) SCHEDULE FOR REVISING LIST OR ACTION: The Trade Representative shall, 120 days after the date the retaliation list or other section 301 (a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.
- “(D) STANDARDS FOR REVISING LIST OR ACTION: In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this chapter.
- “(E) RETALIATION LIST: The term ‘retaliation list’ means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.
- “(F) REQUIREMENT TO INCLUDE RECIPROCAL GOODS ON RETALIATION LIST: The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement.”.

SECTION 408: REPORT ON TRADE ADJUSTMENT ASSISTANCE FOR AGRICULTURAL COMMODITY PRODUCERS

- (a) In General: Not later than 4 months after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that:
- (1) examines the applicability to agricultural commodity producers of trade adjustment assistance programs established under title II of the Trade Act of 1974; and
 - (2) sets forth recommendations to improve the operation of those programs as the programs apply to agricultural commodity producers or to establish a new trade adjustment assistance program for agricultural commodity producers.
- (b) Contents: In preparing the report required by subsection (a), the Secretary of Labor shall:
- (1) assess the degree to which the existing trade adjustment assistance programs address the adverse effects on agricultural commodity producers due to price

suppression caused by increased imports of like or directly competitive agricultural commodities; and

- (2) examine the effectiveness of the program benefits authorized under subchapter B of chapter 2 and chapter 3 of title II of the Trade Act of 1974 in remedying the adverse effects, including price suppression, caused by increased imports of like or directly competitive agricultural commodities.

(c) Definitions: In this section:

- (1) **AGRICULTURAL COMMODITY:** The term “agricultural commodity” means any agricultural commodity, including live-stock, fish or harvested seafood in its raw or natural state.
- (2) **AGRICULTURAL COMMODITY PRODUCER:** The term “agricultural commodity producer” means any person who is engaged in the production and sale of an agricultural commodity in the United States and who owns or shares the ownership and risk of loss of the agricultural commodity.

SECTION 409: AGRICULTURAL TRADE NEGOTIATING OBJECTIVES AND CONSULTATIONS WITH CONGRESS

(a) Findings: Congress finds that:

- (1) United States agriculture contributes positively to the United States balance of trade and United States agricultural exports support in excess of 1,000,000 United States jobs;
- (2) United States agriculture competes successfully worldwide despite the fact that United States producers are at a competitive disadvantage because of the trade distorting support and subsidy practices of other countries and despite the fact that significant tariff and non-tariff barriers exist to United States exports; and
- (3) a successful conclusion of the current World Trade Organization agricultural negotiations is critically important to the United States agricultural sector.

(b) Objectives: The agricultural trade negotiating objectives of the United States with respect to the current World Trade Organization agricultural negotiations include as matters of the highest priority:

- (1) the expeditious elimination of all export subsidies world-wide while maintaining bona fide food aid and preserving United States market development and export credit programs that allow the United States to compete with other foreign export promotion efforts;
- (2) leveling the playing field for United States producers of agricultural products by eliminating blue box subsidies and disciplining domestic supports in a way that forces producers to face world prices on all production in excess of domestic food security needs while allowing the preservation of nontrade distorting programs to support family farms and rural communities;
- (3) the elimination of state trading enterprises or the adoption of rigorous disciplines that ensure operational transparency, competition, and the end of discriminatory

pricing practices, including policies supporting cross-subsidization and price undercutting in export markets;

- (4) affirming that the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures applies to new technologies, including biotechnology, and that labeling requirements to allow consumers to make choices regarding biotechnology products or other regulatory requirements may not be used as disguised barriers to trade;
- (5) increasing opportunities for United States exports of agricultural products by reducing tariffs to the same levels that exist in the United States or to lower levels and by eliminating all non-tariff barriers, including:
 - (A) restrictive or trade distorting practices, including those that adversely impact perishable or cyclical products;
 - (B) restrictive rules in the administration of tariff-rate quotas; and
 - (C) other barriers to agriculture trade, including unjustified restrictions or commercial requirements affecting new technologies, including biotechnology;
- (6) eliminating government policies that create price-depressing surpluses; and
- (7) strengthening dispute settlement procedures to ensure prompt compliance by foreign governments with their World Trade Organization obligations including commitments not to maintain unjustified restrictions on United States exports.

(c) Consultation with Congressional Committees:

- (1) **CONSULTATION BEFORE OFFER MADE:** In developing and before submitting an initial or revised negotiating proposal that would reduce United States tariffs on agricultural products or require a change in United States agricultural law, the United States Trade Representative shall consult with the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate and the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives.
- (2) **CONSULTATION WITH CONGRESSIONAL TRADE ADVISERS:** Prior to and during the course of current negotiations on agricultural trade, the United States Trade Representative shall consult closely with the congressional trade advisers.
- (3) **CONSULTATION BEFORE AGREEMENT INITIALED:** Not less than 48 hours before initialing an agreement reached as part of current World Trade Organization agricultural negotiations, the United States Trade Representative shall consult closely with the committees referred to in paragraph (1) regarding:
 - (A) the details of the agreement;
 - (B) the potential impact of the agreement on United States agricultural producers; and
 - (C) any changes in United States law necessary to implement the agreement.
- (4) **DISCLOSURE OF COMMITMENTS:** Any agreement or other understanding addressing agricultural trade with a foreign government or governments (whether oral or in writing) that relates to a trade agreement with respect to which Congress must enact implementing legislation and that is not disclosed to Congress before legislation implementing that agreement is introduced in either House of Congress

shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.

(d) Sense of the Congress: It is the sense of the Congress that:

- (1) granting the President trade negotiating authority is essential to the successful conclusion of the new round of World Trade Organization agricultural negotiations;
- (2) reaching a successful agreement on agriculture should be the top priority of United States negotiators; and
- (3) if by the conclusion of the negotiations, the primary agricultural competitors of the United States do not agree to reduce their trade distorting domestic supports and eliminate export subsidies in accordance with the negotiating objectives expressed in this section, the United States should take steps to increase the leverage of United States negotiators and level the playing field for United States producers.

SECTION 410: ENTRY PROCEDURES FOR FOREIGN TRADE ZONE OPERATIONS

(a) In General: Section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) is amended by adding at the end the following new subsection:

“(i) SPECIAL RULE FOR FOREIGN TRADE ZONE OPERATIONS:

“(1) IN GENERAL: Notwithstanding any other provision of law and except as provided in paragraph (3), all merchandise (including merchandise of different classes, types, and categories), withdrawn from a foreign trade zone during any 7-day period, shall, at the option of the operator or user of the zone, be the subject of a single estimated entry or release filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone. The estimated entry or release shall be treated as a single entry and a single release of merchandise for purposes of section 13031 (a)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)(A)) and all fee exclusions and limitations of such section 13031 shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(8)(A)(i) of such section. The entry summary for the estimated entry or release shall cover only the merchandise actually withdrawn from the foreign trade zone during the 7-day period.

“(2) OTHER REQUIREMENTS: The Secretary of the Treasury may require that the operator or user of the zone:

“(A) use an electronic data interchange approved by the Customs Service:

“(i) to file the entries described in paragraph (1); and

“(ii) to pay the applicable duties, fees, and taxes with respect to the entries; and

“(B) satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

“(3) EXCEPTION: The provisions of paragraph (1) shall not apply to merchandise the entry of which is prohibited by law or merchandise for which the filing of an entry summary is required before the merchandise is released from customs custody.

“(4) FOREIGN TRADE ZONE; ZONE: In this subsection, the terms ‘foreign trade zone’ and ‘zone’ mean a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).”.

(b) Effective Date: The amendment made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

SECTION 411: GOODS MADE WITH FORCED OR INDENTURED CHILD LABOR

(a) In General: Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended by adding at the end the following new sentence: “For purposes of this section, the term ‘forced labor or/and indentured labor’ includes forced or indentured child labor.”.

(b) Effective Date: The amendment made by this section shall take effect on the date of the enactment of this Act.

SECTION 412: WORST FORMS OF CHILD LABOR

(a) In General: Section 502(b)(2) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)) is amended:

(1) by inserting after subparagraph (G) the following new subparagraph:

“(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.”; and

(2) in the flush paragraph at the end, by striking “and (G)” and inserting “(G), and (H) (to the extent described in section 507(6)(D))”.

(b) Definition of Worst Forms of Child Labor: Section 507 of the Trade Act of 1974 (19 U.S.C. 2467) is amended by adding at the end the following new paragraph:

“(6) WORST FORMS OF CHILD LABOR: The term ‘worst forms of child labor’ means:

“(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

- “(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;
- “(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and
- “(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.”.

- (c) Annual Report: Section 504 of the Trade Act of 1974 (19 U.S.C. 2464) is amended by inserting “, including the findings of the Secretary of Labor with respect to the beneficiary country’s implementation of its international commitments to eliminate the worst forms of child labor” before the end period.

TITLE V: IMPORTS OF CERTAIN WOOL ARTICLES

SECTION 501: TEMPORARY DUTY REDUCTIONS

- (a) Certain Worsted Wool Fabrics with Average Fiber Diameters greater than 18.5 Micron:
- (1) IN GENERAL: Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:
 - “9902.51.11 Fabrics, of worsted wool, with average fiber diameters greater than 18.5 micron, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90) 19.3% No change No change On or before 12/31/2003”.
 - (2) STAGED RATE REDUCTIONS: Any staged rate reduction of a rate of duty set forth in subheading 6203.31.00 of the Harmonized Tariff Schedule of the United States that is pro-claimed by the President shall also apply to the corresponding rate of duty set forth in heading 9902.51.11 of such Schedule, as added by paragraph (1).
- (b) Certain Worsted Wool Fabrics with Average Fiber Diameters of 18.5 Micron or less:
- (1) IN GENERAL: Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:
 - “9902.51.12 Fabrics, of worsted wool, with average fiber diameters of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suittype jackets, or trousers (provided for in subheading 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90) 6% No change No change On or before 12/31/2003”.

(2) **EQUALIZATION WITH CANADIAN DUTY RATES:** The President is authorized to proclaim a reduction in the rate of duty applicable to imports of worsted wool fabrics classified under subheading 9902.51.12 of the Harmonized Tariff Schedule of the United States, as added by paragraph (1), that is necessary to equalize such rate of duty with the most favored nation rate of duty applicable to imports of worsted wool fabrics of the kind described in such subheading imported into Canada.

(c) **Definitions:** The U.S. Notes to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States are amended by adding at the end the following:

“13. For purposes of headings 9902.51.11 and 9902.51.12, the term ‘suit’ has the meaning given such term under note 3(a) of chapter 62 for purposes of headings 6203 and 6204.

“14. For purposes of headings 9902.51.11 and 9902.51.12, the term ‘making’ means cut and sewn in the United States.”.

(d) **Limitation on Quantity of Imports:** The U.S. Notes to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States, as amended by subsection (c), are further amended by adding at the end the following:

“15. The aggregate quantity of worsted wool fabrics entered under heading 9902.51.11 from January 1 to December 31 of each year, inclusive, shall be limited to 2,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act of 2000.

“16. The aggregate quantity of worsted wool fabrics entered under subheading 9902.51.12 from January 1 to December 31 of each year, inclusive, shall be limited to 1,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act of 2000.”.

(e) **Allocation of Tariff-Rate Quotas:** In implementing the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States, as required by U.S. Notes 15 and 16 of subchapter II of chapter 99 of such Schedule, respectively, for the entry, or withdrawal from warehouse for consumption, the President, consistent with United States international obligations, shall take such action as determined appropriate by the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men’s and boys’ worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.

(f) **Effective Date:** The amendments made by this section apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2001.

SECTION 502: TEMPORARY DUTY SUSPENSIONS

- (a) Wool Yarn with Average Fiber Diameters of 18.5 Micron or less: Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:
- “9902.51.13 Yarn, of combed wool, not put up for retail sale, containing 85 percent or more by weight of wool, formed with wool fibers having diameters of 18.5 micron or less (provided for in subheading 5107.10.00)... On or before 12/31/2003”.
- (b) Wool Fiber and Wool Top with Average Diameters of 18.5 Micron or less: Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:
- “9902.51.14 Wool fiber, waste, garnetted stock, combed wool, or wool top, having average fiber diameters of 18.5 micron or less (provided for in subheading 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21, or 5105.29)... On or before 12/31/2003”.
- (c) Effective Date: The amendments made by this section apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2001.

SECTION 503: SEPARATE TARIFF LINE TREATMENT FOR WOOL YARN AND MEN’S OR BOYS’ SUITS AND SUIT-TYPE JACKETS AND TROUSERS OF WORSTED WOOL FABRIC

- (a) Separate Tariff Line Treatment: The President shall proclaim 8-digit tariff categories, without changes in existing duty rates, in chapters 51 and 62 of the Harmonized Tariff Schedule of the United States in order to provide separate tariff treatment for:
- (1) wool yarn made of wool fiber with an average fiber diameter of 18.5 micron or less, and wool fabrics made from yarns with an average fiber diameter of 18.5 micron or less; and
 - (2) men’s or boys’ suits, suit-type jackets, and trousers of worsted wool fabric, made of wool yarn having an average diameter of 18.5 micron or less.
- (b) Conforming Changes: The President is authorized to make conforming changes in headings 9902.51.11, 9902.51.12, 9902.51.13, and 9902.51.14 of the Harmonized Tariff Schedule of the United States to take into account the new permanent tariff categories proclaimed under subsection (a).

SECTION 504: MONITORING OF MARKET CONDITIONS AND AUTHORITY TO MODIFY TARIFF REDUCTIONS

- (a) Monitoring of Market Conditions: Beginning on the date of the enactment of this Act, the President shall monitor market conditions in the United States, including domestic demand, domestic supply, and increases in domestic production, of worsted wool fabrics and their components in the market for:
- (1) men’s or boys’ worsted wool suits, suit-type jackets, and trousers;

- (2) worsted wool fabric and yarn used in the manufacture of such suits, jackets, and trousers; and
- (3) wool used in the production of such fabrics and yarn.

(b) Authority to Modify Limitation on Quantity of Worsted Wool Fabrics Subject to Tariff Reduction:

- (1) IN GENERAL: The President shall, on an annual basis, consider requests made by United States manufacturers of apparel products made of worsted wool fabrics described in subsection (a) to modify the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States, as required by U.S. Notes 15 and 16 of subchapter II of chapter 99 of such Schedule, respectively.
- (2) CONSIDERATION OF CERTAIN MARKET CONDITIONS: In determining whether to modify the limitation on the quantity of imports of worsted wool fabrics described in paragraph (1), the President shall consider the following United States market conditions:

- (A) Increases or decreases in sales of the domestically-produced worsted wool fabrics described in subsection (a).
- (B) Increases or decreases in domestic production of such fabrics.
- (C) Increases or decreases in domestic production and consumption of the apparel items described in subsection (a).
- (D) The ability of domestic producers of worsted wool fabrics described in subsection (a) to meet the needs of domestic manufacturers of the apparel items described in subsection (a) in terms of quantity and ability to meet market demands for the apparel items.
- (E) Evidence that domestic manufacturers of worsted wool fabrics have lost sales due to the temporary duty reductions on certain worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (as added by subsections (a) and (b) of section 501).
- (F) Evidence that domestic manufacturers of apparel items described in subsection (a) have lost sales due to the inability to purchase adequate supplies of worsted wool fabrics on a cost competitive basis.
- (G) Price per square meter of imports and domestic sales of worsted wool fabrics.

(3) MODIFICATION OF LIMITATION ON QUANTITY OF FABRICS:

- (A) IN GENERAL: If the President determines that the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States should be modified, the President shall proclaim such changes to U.S. Note 15 or 16 to subchapter II of chapter 99 of such Schedule (as added by section 501 (d)), as the President determines to be appropriate.
- (B) ADDITIONAL REQUIREMENT: In any calendar year, any modification of the limitation on the quantity of imports of worsted wool fabrics under headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States shall not exceed:

- (i) 1,000,000 square meter equivalents for worsted wool fabrics under heading 9902.51.11; and
- (ii) 1,000,000 square meter equivalents for worsted wool fabrics under heading 9902.51.12.

(c) Implementation: The President shall issue regulations necessary to implement the provisions of this section.

SECTION 505: REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL ARTICLES

- (a) **Worsted Wool Fabrics:** In each of the calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on behalf of the manufacturer to process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such fabrics in each such calendar year in an amount equal to one-third of the amount of duties paid by the importer on such worsted wool fabrics (without regard to micron level) imported in calendar year 1999.
- (b) **Wool Yarn:** In each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool yarn in each such calendar year in an amount equal to one-third of the amount of duties paid by the manufacturer on such wool yarn (without regard to micron level) imported in calendar year 1999.
- (c) **Wool Fiber and Wool Top:** In each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool fiber in each such calendar year in an amount equal to one-third of the amount of duties paid by the manufacturer on such wool fiber (without regard to micron level) imported in calendar year 1999.
- (d) **Proper Identification and Appropriate Claim:** Any person applying for a rebate under this section shall properly identify and make appropriate claim to the United States Customs Service for each entry involved.

SECTION 506: WOOL RESEARCH, DEVELOPMENT, AND PROMOTION TRUST FUND

- (a) **Establishment:** There is hereby established within the Treasury of the United States a trust fund to be known as the Wool Research, Development, and Promotion Trust Fund (hereafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred to the Trust Fund under subsection (b)(1) and any amounts as may be credited to the Trust Fund under subsection (c)(2).
- (b) **Transfer of Amounts:**

- (1) **IN GENERAL:** The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty received on articles under chapters 51 and 52 of the Harmonized Tariff Schedule of the United States, subject to the limitation in paragraph (2).
- (2) **LIMITATION:** The Secretary shall not transfer more than \$2,250,000 to the Trust Fund in any fiscal year.
- (3) **TRANSFERS BASED ON ESTIMATES:** The amounts required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(c) **Investment of Trust Fund:**

- (1) **IN GENERAL:** It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.
- (2) **INTEREST AND PROCEEDS FROM SALE OR REDEMPTION OF OBLIGATIONS:** The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) **Availability of Amounts from Trust Fund:** From amounts available in the Trust Fund (including any amounts not obligated in previous fiscal years), the Secretary of Agriculture is authorized to provide grants to a nationally-recognized council established for the development of the United States wool market for the following purposes:

- (1) Assist United States wool producers to improve the quality of wool produced in the United States, including to improve wool production methods.
- (2) Disseminate information on improvements described in paragraph (1) to United States wool producers generally.
- (3) Assist United States wool producers in the development and promotion of the wool market.

(e) **Reports to Congress:** The Secretary of the Treasury, in consultation with the Secretary of Agriculture, shall prepare and submit to Congress an annual report on the financial condition and the results of the operations of the Trust Fund, including a description of

the use of amounts of grants provided under subsection (d), during the preceding fiscal year and on its expected condition and operations during the next fiscal year.

- (f) Sunset Provision: Effective January 1, 2004, the Trust Fund shall be abolished and all amounts in the Trust Fund on such date shall be transferred to the general fund of the Treasury of the United States.

TITLE VI: REVENUE PROVISIONS

SECTION 601: APPLICATION OF DENIAL OF FOREIGN TAX CREDIT REGARDING TRADE AND INVESTMENT WITH RESPECT TO CERTAIN FOREIGN COUNTRIES

- (a) In General: Section 901(j) of the Internal Revenue Code of 1986 (relating to denial of foreign tax credit, etc., regarding trade and investment with respect to certain foreign countries) is amended by adding at the end the following new paragraph:

“(5) WAIVER OF DENIAL:

“(A) IN GENERAL: Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President:

“(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

“(ii) reports such waiver under subparagraph (B).

“(B) REPORT: Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress:

“(i) the intention to grant such waiver; and

“(ii) the reason for the determination under subparagraph (A)(i).”.

- (b) Effective Date: The amendment made by this section shall apply on or after February 1, 2001.

SECTION 602: ACCELERATION OF COVER OVER PAYMENTS TO PUERTO RICO AND VIRGIN ISLANDS

- (a) Initial Payment: Section 512(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 is amended:

(1) by striking “October 1, 2000,” in the matter preceding paragraph (1) and inserting “the first day of the month within which the date of the enactment of the Trade and Development Act of 2000 occurs,”; and

(2) by striking paragraph (2) and inserting the following new paragraph:

“(2) SECOND TRANSFER OF INCREMENTAL INCREASE IN COVER OVER ATTRIBUTABLE TO PERIODS BEFORE RESUMPTION OF REGULAR PAYMENTS: The Secretary of the Treasury shall transfer on the first payment date after the date of the enactment of the Trade and Development Act of 2000 an amount equal to the excess of:

“(A) the amount of such increase otherwise required to be covered over after June 30, 1999, and before the first day of the month within which such date of enactment occurs, over

“(B) the amount of the transfer described in paragraph (1).”.

(b) Clarification of Disposition of Taxes to Virgin Islands: So much of paragraph (3) of section 7652(b) of the Internal Revenue Code of 1986 (relating to Virgin Islands) as precedes subparagraph (B) thereof is amended to read as follows:

“(3) DISPOSITION OF INTERNAL REVENUE COLLECTIONS: The Secretary shall determine the amount of all taxes imposed by, and collected under the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

“(A) The payment of an estimated amount shall be made to the government of the Virgin Islands before the commencement of each fiscal year as set forth in section 4(c)(2) of the Act entitled ‘An Act to authorize appropriations for certain insular areas of the United States, and for other purposes’, approved August 18, 1978 (48 U.S.C. 1645), as in effect on the date of the enactment of the Trade and Development Act of 2000. The payment so made shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine.”.

(c) Resolution of Statutory Conflict: Section 7652 of the Internal Revenue Code of 1986 (relating to shipments to the United States) is amended by adding at the end the following new subsection:

“(h) MANNER OF COVER OVER OF TAX MUST BE DERIVED FROM THIS TITLE: No amount shall be covered into the treasury of Puerto Rico or the Virgin Islands with respect to taxes for which cover over is provided under this section unless made in the manner specified in this section without regard to:

“(1) any provision of law which is not contained in this title or in a revenue Act; and

“(2) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.”.

(d) Effective Date: The amendments made by this section shall apply with respect to transfers or payments made after the date of the enactment of this Act.

CHAPTER SIXTY-EIGHT

Constitutive Act of the African Union

Lomé, 11 July 2000

INTRODUCTION

After years of enduring criticisms of the Organization of African Unity (OAU) for being ineffective and anachronistic in the light of post-Cold War international politics and economic agenda, the heads of state and government of African countries enacted this treaty. The Constitutive Act established the African Union (AU) to replace the OAU. This is a monumental step towards the aspiration of continental union envisioned by Dr Kwame Nkrumah (1909–72) and other founding leaders of the OAU.

The objectives of the new Union include: the acceleration of the political and socio-economic integration of the continent; the promotion and defence of common positions adopted by member states; the promotion of peace, security, stability, democracy and sustainable development; the co-ordination and harmonization of policies of regional economic institutions; and working with international bodies to eradicate preventable diseases and to promote good health. The objectives are underpinned by broad principles, mainly of human rights and democracy. These clearly reflect the pressing issues of the times. Civil conflicts, disease, economic stagnation, mass poverty and bad governance are the key problems facing contemporary Africa. The new Union is founded on that consciousness. At the same time, however, there are echoes of the old thinking, as reflected in the defence of the ‘sovereignty, territorial integrity and independence’ of member states and the ‘non-interference by any Member State in the internal affairs of another’. Dogmatic adherence to these ideas contributed enormously to the slow interest shown by member states of the then OAU to the civil conflicts, abuse of democratic principles and bad governance in other member countries. The effect of the current political situation in Africa, even in the new Constitutive Act of the African Union, has been to overshadow the articulation of clear economic ideals and projects. The recognition of the pivotal importance of economic advancement is seen more in the creation of institutions of the Union and the remit assigned them.

The AU is modelled along the lines of the European Union. This is seen mainly in the creation and orientation of the institutions of the AU. There is the Assembly, comprised of heads of state and government, which is the supreme organ of the Union. There is also an Executive Council, made up of foreign ministers or ministers holding the relevant portfolio, the functions of which are almost entirely economic, covering, among others, the fields of foreign trade, energy, industry and natural resources, transport and communications, insurance, education, and science and technology. Below the Executive

Council are seven technical committees dealing with economic matters. Other organs of the AU are the Pan-African Parliament, the Court of Justice, three financial institutions (the African Central Bank, the African Monetary Fund and the African Investment Bank), the Commission (a secretariat) and the Economic, Social and Cultural Council.

To give teeth to the new organization, article 23 provides for the imposition of sanctions on member states that default on their commitments or obligations to the Union. The details of any sanctions are determined by the Assembly, but may include the severance of transport and communication links with other member states. This is hugely important in view of the interdependence of many African countries on sister countries for various economic and social imperatives. The test of the effectiveness of the sanctions would be if the national leaders have the political will to impose sanctions when necessary.

The Act made provisions for the transition, when the OAU and its derivative African Economic Commission (AEC) are being phased out, allowing the devolution of their assets, liabilities and privileges to the AU. The initial transition period was put at one year (from 2000), to be and, in fact, extended to the end of 2002.

The Act entered into force on 26 May 2001. Fifty-three states have signed and ratified the document and are members of the AU.

THE CONSTITUTIVE ACT OF THE AFRICAN UNION (ADOPTED
BY THE THIRTY-SIXTH ORDINARY SESSION OF THE
ASSEMBLY OF HEADS OF STATE AND GOVERNMENT ON 11
JULY 2000 IN LOMÉ, TOGO)*

We, Heads of State and Government of the Member States of the Organization of African Unity (OAU):

1. The President of the People's Democratic Republic of Algeria
2. The President of the Republic of Angola
3. The President of the Republic of Benin
4. The President of the Republic of Botswana
5. The President of Burkina Faso
6. The President of the Republic of Burundi
7. The President of the Republic of Cameroon
8. The President of the Republic of Cape Verde
9. The President of the Central African Republic
10. The President of the Republic of Chad
11. The President of the Islamic Federal Republic of the Comoros
12. The President of the Republic of the Congo
13. The President of the Republic of Côte d'Ivoire
14. The President of the Democratic Republic of Congo
15. The President of the Republic of Djibouti
16. The President of the Arab Republic of Egypt
17. The President of the State of Eritrea
18. The Prime Minister of the Federal Democratic Republic of Ethiopia
19. The President of the Republic of Equatorial Guinea

20. The President of the Gabonese Republic
21. The President of the Republic of The Gambia
22. The President of the Republic of Ghana
23. The President of the Republic of Guinea
24. The President of the Republic of Guinea Bissau
25. The President of the Republic of Kenya
26. The Prime Minister of Lesotho
27. The President of the Republic of Liberia
28. The Leader of the 1st of September Revolution of the Great Socialist People's Libyan Arab Jamahiriya
29. The President of the Republic of Madagascar
30. The President of the Republic of Malawi
31. The President of the Republic of Mali
32. The President of the Islamic Republic of Mauritania
33. The Prime Minister of the Republic of Mauritius
34. The President of the Republic of Mozambique
35. The President of the Republic of Namibia
36. The President of the Republic of Niger
37. The President of the Federal Republic of Nigeria
38. The President of the Republic of Rwanda
39. The President of the Sahrawi Arab Democratic Republic
40. The President of the Republic of Sao Tome and Principe
41. The President of the Republic of Senegal
42. The President of the Republic of Seychelles
43. The President of the Republic of Sierra Leone
44. The President of the Republic of Somalia
45. The President of the Republic of South Africa
46. The President of the Republic of Sudan
47. The King of Swaziland
48. The President of the United Republic of Tanzania
49. The President of the Togolese Republic
50. The President of the Republic of Tunisia
51. The President of the Republic of Uganda
52. The President of the Republic of Zambia
53. The President of the Republic of Zimbabwe

INSPIRED by the noble ideals which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States;

CONSIDERING the principles and objectives stated in the Charter of the Organization of African Unity and the Treaty establishing the African Economic Community;

RECALLING the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation;

CONSIDERING that since its inception, the Organization of African Unity has played a determining and invaluable role in the liberation of the continent, the affirmation of a common identity and the process of attainment of the unity of our continent and has

provided a unique framework for our collective action in Africa and in our relations with the rest of the world.

DETERMINED to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world;

CONVINCED of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization;

GUIDED by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples;

CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

FURTHER DETERMINED to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively;

RECALLING the Declaration which we adopted at the Fourth Extraordinary Session of our Assembly in Sirte, the Great Socialist People's Libyan Arab Jamahiriya, on 9.9.99, in which we decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our Continental Organization and the Treaty establishing the African Economic Community;

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

In this Constitutive Act:

“Act” means the present Constitutive Act;

“AEC” means the African Economic Community;

“Assembly” means the Assembly of Heads of State and Government of the Union;

“Charter” means the Charter of the OAU;

“Commission” means the Secretariat of the Union;

“Committee” means a Specialized Technical Committee of the Union;

“Council” means the Economic, Social and Cultural Council of the Union;

“Court” means the Court of Justice of the Union;

“Executive Council” means the Executive Council of Ministers of the Union;

“Member State” means a Member State of the Union;

“OAU” means the Organization of African Unity;

“Parliament” means the Pan-African Parliament of the Union;

“Union” means the African Union established by the present Constitutive Act.

Article 2: Establishment

The African Union is hereby established in accordance with the provisions of this Act.

Article 3: Objectives

The objectives of the Union shall be to:

(a) achieve greater unity and solidarity between the African countries and the peoples of Africa;

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of the African Union (<http://www.africa-union.org/>).

(b) defend the sovereignty, territorial integrity and independence of its Member States;

(c) accelerate the political and socio-economic integration of the continent;

(d) promote and defend African common positions on issues of interest to the continent and its peoples;

(e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;

(f) promote peace, security, and stability on the continent;

(g) promote democratic principles and institutions, popular participation and good governance;

(h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

(i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;

(j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;

(k) promote co-operation in all fields of human activity to raise the living standards of African peoples;

(l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

(m) advance the development of the continent by promoting research in all fields, in particular in science and technology;

(n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4: Principles

The Union shall function in accordance with the following principles:

(a) sovereign equality and interdependence among Member States of the Union;

(b) respect of borders existing on achievement of independence;

(c) participation of the African peoples in the activities of the Union;

(d) establishment of a common defence policy for the African Continent;

- (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to use force among Member States of the Union;
- (g) non-interference by any Member State in the internal affairs of another;
- (h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- (i) peaceful co-existence of Member States and their right to live in peace and security;
- (j) the right of Member States to request intervention from the Union in order to restore peace and security;
- (k) promotion of self-reliance within the framework of the Union;
- (l) promotion of gender equality;
- (m) respect for democratic principles, human rights, the rule of law and good governance;
- (n) promotion of social justice to ensure balanced economic development;
- (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- (p) condemnation and rejection of unconstitutional changes of governments.

Article 5: Organs of the Union

1. The organs of the Union shall be:
 - (a) The Assembly of the Union;
 - (b) The Executive Council;
 - (c) The Pan-African Parliament;
 - (d) The Court of Justice;
 - (e) The Commission;
 - (f) The Permanent Representatives Committee;
 - (g) The Specialized Technical Committees;
 - (h) The Economic, Social and Cultural Council;
 - (i) The Financial Institutions;
2. Other organs that the Assembly may decide to establish.

Article 6: The Assembly

1. The Assembly shall be composed of Heads of State and Government or their duly accredited representatives.
2. The Assembly shall be the supreme organ of the Union.
3. The Assembly shall meet at least once a year in ordinary session. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.
4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State or Government elected after consultations among the Member States.

Article 7: Decisions of the Assembly

1. The Assembly shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States of the Union. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.
2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.

Article 8: Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9: Powers and Functions of the Assembly

1. The functions of the Assembly shall be to:
 - (a) determine the common policies of the Union;
 - (b) receive, consider and take decisions on reports and recommendations from the other organs of the Union;
 - (c) consider requests for Membership of the Union;
 - (d) establish any organ of the Union;
 - (e) monitor the implementation of policies and decisions of the Union as well ensure compliance by all Member States;
 - (f) adopt the budget of the Union;
 - (g) give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;
 - (h) appoint and terminate the appointment of the judges of the Court of Justice;
 - (i) appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.
2. The Assembly may delegate any of its powers and functions to any organ of the Union.

Article 10: The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.
2. The Executive Council shall meet at least twice a year in ordinary session. It shall also meet in an extra-ordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

Article 11: Decisions of the Executive Council

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the

question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

Article 12: Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13: Functions of the Executive Council

1. The Executive Council shall coordinate and take decisions on policies in areas of common interest to the Member States, including the following:
 - (a) foreign trade;
 - (b) energy, industry and mineral resources;
 - (c) food, agricultural and animal resources, livestock production and forestry;
 - (d) water resources and irrigation;
 - (e) environmental protection, humanitarian action and disaster response and relief;
 - (f) transport and communications;
 - (g) insurance;
 - (h) education, culture, health and human resources development;
 - (i) science and technology;
 - (j) nationality, residency and immigration matters;
 - (k) social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped;
 - (l) establishment of a system of African awards, medals and prizes.
2. The Executive Council shall be responsible to the Assembly. It shall consider issues referred to it and monitor the implementation of policies formulated by the Assembly.
3. The Executive Council may delegate any of its powers and functions mentioned in paragraph 1 of this Article to the Specialized Technical Committees established under Article 14 of this Act.

Article 14: The Specialized Technical Committees Establishment and Composition

1. There is hereby established the following Specialized Technical Committees, which shall be responsible to the Executive Council:
 - (a) The Committee on Rural Economy and Agricultural Matters;
 - (b) The Committee on Monetary and Financial Affairs;
 - (c) The Committee on Trade, Customs and Immigration Matters;
 - (d) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;
 - (e) The Committee on Transport, Communications and Tourism;
 - (f) The Committee on Health, Labour and Social Affairs; and

(g) The Committee on Education, Culture and Human Resources.

2. The Assembly shall, whenever it deems appropriate, restructure the existing Committees or establish other Committees.
3. The Specialized Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.

Article 15: Functions of the Specialized Technical Committees

Each Committee shall within its field of competence:

- (a) prepare projects and programmes of the Union and submit it to the Executive Council;
- (b) ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
- (c) ensure the coordination and harmonization of projects and programmes of the Union;
- (d) submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and
- (e) carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act.

Article 16: Meetings

Subject to any directives given by the Executive Council, each Committee shall meet as often as necessary and shall prepare its Rules of Procedure and submit them to the Executive Council for approval.

Article 17: The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a PanAfrican Parliament shall be established.
2. The composition, powers, functions and organization of the PanAfrican Parliament shall be defined in a protocol relating thereto.

Article 18: The Court of Justice

1. A Court of Justice of the Union shall be established;
2. The statute, composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19: The Financial Institutions

The Union shall have the following financial institutions whose rules and regulations shall be defined in protocols relating thereto:

- (a) The African Central Bank;
- (b) The African Monetary Fund;

(c) The African Investment Bank.

Article 20: The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.
2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.
3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21: The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other Plenipotentiaries of Member States.
2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22: The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.
2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

Article 23: Imposition of Sanctions

1. The Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments, therefrom;
2. Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

Article 24: The Headquarters of the Union

1. The Headquarters of the Union shall be in Addis Ababa in the Federal Democratic Republic of Ethiopia.

2. There may be established such other offices of the Union as the Assembly may, on the recommendation of the Executive Council, determine.

Article 25: Working Languages

The working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese.

Article 26: Interpretation

The Court shall be seized with matters of interpretation arising from the application or implementation of this Act. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by a two-thirds majority.

Article 27: Signature, Ratification and Accession

1. This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Secretary-General of the OAU.
3. Any Member State of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

Article 28: Entry into Force

This Act shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU.

Article 29: Admission to Membership

1. Any African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.
2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

Article 30: Suspension

Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.

Article 31: Cessation of Membership

1. Any State which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform Member States thereof. At the end of one year from the date of such notification, if not withdrawn, the Act shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Union.
2. During the period of one year referred to in paragraph 1 of this Article, any Member State wishing to withdraw from the Union shall comply with the provisions of this Act and shall be bound to discharge its obligations under this Act up to the date of its withdrawal.

Article 32: Amendment and Revision

1. Any Member State may submit proposals for the amendment or revision of this Act.
2. Proposals for amendment or revision shall be submitted to the Chairman of the Commission who shall transmit same to Member States within thirty (30) days of receipt thereof.
3. The Assembly, upon the advice of the Executive Council, shall examine these proposals within a period of one year following notification of Member States, in accordance with the provisions of paragraph 2 of this Article;
4. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority and submitted for ratification by all Member States in accordance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairman of the Commission by a two-thirds majority of the Member States.

Article 33: Transitional Arrangements and Final Provisions

1. This Act shall replace the Charter of the Organization of African Unity. However, the Charter shall remain operative for a transitional period of one year or such further period as may be determined by the Assembly, following the entry into force of the Act, for the purpose of enabling the OAU/AEC to undertake the necessary measures regarding the devolution of its assets and liabilities to the Union and all matters relating thereto.
2. The provisions of this Act shall take precedence over and supersede any inconsistent or contrary provisions of the Treaty establishing the African Economic Community.
3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or decisions which may be adopted in this regard by the Parties thereto within the transitional period stipulated above.
4. Pending the establishment of the Commission, the OAU General Secretariat shall be the interim Secretariat of the Union.
5. This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the

Commission who shall transmit a certified true copy of the Act to the Government of each signatory State. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory States of the dates of the deposit of the instruments of ratification or accession and shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

IN WITNESS WHEREOF, WE have adopted this Act.

Done at Lomé, Togo, this 11th day of July, 2000.

CONSTITUTIVE ACT OF THE AFRICAN UNION

ADOPTED BY THE THIRTY-SIXTH ORDINARY SESSION OF THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT 11 JULY, 2000—LOME, TOGO

1. People's Democratic Republic of Algeria
2. Republic of Angola
3. Republic of Benin
4. Republic of Botswana
5. Burkina Faso
6. Republic of Burundi
7. Republic of Cameroon
8. Republic of Cape Verde
9. Central African Republic
10. Republic of Chad
11. Islamic Federal Republic of the Comoros
12. Republic of the Congo
13. Republic of Côte d'Ivoire
14. Democratic Republic of Congo
15. Republic of Djibouti
16. Arab Republic of Egypt
17. State of Eritrea
18. Federal Democratic Republic of Ethiopia
19. Republic of Equatorial Guinea
20. Republic of Gabon
21. Republic of The Gambia
22. Republic of Ghana
23. Republic of Guinea
24. Republic of Guinea Bissau
25. Republic of Kenya
26. Kingdom of Lesotho
27. Republic of Liberia
28. Great Socialist People's Libyan Arab Jamahiriya
29. Republic of Madagascar
30. Republic of Malawi
31. Republic of Mali
32. Islamic Republic of Mauritania
33. Republic of Mauritius
34. Republic of Mozambique
35. Republic of Namibia

36. Republic of Niger
37. Federal Republic of Nigeria
38. Republic of Rwanda
39. Sahrawi Arab Democratic Republic
40. Republic of Sao Tome and Principe
41. Republic of Senegal
42. Republic of Seychelles
43. Republic of Sierra Leone
44. Republic of Somalia
45. Republic of South Africa
46. Republic of Sudan
47. Kingdom of Swaziland
48. United Republic of Tanzania
49. Republic of Togo
50. Republic of Tunisia
51. Republic of Uganda
52. Republic of Zambia
53. Republic of Zimbabwe

CHAPTER SIXTY-NINE

The International Coffee Agreement

London, 28 September 2000

INTRODUCTION

The first International Coffee Agreement was signed in 1962. There have been five such agreements since then, including the current one, which came into force in 2001. As with the International Cocoa Agreement (see above), the coffee treaty was prompted by the dependence of many developing countries on coffee as the main foreign-exchange earner and by the fluctuations in the market price of the crop. The objectives of the Agreement include: the facilitation of the expansion of the coffee business; transparency in the business; promoting quality of the product; encouraging consumption; provision of forum for consultations; promotion of co-operation on coffee issues; training; the transfer of technology; research; and disseminating information on the development of the coffee business in a sustainable manner.

As with the International Cocoa Agreement, the Coffee Agreement places enormous emphasis on institutional arrangements. The centrepiece of the Agreement itself is the establishment of the International Coffee Organization. The operation of this Organization is effected by the Coffee Council and the Executive Board. The Coffee Council is the highest in importance and is made up of all the members of the Organization. The Council is vested with all powers necessary to execute the terms of the Agreement. Its functions are not specifically categorized, which means then that it can and is empowered to delegate specific functions to other bodies or committees—in particular, the Executive Board. The Council cannot, however, delegate its responsibility in the areas of administrative budget approval, membership issues and the negotiation of a new Agreement or extension of the current one. The Board consists of 16 members, eight appointed by exporters and the remainder by importers. Its key functions are: the evaluation of the administrative budget and then recommendation to the Council for approval; dealing with administrative and financial matters not otherwise reserved for the Council; and assessing programmes and projects on coffee and the coffee business.

The Council and the Board are assisted by the World Coffee Conference, the Private Sector Consultative Board and other specialized committees. The Conference is to be held at the instance of the Council and it shall welcome participants from all relevant fields, including non-members. The Private Sector Consultative Board is made up of eight representatives from the importing nations and eight from the exporting members—

all representing the private sector. It is to have its own meeting procedures. Its main function is to consider matters referred to it by the Council or on its own initiative within the framework of the agreement and make recommendations to the Council.

The International Coffee Organization is also to promote the consumption of coffee. It is, among other matters, to discourage the promotion of synthetic substitutes and refuses 'coffee recognition' to any product that has 'less than 95 percent green coffee as the basic raw material'. To support this, as well as having comprehensive information on the coffee trade, certificates are to be issued to certify the origin of coffee from each member state. All obstacles to the trade in and to the rapid consumption of coffee are to be removed. These include preferential tariffs, quotas, domestic and regional legal and administrative provisions, etc. These obstacles may relate mainly to conditions in the developed importing countries, especially the European Union (EU) and the North American Free Trade Area (NAFTA) trade arrangements, which, in many ways, discriminate against processed products from developing countries, indirectly keeping the prices of products like coffee at certain levels.

Finally, the Organization is to co-operate with appropriate non-governmental organizations concerned with the international coffee trade, with experts in coffee matters and with relevant international bodies. These, presumably, would encompass the 'Fair Trade' phenomenon and its labelling. As with the International Cocoa Agreement, the International Coffee Agreement is rather reticent about buffer stocks, price support systems, etc. There are exhortatory and very weak provisions on sustainable development and on the standard of living of the people working in the coffee sector.

The sixth International Coffee Agreement came into effect on 1 October 2001. As at February 2005 the Agreement had 44 exporting members and 30 importing members (including the EU's European Community—under an economic union, Belgium acts for Luxembourg, while the Bailiwick of Jersey and St Helena are specifically included with the United Kingdom).

THE INTERNATIONAL COFFEE AGREEMENT 2001*

PREAMBLE

THE GOVERNMENTS PARTY TO THIS AGREEMENT,

RECOGNIZING the exceptional importance of coffee to the economies of many countries which are largely dependent upon this commodity for their export earnings and thus for the continuation of their development programmes in the social and economic fields;

RECOGNIZING the importance of the coffee sector to the livelihoods of millions of people, particularly in developing countries, and bearing in mind that in many of these countries production is on small-scale family farms;

RECOGNIZING the need to foster the development of productive resources and the promotion and maintenance of employment and income in the coffee industry in Member countries, thereby bringing about fair wages, higher living standards and better working conditions;

CONSIDERING that close international cooperation on trade in coffee will foster the economic diversification and development of coffee-producing countries, will contribute to the improvement of political and economic relations between coffee exporting and importing countries, and will provide for increasing consumption of coffee;

RECOGNIZING the desirability of avoiding disequilibrium between production and consumption which can give rise to pronounced fluctuations in prices harmful both to producers and to consumers;

CONSIDERING the relationship between the stability of the trade in coffee and the stability of markets for manufactured goods;

NOTING the advantages derived from the international cooperation which resulted from the operation of the International Coffee Agreements 1962,1968,1976,1983 and 1994,

HAVE AGREED AS FOLLOWS:

CHAPTER I: OBJECTIVES

Article 1: Objectives

The objectives of this Agreement are:

1. to promote international cooperation on coffee matters;
2. to provide a forum for intergovernmental consultations, and negotiations when appropriate, on coffee matters and on ways to achieve a reasonable balance between world supply and demand on a basis which will assure adequate supplies of coffee at fair prices to consumers and markets for coffee at remunerative prices to producers, and which will be conducive to long-term equilibrium between production and consumption;
3. to provide a forum for consultations on coffee matters with the private sector;
4. to facilitate the expansion and transparency of international trade in coffee;
5. to act as a centre for and promote the collection, dissemination and publication of economic and technical information, statistics and studies, as well as research and development, in coffee matters;
6. to encourage Members to develop a sustainable coffee economy;
7. to promote, encourage and increase the consumption of coffee;
8. to analyse and advise on the preparation of projects for the benefit of the world coffee economy, for their subsequent submission to donor or financing organizations, as appropriate;
9. to promote quality; and
10. to promote training and information programmes designed to assist the transfer to Members of technology relevant to coffee.

CHAPTER II: DEFINITIONS

Article 2: Definitions

For the purposes of this Agreement:

1. Coffee means the beans and cherries of the coffee tree, whether parchment, green or roasted, and includes ground, decaffeinated, liquid and soluble coffee. The Council shall, as soon as possible after this Agreement enters into force, and again three years after such date, review the conversion factors for the types of coffee listed in sub-paragraphs (d), (e), (f) and (g) below. Following such review the Council shall, by a distributed two-thirds majority vote, determine and publish appropriate conversion factors. Prior to the initial review, and should the Council be unable to reach a decision on this matter, the conversion factors will be those used in the International Coffee Agreement 1994, which are listed in Annex I to this Agreement. Subject to these provisions, the terms listed below shall have the following meaning:
 - (a) green coffee means all coffee in the naked bean form before roasting;
 - (b) dried coffee cherry means the dried fruit of the coffee tree; to find the equivalent of dried coffee cherry to green coffee, multiply the net weight of the dried coffee cherry by 0.50;
 - (c) parchment coffee means the green coffee bean contained in the parchment skin; to find the equivalent of parchment coffee to green coffee, multiply the net weight of the parchment coffee by 0.80;
 - (d) roasted coffee means green coffee roasted to any degree and includes ground coffee;
 - (e) decaffeinated coffee means green, roasted or soluble coffee from which caffeine has been extracted;
 - (f) liquid coffee means the water-soluble solids derived from roasted coffee and put into liquid form; and
 - (g) soluble coffee means the dried water-soluble solids derived from roasted coffee.
2. Bag means 60 kilogrammes or 132.276 pounds of green coffee; tonne means a mass of 1,000 kilogrammes or 2,204.6 pounds; and pound means 453.597 grammes.
3. Coffee year means the period of one year, from 1 October to 30 September.
4. Organization and Council mean, respectively, the International Coffee Organization and the International Coffee Council.
5. Contracting Party means a Government or intergovernmental organization referred to in paragraph (3) of Article 4 which has deposited an instrument of ratification, acceptance, approval or provisional application of this Agreement in accordance with the provisions of Articles 44 and 45 or has acceded thereto in accordance with the provisions of Article 46.
6. Member means a Contracting Party; a designated territory or territories in respect of which separate membership has been declared under the provisions of Article 5; or two or more Contracting Parties or designated territories, or both, which participate in the Organization as a Member group under the provisions of Article 6.

7. Exporting Member or exporting country means a Member or country, respectively, which is a net exporter of coffee; that is, a Member or country whose exports exceed its imports.
8. Importing Member or importing country means a Member or country, respectively, which is a net importer of coffee; that is, a Member or country whose imports exceed its exports.
9. Distributed simple majority vote means a vote requiring more than half of the votes cast by exporting Members present and voting and more than half of the votes cast by importing Members present and voting, counted separately.
10. Distributed two-thirds majority vote means a vote requiring more than two-thirds of the votes cast by exporting Members present and voting and more than two-thirds of the votes cast by importing Members present and voting, counted separately.
11. Entry into force means, except as otherwise provided, the date on which this Agreement enters into force, whether provisionally or definitively.

CHAPTER III: GENERAL UNDERTAKINGS BY MEMBERS

Article 3: General undertakings by Members

1. Members undertake to adopt such measures as are necessary to enable them to fulfil their obligations under this Agreement and

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Coffee Organization (<http://www.ico.org/>).

fully cooperate with one another in securing the attainment of the objectives of this Agreement; in particular, Members undertake to provide all information necessary to facilitate the functioning of this Agreement.

2. Members recognize that Certificates of Origin are important sources of information on the trade in coffee. Exporting Members, therefore, assume responsibility for ensuring the proper issuing and use of Certificates of Origin according to the rules established by the Council.
3. Members recognize further that information on re-exports is also important for the proper analysis of the world coffee economy. Importing Members, therefore, undertake to supply regular and accurate information on re-exports, in the form and manner determined by the Council.

CHAPTER IV: MEMBERSHIP

Article 4: Membership of the Organization

1. Each Contracting Party, together with those territories to which this Agreement is extended under the provisions of paragraph (1) of Article 48, shall constitute a single

Member of the Organization, except as otherwise provided for under the provisions of Articles 5 and 6.

2. A Member may change its category of membership on such conditions as the Council may agree.
3. Any reference in this Agreement to a Government shall be construed as including a reference to the European Community, or any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.
4. Such intergovernmental organization shall not itself have any votes but in the case of a vote on matters within its competence it shall be entitled to cast collectively the votes of its Member States. In such cases, the Member States of such intergovernmental organization shall not be entitled to exercise their individual voting rights.
5. Such intergovernmental organization shall not be eligible for election to the Executive Board under the provisions of paragraph (1) of Article 17 but may participate in the discussions of the Executive Board on matters within its competence. In the case of a vote on matters within its competence, and notwithstanding the provisions of paragraph (1) of Article 20, the votes which its Member States are entitled to cast in the Executive Board may be cast collectively by any one of those Member States.

Article 5: Separate membership in respect of designated territories

Any Contracting Party which is a net importer of coffee may, at any time, by appropriate notification in accordance with the provisions of paragraph (2) of Article 48, declare that it is participating in the Organization separately with respect to any of the territories for whose international relations it is responsible, which are net exporters of coffee and which it designates. In such case, the metropolitan territory and its non-designated territories will have a single membership, and its designated territories, either individually or collectively as the notification indicates, will have separate membership.

Article 6: Group membership

1. Two or more Contracting Parties which are net exporters of coffee may, by appropriate notification to the Council and to the Secretary-General of the United Nations at the time of deposit of their respective instruments of ratification, acceptance, approval, provisional application or accession, declare that they are participating in the Organization as a Member group. A territory to which this Agreement has been extended under the provisions of paragraph (1) of Article 48 may constitute part of such Member group if the Government of the State responsible for its international relations has given appropriate notification thereof under the provisions of paragraph (2) of Article 48. Such Contracting Parties and designated territories must satisfy the following conditions:

- (a) they shall declare their willingness to accept responsibility for group obligations in an individual as well as a group capacity; and
- (b) they shall subsequently provide satisfactory evidence to the Council that:

- i. the group has the organization necessary to implement a common coffee policy and that they have the means of complying, together with the other parties to the group, with their obligations under this Agreement; and
 - ii. they have a common or coordinated commercial and economic policy in relation to coffee and a coordinated monetary and financial policy, as well as the organs necessary to implement such policies, so that the Council is satisfied that the Member group is able to comply with the group obligations involved.
2. Any Member group recognized under the International Coffee Agreement 1994 shall continue to be recognized as a group unless it notifies the Council that it no longer wishes to be so recognized.
3. The Member group shall constitute a single Member of the Organization, except that each party to the group shall be treated as if it were a single Member in relation to matters arising under the following provisions:
 - (a) Articles 11 and 12; and
 - (b) Article 51.
4. The Contracting Parties and designated territories joining as a Member group shall specify the Government or organization which will represent them in the Council on matters arising under this Agreement other than those specified in paragraph (3) of this Article.
5. The voting rights of the Member group shall be as follows:
 - (a) the Member group shall have the same number of basic votes as a single Member country joining the Organization in an individual capacity. These basic votes shall be attributed to and cast by the Government or organization representing the group; and
 - (b) in the event of a vote on any matters arising under the provisions of paragraph (3) of this Article, the parties to the Member group may cast separately the votes attributed to them under the provisions of paragraph (3) of Article 13 as if each were an individual Member of the Organization, except for the basic votes, which shall remain attributable only to the Government or organization representing the group.
6. Any Contracting Party or designated territory which is a party to a Member group may, by notification to the Council, withdraw from that group and become a separate Member. Such withdrawal shall take effect upon receipt of the notification by the Council. If a party to a Member group withdraws from that group or ceases to participate in the Organization, the remaining parties to the group may apply to the Council to maintain the group; the group shall continue to exist unless the Council disapproves the application. If the Member group is dissolved, each former party to the group will become a separate Member. A Member which has ceased to be a party to a group may not, as long as this Agreement remains in force, again become a party to a group.

7. Any Contracting Party which wishes to become party to a Member group after this Agreement has entered into force may do so by notification to the Council provided that:
 - (a) other Members of the group declare their willingness to accept the Member concerned as party to the Member group; and
 - (b) it notifies the Secretary-General of the United Nations that it is participating in the group.
8. Two or more exporting Members may, at any time after this Agreement has entered into force, apply to the Council to form a Member group. The Council shall approve the application if it finds that the Members have made a declaration and have provided satisfactory evidence in accordance with the requirements of paragraph (1) of this Article. Upon such approval, the Member group shall be subject to the provisions of paragraphs (3), (4), (5) and (6) of this Article.

CHAPTER V: THE INTERNATIONAL COFFEE ORGANIZATION

Article 7: Seat and structure of the International Coffee Organization

1. The International Coffee Organization established under the International Coffee Agreement 1962 shall continue in being to administer the provisions and supervise the operation of this Agreement.
2. The seat of the Organization shall be in London unless the Council by a distributed two-thirds majority vote decides otherwise.
3. The Organization shall function through the International Coffee Council and the Executive Board. They shall be assisted as appropriate by the World Coffee Conference, the Private Sector Consultative Board, the Promotion Committee, and specialized committees.

Article 8: Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.
2. The status, privileges and immunities of the Organization, of its Executive Director, its staff and experts, and of representatives of Members while in the territory of the host country for the purpose of exercising their functions, shall continue to be governed by the Headquarters Agreement concluded between the host Government and the Organization on 28 May 1969.
3. The Headquarters Agreement referred to in paragraph (2) of this Article shall be independent of this Agreement. It shall however terminate:
 - (a) by agreement between the host Government and the Organization;

- (b) in the event of the headquarters of the Organization being moved from the territory of the host Government; or
 - (c) in the event of the Organization ceasing to exist.
4. The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.
 5. The Governments of Member countries other than the host Government shall grant the Organization the same facilities in respect of currency or exchange restrictions, maintenance of bank accounts and transfer of monies, as are accorded to the specialized agencies of the United Nations.

CHAPTER VI: THE INTERNATIONAL COFFEE COUNCIL

Article 9: Composition of the International Coffee Council

1. The highest authority of the Organization shall be the International Coffee Council, which shall consist of all the Members of the Organization.
2. Each Member shall appoint one representative on the Council and, if it so desires, one or more alternates. A Member may also designate one or more advisers to its representative or alternates.

Article 10: Powers and functions of the Council

1. All powers specifically conferred by this Agreement shall be vested in the Council, which shall have the powers and perform the functions necessary to carry out the provisions of this Agreement.
2. The Council shall delegate to its Chairman the task of assuring, with the assistance of the Secretariat, the validity of the written communications made with respect to the provisions of paragraph (2) of Article 9, paragraph (3) of Article 12 and paragraph (2) of Article 14. The Chairman shall report to the Council.
3. The Council may set up any committees or working groups as it considers necessary.
4. The Council shall, by a distributed two-thirds majority vote, establish such rules and regulations, including its own rules of procedure and the financial and staff regulations of the Organization, as are necessary to carry out the provisions of this Agreement and are consistent therewith. The Council may, in its rules of procedure, provide the means whereby it may, without meeting, decide specific questions.
5. The Council shall also keep such records as are required to perform its functions under this Agreement and such other records as it considers desirable.

Article 11: Chairman and Vice-Chairmen of the Council

1. The Council shall elect, for each coffee year, a Chairman and a first, a second and a third Vice-Chairman, who shall not be paid by the Organization.

2. As a general rule, the Chairman and the first Vice-Chairman shall both be elected either from among the representatives of exporting Members or from among the representatives of importing Members and the second and the third Vice-Chairmen shall be elected from among representatives of the other category of Member. These offices shall alternate each coffee year between the two categories of Member.
3. Neither the Chairman nor any Vice-Chairman acting as Chairman shall have the right to vote. His or her alternate will in such case exercise the voting rights of the Member.

Article 12: Sessions of the Council

1. As a general rule, the Council shall hold regular sessions twice a year. It may hold special sessions should it so decide. Special sessions shall also be held at the request of the Executive Board, of any five Members, or of a Member or Members having at least 200 votes. Notice of sessions shall be given at least 30 days in advance except in cases of emergency when such notice shall be given at least 10 days in advance.
2. Sessions shall be held at the seat of the Organization, unless the Council decides otherwise by a distributed two-thirds majority vote. If a Member invites the Council to meet in its territory, and the Council agrees, the additional costs to the Organization involved above those incurred when the session is held at the seat shall be borne by that Member.
3. The Council may invite any non-member country or any of the organizations referred to in Article 16 to attend any of its sessions as an observer. In case such invitation is accepted, the country or organization concerned shall send a communication to that effect in writing to the Chairman. If it so wishes it may in that communication request permission to make statements to the Council.
4. The quorum required for a Council session to take decisions shall be the presence of more than half of the number of exporting and importing Members representing respectively at least two-thirds of the votes for each category. If on the opening of a Council session or of any plenary meeting there is no quorum, the Chairman shall postpone the opening of the session or plenary meeting for at least two hours. If there is still no quorum at the new time set, the Chairman may again postpone the opening of the session or plenary meeting for at least a further two hours. If at the end of this new postponement there is still no quorum, the quorum required for taking decisions shall be the presence of more than half of the number of exporting and importing Members representing respectively at least half of the votes for each category. Representation in accordance with paragraph (2) of Article 14 shall be considered as presence.

Article 13: Votes

1. The exporting Members shall together hold 1,000 votes and the importing Members shall together hold 1,000 votes, distributed within each category of Member—that is, exporting and importing Members, respectively—as provided for in the following paragraphs of this Article.
2. Each Member shall have five basic votes.

3. The remaining votes of exporting Members shall be divided among such Members in proportion to the average volume of their respective exports of coffee to all destinations in the preceding four calendar years.
4. The remaining votes of importing Members shall be divided among such Members in proportion to the average volume of their respective imports of coffee in the preceding four calendar years.
5. The distribution of votes shall be determined by the Council in accordance with the provisions of this Article at the beginning of each coffee year and shall remain in effect during that year, except as provided for in paragraph (6) of this Article.
6. The Council shall provide for the redistribution of votes in accordance with the provisions of this Article whenever there is a change in the membership of the Organization or if the voting rights of a Member are suspended or regained under the provisions of Article 25 or 42.
7. No Member shall hold more than 400 votes.
8. There shall be no fractional votes.

Article 14: Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and shall not be entitled to divide its votes. However, a Member may cast differently any votes which it holds under the provisions of paragraph (2) of this Article.
2. Any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to exercise its right to vote at any meeting or meetings of the Council. The limitation provided for in paragraph (7) of Article 13 shall not apply in this case.

Article 15: Decisions of the Council

1. All decisions of the Council shall be taken, and all recommendations shall be made, by a distributed simple majority vote unless otherwise provided for in this Agreement.
2. The following procedure shall apply with respect to any decision by the Council which under the provisions of this Agreement requires a distributed two-thirds majority vote:
 - (a) if a distributed two-thirds majority vote is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall, if the Council so decides by a majority of the Members present and by a distributed simple majority vote, be put to a vote again within 48 hours;
 - (b) if a distributed two-thirds majority vote is again not obtained because of the negative vote of two or less exporting or two or less importing Members, the proposal shall, if the Council so decides by a majority of the Members present and by a distributed simple majority vote, be put to a vote again within 24 hours;
 - (c) if a distributed two-thirds majority vote is not obtained in the third vote because of the negative vote of one exporting or one importing Member, the proposal shall be considered adopted; and
 - (d) if the Council fails to put a proposal to a further vote, it shall be considered rejected.

3. Members undertake to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 16: Cooperation with other organizations

1. The Council may make arrangements for consultation and cooperation with the United Nations and its specialized agencies and with other appropriate intergovernmental organizations. It shall take full advantage of the facilities of the Common Fund for Commodities and other sources of funding. Such arrangements may include financial arrangements which the Council considers appropriate for achieving the objectives of this Agreement. However, in respect of the implementation of any project under such arrangements the Organization shall not incur any financial obligations for guarantees given by individual Members or other entities. No Member shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.
2. Where possible, the Organization may also collect from Members, non-members, and from donor and other agencies, information on development projects and programmes focussing on the coffee sector. Where appropriate, and with the agreement of the parties concerned, the Organization may make this information available to such other organizations as well as to Members.

CHAPTER VII: THE EXECUTIVE BOARD

Article 17: Composition and meetings of the Executive Board

1. The Executive Board shall consist of eight exporting Members and eight importing Members elected for each coffee year in accordance with the provisions of Article 18. Members represented in the Executive Board may be re-elected.
2. Each Member represented in the Executive Board shall appoint one representative and, if it so desires, one or more alternates. Each Member represented in the Executive Board may also designate one or more advisers to its representative or alternates.
3. The Executive Board shall have a Chairman and a Vice-Chairman, who shall be elected by the Council for each coffee year and may be re-elected. These officers shall not be paid by the Organization. Neither the Chairman nor the Vice-Chairman acting as Chairman shall have the right to vote in the meetings of the Executive Board. His or her alternate will in such case exercise the voting rights of the Member. As a general rule, the Chairman and the Vice-Chairman for each coffee year shall be elected from among the representatives of the same category of membership.
4. The Executive Board shall normally meet at the seat of the Organization, but may meet elsewhere if the Council so decides by a distributed two-thirds majority vote. In case of acceptance by the Council of an invitation by a Member to host the meeting of the Executive Board, the provisions of paragraph (2) of Article 12 concerning Council sessions shall also apply.
5. The quorum required for an Executive Board meeting to take decisions shall be the presence of more than half of the number of exporting and importing Members elected

to the Executive Board representing respectively at least two-thirds of the votes for each category. If on the opening of an Executive Board meeting there is no quorum, the Chairman of the Executive Board shall postpone the opening of the meeting for at least two hours. If there is still no quorum at the new time set, the Chairman may again postpone the opening of the meeting for at least a further two hours. If at the end of this new postponement there is still no quorum, the quorum required for taking decisions shall be the presence of more than half of the number of exporting and importing Members elected to the Executive Board representing respectively at least half of the votes for each category.

Article 18: Election of the Executive Board

1. The exporting and the importing Members of the Executive Board shall be elected in the Council by the exporting and the importing Members of the Organization respectively. The election within each category shall be held in accordance with the provisions of the following paragraphs of this Article.
2. Each Member shall cast for a single candidate all the votes to which it is entitled under the provisions of Article 13. A Member may cast for another candidate any votes which it holds under the provisions of paragraph (2) of Article 14.
3. The eight candidates receiving the largest number of votes shall be elected; however, no candidate shall be elected on the first ballot unless it receives at least 75 votes.
4. If, under the provisions of paragraph (3) of this Article, less than eight candidates are elected on the first ballot, further ballots shall be held in which only Members which did not vote for any of the candidates elected shall have the right to vote. In each further ballot the minimum number of votes required for election shall be successively diminished by five until eight candidates are elected.
5. Any Member which did not vote for any of the Members elected shall assign its votes to one of them, subject to the provisions of paragraphs (6) and (7) of this Article.
6. A Member shall be deemed to have received the number of votes cast for it when it was elected and, in addition, the number of votes assigned to it, provided that the total number of votes shall not exceed 499 for any Member elected.
7. If the votes deemed received by an elected Member exceed 499, Members which voted for, or assigned their votes to, such elected Member shall arrange among themselves for one or more of them to withdraw their votes from that Member and assign or reassign them to another elected Member so that the votes received by each elected Member shall not exceed the limit of 499.

Article 19: Competence of the Executive Board

1. The Executive Board shall be responsible to and work under the general direction of the Council.
2. The Council may, by a distributed two-thirds majority vote, delegate to the Executive Board the exercise of any or all of its powers other than the following:
 - (a) approval of the Administrative Budget and assessment of contributions under the provisions of Article 24;

- (b) suspension of the voting rights of a Member under the provisions of Article 42;
 - (c) decisions on disputes under the provisions of Article 42;
 - (d) establishment of conditions for accession under the provisions of Article 46;
 - (e) a decision to exclude a Member under the provisions of Article 50;
 - (f) a decision concerning the negotiation of a new Agreement under the provisions of Article 32, or the extension or termination of this Agreement under the provisions of Article 52; and
 - (g) recommendation of amendments to Members under the provisions of Article 53.
3. The Council may, by a distributed simple majority vote, at any time revoke any powers which have been delegated to the Executive Board.
 4. The Executive Board shall examine the draft Administrative Budget presented by the Executive Director and submit it to the Council with its recommendations for approval, elaborate the annual work plan of the Organization, decide on administrative and financial matters concerning the operation of the Organization other than those matters reserved for the Council under the terms of paragraph (2) of this Article, and examine projects and programmes on coffee matters, which shall be submitted to the Council for approval. The Executive Board shall report to the Council. Decisions of the Executive Board shall enter into force if no objection from a Member of the Council is received within five working days of the report of the Executive Board to the Council, or within five working days of circulation of the summary of the decisions reached by the Executive Board should the Council not meet during the same month as the Executive Board. Nevertheless all Members shall have the right of appeal to the Council against any decision of the Executive Board.
 5. The Executive Board may set up any committees or working groups, as it considers necessary.

Article 20: Voting procedure of the Executive Board

1. Each Member of the Executive Board shall be entitled to cast the number of votes received by it under the provisions of paragraphs (6) and (7) of Article 18. Voting by proxy shall not be allowed. A Member of the Executive Board shall not be entitled to divide its votes.
2. Any decision taken by the Executive Board shall require the same majority as such decision would require if taken by the Council.

CHAPTER VIII: THE PRIVATE COFFEE SECTOR

Article 21: The World Coffee Conference

1. The Council shall make arrangements to hold, at appropriate intervals, a World Coffee Conference (hereinafter referred to as the Conference), which shall be composed of exporting and importing Members, private sector representatives, and other interested participants, including participants from non-member countries. The Council, in coordination with the Chairman of the Conference, shall ensure that the Conference contributes to furthering the objectives of this Agreement.

2. The Conference shall have a Chairman who shall not be paid by the Organization. The Chairman shall be appointed by the Council for an appropriate period, and shall be invited to parti
3. The Council shall decide on the form, title, subject matter and timing of the Conference, in consultation with the Private Sector Consultative Board. The Conference shall be held normally at the seat of the Organization, during a session of the Council. If the Council decides to accept an invitation by a Member to hold a session in its territory, the Conference may also be held in that territory, in which case the additional costs to the Organization involved above those incurred when the session is held at the seat of the Organization shall be borne by the country hosting the session.
4. Unless the Council by a distributed two-thirds majority vote decides otherwise, the Conference shall be self-financing.
5. The Chairman of the Conference shall report the conclusions of each session to the Council.

Article 22: The Private Sector Consultative Board

1. The Private Sector Consultative Board (hereinafter referred to as the PSCB) shall be a consultative body which may make recom mendations on any consultations made by the Council and may invite the Council to give consideration to matters related to this Agreement.
2. The PSCB shall consist of eight representatives of the private sector in exporting countries and eight representatives of the private sector in importing countries.
3. Members of the PSCB shall be representatives of associations or bodies designated by the Council every two coffee years, and may be re-appointed. The Council in so doing shall endeavour to designate:
 - (a) two private sector coffee associations or bodies from exporting countries or regions representing each of the four groups of coffee, preferably representing both growers and exporters, together with one or more alternates for each representative; and
 - (b) eight private sector coffee associations or bodies from importing countries, whether Members or non-members, preferably representing both importers and roasters, together with one or more alternates for each representative.
4. Each member of the PSCB may designate one or more advisers.
5. The PSCB shall have a Chairman and a Vice-Chairman elected from among its members, for a period of one year. These officers may be re-elected. The Chairman and the Vice-Chairman shall not be paid by the Organization. The Chairman shall be invited to participate in meetings of the Council as an observer.
6. The PSCB shall normally meet at the seat of the Organization, during regular sessions of the Council. In case of acceptance by the Council of an invitation by a Member to hold a meeting in its territory, the PSCB shall also meet in that territory, in which case the additional costs to the Organization involved above those incurred when the meeting is held at the seat of the Organization shall be borne by the country or private sector organization hosting the meeting.

7. The PSCB may hold special meetings subject to approval by the Council.
8. The PSCB shall submit regular reports to the Council.
9. The PSCB shall establish its own rules of procedure, consistent with the provisions of this Agreement.

CHAPTER IX: FINANCE

Article 23: Finance

1. The expenses of delegations to the Council, representatives on the Executive Board and representatives on any of the committees of the Council or the Executive Board shall be met by their respective Governments.
2. The other expenses necessary for the administration of this Agreement shall be met by annual contributions from the Members assessed in accordance with the provisions of Article 24, together with revenues from sales of specific services to Members and the sale of information and studies generated under the provisions of Articles 29 and 31.
3. The financial year of the Organization shall be the same as the coffee year.

Article 24: Determination of the Administrative Budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the Administrative Budget of the Organization for the following financial year and shall assess the contribution of each Member to that Budget. A draft Administrative Budget shall be prepared by the Executive Director under the supervision of the Executive Board in accordance with the provisions of paragraph (4) of Article 19.
2. The contribution of each Member to the Administrative Budget for each financial year shall be in the proportion which the number of its votes at the time the Administrative Budget for that financial year is approved bears to the total votes of all the Members. However, if there is any change in the distribution of votes among Members in accordance with the provisions of paragraph (5) of Article 13 at the beginning of the financial year for which contributions are assessed, such contributions shall be correspondingly adjusted for that year. In determining contributions, the votes of each Member shall be calculated without regard to the suspension of the voting rights of any Member or any redistribution of votes resulting therefrom.
3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by it and the period remaining in the current financial year, but the assessments made upon other Members for the current financial year shall not be altered.

Article 25: Payment of contributions

1. Contributions to the Administrative Budget for each financial year shall be payable in freely convertible currency and shall become due on the first day of that financial year.

2. If any Member fails to pay its full contribution to the Administrative Budget within six months of the date on which the contribution is due, its voting rights, its right to be eligible for election to the Executive Board and its right to have its votes cast in the Executive Board shall be suspended until its contribution has been paid in full. However, unless the Council by a distributed two-thirds majority vote so decides, such Member shall not be deprived of any of its other rights nor relieved of any of its obligations under this Agreement.
3. Any Member whose voting rights have been suspended either under the provisions of paragraph (2) of this Article or under the provisions of Article 42 shall nevertheless remain responsible for the payment of its contribution.

Article 26: Liabilities

1. The Organization, functioning as specified in paragraph (3) of Article 7, shall not have power to incur any obligation outside the scope of this Agreement, and shall not be taken to have been authorized by the Members to do so; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Organization shall incorporate in its contracts the terms of this Article in such a way as to bring them to the notice of the other parties entering into contracts with the Organization, but any failure to incorporate such terms shall not invalidate such a contract or render it ultra vires.
2. A Member's liability is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Organization shall be deemed to have notice of the provisions of this Agreement regarding the liabilities of Members.

Article 27: Audit and publication of accounts

As soon as possible and not later than six months after the close of each financial year, an independently audited statement of the Organization's assets, liabilities, income and expenditure during that financial year shall be prepared. This statement shall be presented to the Council for approval at its earliest forthcoming session.

CHAPTER X: THE EXECUTIVE DIRECTOR AND THE STAFF

Article 28: The Executive Director and the staff

1. The Council shall appoint the Executive Director. The terms of appointment of the Executive Director shall be established by the Council and shall be comparable to those applying to corresponding officials of similar intergovernmental organizations.
2. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible for the performance of any duties devolving upon him in the administration of this Agreement.
3. The Executive Director shall appoint the staff in accordance with regulations established by the Council.

4. Neither the Executive Director nor any member of the staff shall have any financial interest in the coffee industry, the coffee trade or the transportation of coffee.
5. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

CHAPTER XI: INFORMATION, STUDIES AND SURVEYS

Article 29: Information

1. The Organization shall act as a centre for the collection, exchange and publication of:
 - (a) statistical information on world production, prices, exports, imports and re-exports, distribution and consumption of coffee; and
 - (b) in so far as is considered appropriate, technical information on the cultivation, processing and utilization of coffee.
2. The Council may require Members to furnish such information as it considers necessary for its operations, including regular statistical reports on coffee production, production trends, exports, imports and re-exports, distribution, consumption, stocks, prices and taxation, but no information shall be published which might serve to identify the operations of persons or companies producing, processing or marketing coffee. Members, in so far as is possible, shall furnish information requested in as detailed, timely and accurate a manner as is practicable.
3. The Council shall establish a system of indicator prices and shall provide for the publication of a daily composite indicator price which should reflect actual market conditions.
4. If a Member fails to supply or finds difficulty in supplying within a reasonable time statistical and other information required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that technical assistance is needed in the matter, the Council may take any necessary measures.

Article 30: Certificates of Origin

1. In order to facilitate the collection of statistics on the international coffee trade and to ascertain the quantities of coffee which have been exported by each exporting Member, the Organization shall establish a system of Certificates of Origin, governed by rules approved by the Council.
2. Every export of coffee by an exporting Member shall be covered by a valid Certificate of Origin. Certificates of Origin shall be issued, in accordance with the rules

established by the Council, by a qualified agency chosen by the Member and approved by the Organization.

3. Each exporting Member shall notify the Organization of the government or non-governmental agency which is to perform the functions specified in paragraph (2) of this Article. The Organization shall specifically approve a non-governmental agency in accordance with the rules approved by the Council.
4. An exporting Member, on an exceptional basis and with proper justification, may submit, for approval by the Council, a request to allow data conveyed in Certificates of Origin concerning its exports of coffee to be transmitted to the Organization using an alternative method.

Article 31: Studies and surveys

1. The Organization shall promote the preparation of studies and surveys concerning the economics of coffee production and distribution, the impact of governmental measures in producing and consuming countries on the production and consumption of coffee, and the opportunities for expansion of coffee consumption for traditional and possible new uses.
2. In order to carry out the provisions of paragraph (1) of this Article, the Council shall adopt, at its second regular session of each coffee year, a draft annual work programme of studies and surveys, with estimated resource requirements, prepared by the Executive Director.
3. The Council may approve the undertaking by the Organization of studies and surveys to be conducted jointly or in cooperation with other organizations and institutions. In such cases, the Executive Director shall present to the Council a detailed account of the resource requirements from the Organization and from the partner or partners involved with the project.
4. The studies and surveys to be promoted by the Organization pursuant to the provisions of this Article shall be financed by resources included in the Administrative Budget, prepared in accordance with the provisions of paragraph (1) of Article 24, and shall be undertaken by members of the staff of the Organization and consultants as required.

CHAPTER XII: GENERAL PROVISIONS

Article 32: Preparations for a new Agreement

1. The Council may examine the possibility of negotiating a new International Coffee Agreement.
2. In order to carry out this provision, the Council shall examine the progress made by the Organization in achieving the objectives of this Agreement as specified in Article 1.

Article 33: Removal of obstacles to consumption

1. Members recognize the utmost importance of achieving the greatest possible increase of coffee consumption as rapidly as possible, in particular through the progressive removal of any obstacles which may hinder such increase.
2. Members recognize that there are at present in effect measures which may to a greater or lesser extent hinder the increase in consumption of coffee, in particular:
 - (a) import arrangements applicable to coffee, including preferential and other tariffs, quotas, operations of government monopolies and official purchasing agencies, and other administrative rules and commercial practices;
 - (b) export arrangements as regards direct or indirect subsidies and other administrative rules and commercial practices; and
 - (c) internal trade conditions and domestic and regional legal and administrative provisions which may affect consumption.
3. Having regard to the objectives stated above and to the provisions of paragraph (4) of this Article, Members shall endeavour to pursue tariff reductions on coffee or to take other action to remove obstacles to increased consumption.
4. Taking into account their mutual interest, Members undertake to seek ways and means by which the obstacles to increased trade and consumption referred to in paragraph (2) of this Article may be progressively reduced and eventually, wherever possible, eliminated, or by which the effects of such obstacles may be substantially diminished.
5. Taking into account any commitments undertaken under the provisions of paragraph (4) of this Article, Members shall inform the Council annually of all measures adopted with a view to implementing the provisions of this Article.
6. The Executive Director shall prepare periodically a survey of the obstacles to consumption to be reviewed by the Council.
7. The Council may, in order to further the purposes of this Article, make recommendations to Members which shall report as soon as possible to the Council on the measures adopted with a view to implementing such recommendations.

Article 34: Promotion

1. Members recognize the need to promote, encourage and increase the consumption of coffee, and shall endeavour to encourage activities undertaken in this respect.
2. The Promotion Committee, which shall be composed of all Members of the Organization, shall promote coffee consumption by appropriate activities, including information campaigns, research and studies related to coffee consumption.
3. Such promotion activities shall be financed by resources which may be pledged by Members, non-members, other organizations and the private sector at meetings of the Promotion Committee.
4. Specific promotion projects may also be financed by voluntary contributions from Members, non-members, other organizations and the private sector.
5. The Council shall establish separate accounts for the purposes of paragraphs (3) and (4) of this Article.
6. The Promotion Committee shall establish its own rules of procedure, as well as establish the pertinent regulations for the participation of non-members, other

organizations and the private sector consistent with the provisions of this Agreement. It shall report regularly to the Council.

Article 35: Measures related to processed coffee

Members recognize the need of developing countries to broaden the base of their economies through, inter alia, industrialization and the export of manufactured products, including the processing of coffee and the export of processed coffee, as referred to in sub-paragraphs (d), (e), (f) and (g) of paragraph (1) of Article 2. In this connection, Members shall avoid the adoption of governmental measures which could cause disruption to the coffee sector of other Members. Members are encouraged to consult on the introduction of any such measures which might be considered to pose a risk of disruption. If these consultations do not lead to a mutually satisfactory solution, parties may invoke the procedures provided for in Articles 41 and 42.

Article 36: Mixtures and substitutes

1. Members shall not maintain any regulations requiring the mixing, processing or using of other products with coffee for commercial resale as coffee. Members shall endeavour to prohibit the sale and advertisement of products under the name of coffee if such products contain less than the equivalent of 95 percent green coffee as the basic raw material.
2. The Council may request any Member to take the steps necessary to ensure observance of the provisions of this Article.
3. The Executive Director shall submit to the Council a periodic report on compliance with the provisions of this Article.

Article 37: Consultation and cooperation with non-governmental organizations

Without prejudice to the provisions of Articles 16, 21 and 22, the Organization shall maintain links with appropriate non-governmental organizations concerned with international commerce in coffee and with experts in coffee matters.

Article 38: Established coffee trade channels

Members shall conduct their activities within the framework of this Agreement in a manner consonant with established trade channels and shall refrain from discriminatory sales practices. In carrying out these activities they shall endeavour to take due account of the legitimate interests of the coffee trade and industry.

Article 39: Sustainable coffee economy

Members shall give due consideration to the sustainable management of coffee resources and processing, bearing in mind the principles and objectives on sustainable development

contained in Agenda 21 agreed at the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992.

Article 40: Standard of living and working conditions

Members shall give consideration to improving the standard of living and working conditions of populations engaged in the coffee sector, consistent with their stage of development, bearing in mind internationally recognized principles on these matters. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.

CHAPTER XIII: CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 41: Consultations

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Member with respect to any matter relating to this Agreement. In the course of such consultation, on request by either party and with the consent of the other, the Executive Director shall establish an independent panel which shall use its good offices with a view to conciliating the parties. The costs of the panel shall not be chargeable to the Organization. If a party does not agree to the establishment of a panel by the Executive Director, or if the consultation does not lead to a solution, the matter may be referred to the Council in accordance with the provisions of Article 42. If the consultation does lead to a solution, it shall be reported to the Executive Director who shall distribute the report to all Members.

Article 42: Disputes and complaints

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of any Member party to the dispute, be referred to the Council for decision.
2. In any case where a dispute has been referred to the Council under the provisions of paragraph (1) of this Article, a majority of Members, or Members holding not less than one third of the total votes, may require the Council, after discussion, to seek the opinion of the advisory panel referred to in paragraph (3) of this Article on the issues in dispute before giving its decision.
3.
 - (a) Unless the Council unanimously agrees otherwise, the advisory panel shall consist of:

- i. two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;
 - ii. two such persons nominated by the importing Members; and
 - iii. a chairman selected unanimously by the four persons nominated under the provisions of sub-paragraphs (i) and (ii) or, if they fail to agree, by the Chairman of the Council.
- (b) Persons from countries whose Governments are Contracting Parties to this Agreement shall be eligible to serve on the advisory panel.
- (c) Persons appointed to the advisory panel shall act in their personal capacities and without instructions from any Government.
- (d) The expenses of the advisory panel shall be paid by the Organization.
4. The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall decide the dispute.
5. The Council shall rule on any dispute brought before it within six months of submission of such dispute for its consideration.
6. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council which shall make a decision on the matter.
7. No Member shall be found to have been in breach of its obligations under this Agreement except by a distributed simple majority vote. Any finding that a Member is in breach of its obligations under this Agreement shall specify the nature of the breach.
8. If the Council finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to other enforcement measures provided for in other Articles of this Agreement, by a distributed two-thirds majority vote, suspend such Member's voting rights in the Council and its right to have its votes cast in the Executive Board until it fulfils its obligations, or the Council may decide to exclude such Member from the Organization under the provisions of Article 50.
9. A Member may seek the prior opinion of the Executive Board in a matter of dispute or complaint before the matter is discussed by the Council.

CHAPTER XIV: FINAL PROVISIONS

Article 43: Signature

This Agreement shall be open for signature at the United Nations headquarters from 1 November 2000 until and including 25 September 2001 by Contracting Parties to the International Coffee Agreement 1994 or the International Coffee Agreement 1994 as extended, and Governments invited to the session of the International Coffee Council at which this Agreement was negotiated.

Article 44: Ratification, acceptance or approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures.
2. Except as provided for in Article 45, instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations not later than 25 September 2001. However, the Council may decide to grant extensions of time to signatory Governments which are unable to deposit their instruments by that date. Such decisions shall be transmitted by the Council to the Secretary-General of the United Nations.

Article 45: Entry into force

1. This Agreement shall enter into force definitively on 1 October 2001 if by that date Governments representing at least 15 exporting Members holding at least 70 percent of the votes of the exporting Members and at least 10 importing Members holding at least 70 percent of the votes of the importing Members, calculated as at 25 September 2001, without reference to possible suspension under the terms of Articles 25 and 42, have deposited instruments of ratification, acceptance or approval. Alternatively, it shall enter into force definitively at any time after 1 October 2001 if it is provisionally in force in accordance with the provisions of paragraph (2) of this Article and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance or approval.
2. This Agreement may enter into force provisionally on 1 October 2001. For this purpose, a notification by a signatory Government or by any other Contracting Party to the International Coffee Agreement 1994 as extended, containing an undertaking to apply this new Agreement provisionally, in accordance with its laws and regulations, and to seek ratification, acceptance or approval in accordance with its constitutional procedures as rapidly as possible, which is received by the Secretary-General of the United Nations not later than 25 September 2001, shall be regarded as equal in effect to an instrument of ratification, acceptance or approval. A Government which undertakes to apply this Agreement provisionally, in accordance with its laws and regulations, pending the deposit of an instrument of ratification, acceptance or approval shall be regarded as a provisional Party thereto until it deposits its instrument of ratification, acceptance or approval, or until and including 30 June 2002 whichever is the earlier. The Council may grant an extension of the time within which any Government which is applying this Agreement provisionally may deposit its instrument of ratification, acceptance or approval.
3. If this Agreement has not entered into force definitively or provisionally on 1 October 2001 under the provisions of paragraph (1) or (2) of this Article, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made notifications containing an undertaking to apply this Agreement provisionally, in accordance with their laws and regulations, and to seek ratification, acceptance or approval may, by mutual consent, decide that it shall enter into force among themselves. Similarly, if this Agreement has entered into force provisionally but has not entered into force definitively on 31 March 2002, those Governments which have deposited instruments of ratification, acceptance, approval or accession or made the notifications referred to in paragraph (2) of this Article, may, by mutual consent,

decide that it shall continue in force provisionally or enter into force definitively among themselves.

Article 46: Accession

1. The Government of any State member of the United Nations or of any of its specialized agencies may accede to this Agreement upon conditions which shall be established by the Council.
2. Instruments of accession shall be deposited with the Secretary-General of the United Nations. The accession shall take effect upon deposit of the instrument.

Article 47: Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 48: Extension to designated territories

1. Any Government may, at the time of signature or deposit of an instrument of ratification, acceptance, approval, provisional application or accession, or at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall extend to any of the territories for whose international relations it is responsible; this Agreement shall extend to the territories named therein from the date of such notification.
2. Any Contracting Party which desires to exercise its rights under the provisions of Article 5 in respect of any of the territories for whose international relations it is responsible or which desires to authorize any such territory to become part of a Member group formed under the provisions of Article 6, may do so by making a notification to that effect to the Secretary-General of the United Nations, either at the time of the deposit of its instrument of ratification, acceptance, approval, provisional application or accession, or at any later time.
3. Any Contracting Party which has made a declaration under the provisions of paragraph (1) of this Article may at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Agreement shall cease to extend to the territory named in the notification. This Agreement shall cease to extend to such territory from the date of such notification.
4. When a territory to which this Agreement has been extended under the provisions of paragraph (1) of this Article subsequently attains its independence, the Government of the new State may, within 90 days after the attainment of independence, declare by notification to the Secretary-General of the United Nations that it has assumed the rights and obligations of a Contracting Party to this Agreement. It shall, as from the date of such notification, become a Contracting Party to this Agreement. The Council may grant an extension of the time within which such notification may be made.

Article 49: Voluntary withdrawal

Any Contracting Party may withdraw from this Agreement at any time by giving a written notice of withdrawal to the Secretary-General of the United Nations. Withdrawal shall become effective 90 days after the notice is received.

Article 50: Exclusion

If the Council decides that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by a distributed two-thirds majority vote, exclude such Member from the Organization. The Council shall immediately notify the Secretary-General of the United Nations of any such decision. Ninety days after the date of the Council's decision, such Member shall cease to be a Member of the Organization and, if such Member is a Contracting Party, a Party to this Agreement.

Article 51: Settlement of accounts with withdrawing or excluded Members

1. The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective; provided, however, that in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph (2) of Article 53, the Council may determine any settlement of accounts which it finds equitable.
2. A Member which has ceased to participate in this Agreement shall not be entitled to any share of the proceeds of liquidation or the other assets of the Organization; nor shall it be liable for payment of any part of the deficit, if any, of the Organization upon termination of this Agreement.

Article 52: Duration and termination

1. This Agreement shall remain in force for a period of six years until 30 September 2007 unless extended under the provisions of paragraph (2) of this Article or terminated under the provisions of paragraph (3) of this Article.
2. The Council may, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to extend this Agreement beyond 30 September 2007 for one or more successive periods not to exceed six years in total. Any Member which does not accept any such extension of this Agreement shall so inform the Council and the Secretary-General of the United Nations in writing before the commencement of the period of extension and shall cease to be a Party to this Agreement from the beginning of the period of extension.
3. The Council may at any time, by a vote of a majority of the Members having not less than a distributed two-thirds majority of the total votes, decide to terminate this Agreement. Termination shall take effect on such date as the Council shall decide.

4. Notwithstanding the termination of this Agreement, the Council shall remain in being for as long as necessary to take such decisions as are needed during the period of time required for the liquidation of the Organization, settlement of its accounts and disposal of its assets.
5. Any decision taken with respect to the duration and/or termination of this Agreement and any notification received by the Council pursuant to this Article shall be duly transmitted by the Council to the Secretary-General of the United Nations.

Article 53: Amendment

1. The Council may, by a distributed two-thirds majority vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the Secretary-General of the United Nations has received notifications of acceptance from Contracting Parties representing at least 70 percent of the exporting countries holding at least 75 percent of the votes of the exporting Members, and from Contracting Parties representing at least 70 percent of the importing countries holding at least 75 percent of the votes of the importing Members. The Council shall fix a time within which Contracting Parties shall notify the Secretary-General of the United Nations of their acceptance of the amendment. If, on expiry of such time limit, the percentage requirements for the entry into effect of the amendment have not been met, the amendment shall be considered withdrawn.
2. Any Contracting Party which has not notified acceptance of an amendment within the period fixed by the Council, or any territory which is either a Member or a party to a Member group on behalf of which such notification has not been made by that date, shall cease to participate in this Agreement from the date on which such amendment becomes effective.
3. The Council shall notify the Secretary-General of the United Nations of any amendments distributed to the Contracting Parties under this Article.

Article 54: Supplementary and transitional provisions

The following shall apply in relation to the International Coffee Agreement 1994, as extended:

- (a) all acts by or on behalf of the Organization or any of its organs under the International Coffee Agreement 1994 as extended, in effect on 30 September 2001, the terms of which do not provide for expiry on that date, shall remain in effect unless changed under the provisions of this Agreement; and
- (b) all decisions required to be taken by the Council during coffee year 2000/01 for application in coffee year 2001/02 shall be taken by the Council in coffee year 2000/01 and applied on a provisional basis as if this Agreement had already entered into force.

Article 55: Authentic texts of the Agreement

The texts of this Agreement in the English, French, Portuguese and Spanish languages shall all be equally authentic. The originals shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective Governments, have signed this Agreement on the dates appearing opposite their signatures.

[Like the list of signatures, the annexes to the Agreement are not included here.]

CHAPTER SEVENTY

Inter-Governmental Agreement on North-South Transport Corridor

St Petersburg, 12 September 2000

INTRODUCTION

This Agreement was between countries that are not necessarily directly connected by geography, but by some common interests in the efficient transportation of goods to and from their respective countries. The Agreement is to facilitate or regularize multi-modal transportation among the parties, although India limits the scope to sea or marine transport. The objective is to promote access to international markets through rail, road, sea, river and air transport. Given the subject matter of the Agreement and the fact that it covers two important but somehow enclosed seas, it is not surprising that security of travel, safety of goods and environmental protection are important goals. The standard is the international one. To achieve these goals, the parties are to harmonize their laws and policies on transport. The terms of the Agreement must not contradict national legislation. Neither should any party's rights and obligations under other international agreements be constrained. It is difficult to follow the logic of the provisions on consistency with national and international law obligations. It is understandable to have consistency with international law, i.e. placing premium on the international, but one would have expected the regional agreement to take precedence over individual national law and policy. The solution would be faster harmonization of the laws and policies on transport by all the parties to this Agreement.

The corridor on which the Agreement concentrates is mainly that from India, across the Arabian Sea (part of the Indian Ocean) to Oman and the Persian (Arabian) Gulf, then through Iran and on to the Caspian Sea and, thus, into the Russian Federation—and in reverse. Each party must grant the right of transit to the other parties. Parties are to have systems that will assist and speed up the transit of goods and persons, and their means of transportation, through their countries, including the issue of multiple-entry visas to relevant personnel from states parties. No taxes, custom duties and charges of equivalent effect are to be imposed on the transit of goods. Administrative charges, transport user fees and storage costs must be on uniform terms to all countries relying on the most-favoured-nation principle.

The monitoring and enforcement of the Agreement is entrusted to the competent government agencies in the individual member countries. They are to form a Co-ordination Council that meets at least once a year to supervise efforts and to deal with issues arising from the implementation of the Agreement. The Coordination Council also serves as the secondary centre for resolving disputes arising from the Agreement, if negotiations have failed. The Agreement is valid for an initial period of 10 years from the date of coming into force. It may be extended by similar periods unless any of the founding countries serves notice to the contrary. The founding countries also hold veto power regarding the accession of other countries to the Agreement. It would appear that the founding countries would have to be flexible in receiving new members or, perhaps, actively seek the accession of countries such as Pakistan and Afghanistan, which may, for geographical and cost reasons, have to serve as transit routes for the transport and trade of the existing states parties.

The Agreement came into effect on 16 May 2002, with ratification by three founding members, and the Co-ordination Council was established five days later. The three founding members are officially listed as India, Iran and Russia, with Oman (despite appearing in the text of the document, as reproduced below) only formally joining, with three other countries, in 2003. Four more countries joined one year later and, at the beginning of 2005, four further applications were going through the admittance process.

INTER-GOVERNMENTAL AGREEMENT ON NORTH-SOUTH TRANSPORT CORRIDOR*

IN THE NAME OF GOD

The Government of the Republic of India,
The Government of the Islamic Republic of Iran,
The Government of the Sultanate of Oman,
The Government of the Russian Federation,
hereinafter referred to as "Parties"

DETERMINED to support, develop and strengthen friendly relations and cooperation among them,

UNDERSTANDING growing inter relations of nations in the region and globally,

GIVING significant consideration to extension of external economic ties and raising their efficiency,

ACKNOWLEDGING importance of existing agreements on transit shipments for international trade and speeding up of economic development of the nations,

STRESSING their commitments to facilitation of uninterrupted, timely and effective movement of goods from/to other countries,

WISHING to further develop their respective modes of handling transit of passengers and goods on the basis of prevailing experience and in accordance with the International Conventions and standards,

EXTENDING maximum efforts for due usage of existing transport infrastructure and performance of passenger and goods transport along the international "North-South" transport corridor.

HAVE AGREED as follows:

ARTICLE 1 Definitions

For the purpose of this Agreement the following terms shall mean as follows.

- 1.1 “All modes of transport”: transport infrastructure and transport modes providing transportation of passengers and goods by rail, sea, road, river and air routes.
However, in case of India: transport infrastructure and transport modes providing transportation of goods presently by sea routes only.
- 1.2 “Cargo transport”: the kind of transportation service for movement of goods while keeping their physical/chemical properties and mass within the agreed limits.
- 1.3 “Container”: following transport device:
fully/partly covered capacity designed for storage of goods; of permanent nature, and, because of that, having construction sufficient enough to serve for multiple use;
specially designed to facilitate transportation of goods by means of one or more types of transport without intermediate reloading of goods;
designed to secure easy load/unload and easy to handle including its replacement from one transport mode to another; of internal volume not less than one cubic meter.
- 1.4 “Forwarder”: legal entity or a physical person who in fact effects cargo movement or who is responsible for the use of a transport facility and who carries out international transport of goods and passengers with their baggage in accordance with the national legislation of the state Parties along the international “North-South” transport corridor.
- 1.5 “Goods”: all types of cargoes transported in wagons, containers or by any other means that are not forbidden by the national legislation of the Parties.
- 1.6 “International transit of goods”: movement of goods through the territory of a Party with their origin/destination points lying outside that State, under customs’ control.
- 1.7 “International transport”: movement of passengers/goods by various modes of transport, carried out through the national territories of at least two Parties to this Agreement.
- 1.8 “International transport corridor”: a network of main transport systems (both existing and to be constructed) connecting the Parties, as a rule equipped adequately to handle various modes of transport, which shall ensure international transportation of passengers and goods especially in the directions of their most concentration.
- 1.9 “International North-South Transport Corridor”: from India, Oman via sea to and through Iran, Caspian Sea, the Russian Federation and beyond and back.
- 1.10 “Passenger”: the consumer of transport services related to the movement of physical person by any mode of transport, who has concluded a contract for transportation.
- 1.11 “Passenger transport”: the kind of transport service for movement of physical persons (passengers) by every mode of transport.
- 1.12 “Related installations” within the framework of international transport corridor shall refer to border crossing points, customs terminals, stations for the exchange of wagon groups, gauge interchange stations, as well as rail road and combined ferry links/ports, both existing and to be constructed, which are of great importance for international transport along the international “North-South” transport corridor.

ARTICLE 2 Objectives of the Agreement

2.1 The objectives of this Agreement shall be as follows:

- (a) increasing effectiveness of transport ties in order to organise goods and passenger transport along the international “North-South” transport corridor;
- (b) promotion of access to the international market through rail, road, sea, river and air transport of the state Parties to this Agreement;
- (c) assistance in increasing the volume of international transport of passengers and goods;
- (d) providing security of travel, safety of goods as well as environmental protection according to the international standards;
- (e) harmonization of transport policies as well as law and legislative basis in the field of transport for the purpose of implementing this Agreement;
- (f) setting up equal non-discriminative conditions for all types of transport service providers from all the Parties in transport of passengers and goods within the framework of the international “North-South” transport corridor.

2.2 In accordance with the objectives stipulated in the Article

2.3 above, the Parties shall make every effort aimed at:

- (a) reducing transit time for passengers and goods transport in their respective territories;
- (b) minimizing transit transport costs.
- (c) simplifying and unifying all administrative documentation and procedures (including customs) applicable to international transport of goods and passengers through their respective territories in accordance with the adopted international agreements and standards.

ARTICLE 3 General Conditions

3.1 Provisions of this Agreement shall regulate international transport and transit of goods and passengers through the national territories of the Parties to this Agreement, carried out by all modes of transport or through combined transport along the routes determined by all modes of transport or through combined transport along the routes determined by the Competent authorities of the respective Parties:

3.2 For the purpose of this Agreement, Competent authorities of the Parties to this Agreement shall be as follows:

In the Republic of India: Ministry of Surface Transport (Department of Shipping) and Ministry of Commerce and Industry (Department of Commerce);

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat for the International North-South Transport Corridor (<http://www.instc.org/>).

In the Islamic Republic of Iran: Ministry of Roads and Transportation;

In the Sultanate of Oman: Ministry of Transport and Housing;

In the Russian Federation: Ministry of Transport and Ministry of Railways.

- 3.3 This Agreement shall not contradict national legislation of the Parties to this Agreement and shall not restrain the rights and obligations of any Party assumed in international agreements to which a Party is a participant.

ARTICLE 4 Assistance to the International Transport of Passengers and Goods

- 4.1 Each Party shall grant the other Parties the right for international transit of passengers, goods and transport means through its respective state territory on the terms and conditions stipulated by this Agreement.
- 4.2 State Parties to this Agreement shall provide effective assistance to international transit of goods within their respective State territories.
- 4.3 State Parties to this Agreement shall have multiple entry visa regime for personnel engaged in international transit of goods and passengers as per the procedure laid down by the respective Parties.

ARTICLE 5 Taxes, Excise and Other Duties

- 5.1 No taxes, excises and other duties regardless of their names and purposes shall be imposed on the International transit of goods, except related transport expenses and transport infrastructure user fees. The imposition of transport expenses and user fees, etc. shall be on terms which are no less favorable than those levied by the members in respect of transit of goods of other countries.
- 5.2 Parties shall not impose custom taxes on the goods, which are in transit within their territories except customs formalities fees, storage and other services of that nature.

ARTICLE 6 Coordination Council

- 6.1 The competent authorities of the Parties shall form a Coordination Council in order to regulate the issues related to implementation and application of the provisions of this Agreement.
- 6.2 The Coordination Council consisting of the Competent Authorities of the Parties to this Agreement shall adopt a Statute at its first meeting to be convened within six months of this Agreement entering into force, where it shall set up its own rules and procedures of its activities.
- 6.3 The Coordination Council shall meet at least once a year or upon a request made by any party to the Agreement.

ARTICLE 7 Settlement of Disputes

- 7.1 Any dispute, discord or claim among the Parties which relates to application, interpretation or violation of this Agreement and which cannot be settled by negotiation shall be submitted to the Coordination Council for consideration and settlement.
- 7.2 Any dispute, discord or claim which the Coordination Council fails to settle shall be settled by such other means as the Parties by common consent agree.

ARTICLE 8 Designation of the Depositary

- 8.1 Islamic Republic of Iran shall be the Depositary of this Agreement. The Depositary State shall transmit certified copies of this Agreement to the parties who have signed this agreement.
- 8.2 The Depositary State shall inform the Parties regarding accession by the other countries to this Agreement and regarding cessation of this Agreement by any Party.

ARTICLE 9 Ratification

This Agreement is subject to Ratification according to the national requirements of the Parties. The instruments of Ratification shall be deposited with the Depositary State.

ARTICLE 10 Accession

- 10.1 This Agreement shall be open for accession by any country only with the consent of all the Parties to this Agreement.
- 10.2 For a country which has accessed, this Agreement shall come into force 30 days after the date on which that country deposits the instrument of accession with the Depositary State. The country accessing this Agreement shall notify the Depositary State in writing regarding its competent authority/authorities and thereafter, the Depositary State shall transmit the same to the competent Authorities of the other Parties to this Agreement.

ARTICLE 11 Additions and Amendments

Additions and amendments to this Agreement may be introduced provided that they are agreed to by all competent authorities of the Parties on the basis of the procedures laid down by the Coordination Council.

ARTICLE 12 Validity

- 12.1 This Agreement shall be valid for the period of ten years from
- 12.2 the date of its entry into force. This Agreement will be further extended by similar periods, unless a notification to the contrary is received by the Depositary State from any of the founding Parties to this Agreement at least six months prior to the expiry of the validity of this Agreement.
- 12.3 Validity of this Agreement may cease in the territory of a Party to this Agreement, given that such a Party shall communicate in writing to the Depositary State of its intention to cease validity of this Agreement in its territory at least six months prior to the date when it shall do so.
- 12.4 Obligations assumed in agreements and other contracts signed in accordance with the provisions of this Agreement shall remain valid up to their complete fulfillment even after cessation of this Agreement.

ARTICLE 13 Entry into Force

- 13.1 This Agreement shall come into force 30 days after the date on which any three of the Parties

have deposited with the Depositary State the instrument of ratification, approved according to their national legislation procedures.

- 13.2 For the remaining party, which completes its state formalities later, this Agreement shall come into force 30 days after the date on which that Party deposits the instrument of ratification, approved according to its national legislation procedures, with the Depositary State.

DONE in Saint Petersburg city on 1379/6/22 (2000/09/12). The original text of this Agreement is done in English and in the national languages of the founding Parties, all of them being equally authentic. For the purpose of interpretation of this Agreement English text shall prevail.

IN WITNESS WHEREOF the undersigned, the representatives of the states Parties duly authorised to that effect, have signed this Agreement [signatures are not reproduced].

CHAPTER SEVENTY-ONE

UN Convention against Transnational Organized Crime

New York, NY, 15 November 2000

INTRODUCTION

The organization and objects of crime have in many ways followed the ethos of globalization and technological advancement. Crime now transcends national borders and has become sophisticated. The items of transnational crime include drugs, immigrants, women and children in slavery and prostitution, precious minerals like gold and diamonds, etc. Corruption of public officials, money laundering, tax evasion, etc., are also crimes that not only defy geographical or jurisdictional limitations, but are also very well organized. The Convention against transnational crime is one of the many efforts at containing or dealing with this canker.

For the purposes of the Convention, an organized crime ring is where three or more persons arrange a structured system over a period of time, with the aim of committing an offence that, if detected and prosecuted, would be punishable by four or more years' imprisonment. The Convention depends significantly on the domestic legal systems of member countries. For example, each state party is under an obligation to adopt laws and policies that would criminalize: the conversion of the proceeds of a crime to property or other 'legitimate' transaction; the disguising of the origin, location and ownership of property; participation in, facilitating or counselling the commission of organized crime. Two subjects that have been focused on disproportionately in the Convention are money-laundering and corruption.

Each state party is required to put in place a comprehensive regulatory and supervisory regime for the financial sector of its economy. The emphasis must be on customer identification, record keeping and the reporting of suspicious transactions. A national centre to co-ordinate these systems should be established. Regarding corruption, state parties are to enact legislation and other necessary measures to prosecute the promise or offering to a public official and the direct or indirect receipt by a public official of any undue favour or advantage that might influence the exercise of the said official's duties. National authorities must be established with adequate training, resources and independence to deal with corrupt practices. An interesting aspect of the Convention is that it covers both natural and artificial persons (i.e. individuals or companies, for

example). It also provides for dealing with international civil or public servants who get involved in transnational organized crime.

State parties are to provide in their national legal systems for the seizure and confiscation of the proceeds of crime and of the property and equipment used in crime or acquired with the proceeds of crime. In the identification and tracing of the proceeds of crime, courts are to be empowered to order the production of bank, financial or commercial records, and such process shall not be attenuated by the principle of bank secrecy.

To achieve the objectives of the Convention, state parties are to co-operate and support each other to the maximum extent possible. This is not to interfere with the principles of state sovereignty, and the Convention makes it clear that no state is empowered to intervene in the domestic affairs of other states. This is one of the difficulties of the conception of the Convention. It would be difficult to restrain more powerful states from getting directly involved, whether invited or not, in pursuit of 'criminals'. The USA showed this when in 1989 it arrested Manuel Noriega, then head of state of Panama. More recently, Uganda and Rwanda sent troops to the Democratic Republic of the Congo (formerly Zaire) in pursuit of 'rebels' or 'criminals'. Another worry is the oft-repeated assertion about the primacy of the 'fundamental principles of domestic law', etc. This may provide an easy way out of the non-implementation of aspects of the Convention. For example, the principle of the presumption of innocence in article 12(7) may be blatantly violated, widely interpreted to favour an accused or to satisfy the demands of a more powerful state.

Transnational organized crime adversely affects the states involved, in the short or long term, but poor countries are more vulnerable, either as victims or as locations for criminal activity. For example, in Ethiopia, because of low income from coffee and the non-diversification of the economy, many shifted from the cultivation of coffee to the trade in hard drugs. It is, therefore, important continually to pay attention to economic circumstances and developmental patterns as a means of removing the incentive, or the faintest moral justification, for organized crime. This is why article 31 of the Convention, particularly clause (7), which urges the alleviation of 'the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime', is very welcome.

The Convention came into force on 29 September 2003. By mid-2005 there were 147 signatories, with 102 parties having ratified or acceded to the Convention.

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME*

Article 1 Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2 Use of terms

For the purposes of this Convention:

- (a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (j) “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

Article 3 Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
 - (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
 - (b) Serious crime as defined in article 2 of this Convention; Where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
- (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.

Article 4 Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5 Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - i. Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
 - ii. Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
 - a. Criminal activities of the organized criminal group;
 - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
 - (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1(a)(i) of

this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1(a)(i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6 Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

measures as may be necessary to establish as criminal offences, when committed intentionally:

(a)

- i. The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- ii. The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

- i. The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
- ii. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

- (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
- (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
- (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;
- (f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7 Measures to combat money-laundering

1. Each State Party:

- (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;
- (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

- 2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
- 3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8 Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 - (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9 Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10 Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious

crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11 Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12 Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

- (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
- 2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
- 3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
- 4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
- 5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
- 6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
- 7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
- 8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
- 9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13 International cooperation for purposes of confiscation

- 1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.
3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:
 - (a) In the case of a request pertaining to paragraph 1(a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
 - (b) In the case of a request pertaining to paragraph 1(b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
 - (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.
4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.
5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14 Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
 - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2(c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;
 - (b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15 Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:
 - (a) The offence is committed in the territory of that State Party; or
 - (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State Party;
 - (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
 - (c) The offence is:
 - i. One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
 - ii. One of those established in accordance with article 6, paragraph 1(b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1(a)(i) or (ii) or (b)(i), of this Convention within its territory.
3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it

does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.
5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16 Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1(a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall:
 - (a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.
12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18 Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1(a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist

the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.
6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.
10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
11. For the purposes of paragraph 10 of this article:
 - (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
 - (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the

person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.
13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.
14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.
15. A request for mutual legal assistance shall contain:
 - (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned; and
 - (f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
 17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
 18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
 19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
 20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
 21. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this article;
 - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
 - (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
23. Reasons shall be given for any refusal of mutual legal assistance.
24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.
28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
29. The requested State Party:
 - (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20 Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22 Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23 Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24 Protection of witnesses

- 1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
- 2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
 - (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.
- 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
- 4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25 Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26 Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:
 - (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
 - i. The identity, nature, composition, structure, location or activities of organized criminal groups;
 - ii. Links, including international links, with other organized criminal groups;
 - iii. Offences that organized criminal groups have committed or may commit;
 - (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
4. Protection of such persons shall be as provided for in article 24 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

- (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
 - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
 - i. The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - ii. The movement of proceeds of crime or property derived from the commission of such offences;
 - iii. The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
 - (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
 - (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28 Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in

which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.
3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29 Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:
 - (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
 - (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
 - (c) Monitoring of the movement of contraband;
 - (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
 - (e) Collection of evidence;
 - (f) Control techniques in free trade zones and free ports;
 - (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
 - (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
 - (i) Methods used in the protection of victims and witnesses.
2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may

include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30 Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
 - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;
 - (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;
 - (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
 - (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31 Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.
2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:
 - (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
 - (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
 - (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
 - (d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:
 - i. The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
 - ii. The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
 - iii. The establishment of national records of persons disqualified from acting as directors of legal persons; and
 - iv. The exchange of information contained in the records referred to in subparagraphs (d)(i) and (iii) of this paragraph with the competent authorities of other States Parties.
3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.
4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.
5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.
6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32 Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
 - (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
 - (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
 - (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
 - (d) Reviewing periodically the implementation of this Convention;
 - (e) Making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3(d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33 Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:

- (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
- (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
- (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34 Implementation of the Convention

- 1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
- 2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.
- 3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35 Settlement of disputes

- 1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
- 2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
- 3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
- 4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36 Signature, ratification, acceptance, approval and accession

- 1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37 Relation with protocols

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38 Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39 Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States

Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40 Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.
3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41 Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

CHAPTER SEVENTY-TWO

The International Cocoa Agreement

Geneva, 2 March 2001

INTRODUCTION

The dependence of developing countries on one or two primary commodities for foreign exchange and the fluctuations of the price of these commodities prompted a number of international measures to stabilize the trade and price of commodities. The first Cocoa Agreement became effective in 1975. Since then, there have been five more such agreements. The 1993 one was replaced by the current 2001 Agreement. The 2001 International Cocoa Agreement entered into force in October 2003 and is valid for an initial period of five years, but can be extended.

The Agreement can be categorized as having three main features: first, institutional arrangements, including voting rights; secondly, co-operation with other international organizations; and, thirdly, the promotion of the cocoa business. The main thrust of the Agreement is the establishment of an organizational framework to promote the interest of members. There are three key levels of institutional governance operated under the Agreement. The most authoritative level is the International Cocoa Council. It is composed of all the contracting parties and is the executive arm of the organization, seeing to the functioning of the terms of the Agreement. The Council deals with the admission of new members, the distribution of votes, suspension of members and the approval of budgets. However, it does not have the power to contract loans. Under article 24, parties doing business with the Council and the International Cocoa Organization are notified of this limitation on the Council's power, and of the limited liability of parties.

The day to day working of the Organization is to be delegated to an Executive Committee made up of 10 exporting member states and 10 importing member states. Under the general direction of the Council, the Executive Committee is to assess, recommend and monitor annual administrative budgets and to approve projects for financing from the Common Fund for Commodities and from other contributions. It is also to evaluate the annual work programme of the International Cocoa Organization and to make recommendations for the Council's approval. The Executive Committee is headed by an Executive Director, appointed to serve not more than the life of the Agreement.

The third leg of the structure is the Consultative Board on the World Cocoa Economy. The Board is established by the Council, but its membership transcends cocoa exporters and importers. It includes cocoa research institutes, associations from trade and industry and other private sector groups with an interest in the cocoa economy. The exact number and membership of the Board is left to the discretion of the Council, but at the first instance it is to have seven members each from exporting and from importing countries. The purpose of establishing the Board was to facilitate the participation of non-governmental, 'private' agencies in the work of the organization. The definition of 'private', however, may be fraught with difficulties. For example, in many developing

and developed country parties to the Agreement, research institutes are owned and managed by the state. Even in countries where private research institutes dominate, they often receive direct or indirect funding from the state.

Apart from the Consultative Board serving as a forum for dialogue, the International Cocoa Organization is to liaise and co-operate with relevant international organizations, such as the UN Conference on Trade and Development (UNCTAD), research institutions and the private sector, and to seek their support in its programmes.

The third thrust of the Agreement is in the area of promoting the cocoa business. The International Cocoa Organization is to discourage the use and promotion of synthetic substitutes for cocoa, member states must encourage the consumption of cocoa in their countries, and the Organization is to explore and exploit the Common Fund for Commodities for the financing of various aspects of the cocoa business.

It is quite disappointing that the Agreement makes no significant provisions for the factors that affect the price of and therefore income from cocoa. Provisions on stocks, market monitoring and sustainable cocoa development are largely exhortatory and weak. No mention is made of buffer stocks, quotas, over invoicing and under invoicing, incentives for small producers, etc.

The Agreement came into effect on 1 October 2003. At mid-2004 there were 12 exporting members and 28 importing members (including the European Union, as well as its member states).

THE SIXTH INTERNATIONAL COCOA AGREEMENT*

PART ONE: OBJECTIVES AND DEFINITIONS

Chapter I: Objectives

Article 1: Objectives

1. The objectives of the Sixth International Cocoa Agreement are:

- (a) To promote international cooperation in the world cocoa economy;
- (b) To provide an appropriate framework for the discussion of all matters relating to all sectors thereof;
- (c) To contribute to the strengthening of the national cocoa economies of Member countries, in particular through the preparation of appropriate projects to be submitted to the relevant institutions for financing and implementation;
- (d) To contribute to a balanced development of the world cocoa economy in the interest of all Members through appropriate measures, including:
 - i. Promoting a sustainable cocoa economy;
 - ii. Promoting research and the implementation of its findings;
 - iii. Promoting transparency in the world cocoa economy through the collection, analysis and dissemination of relevant statistics and undertaking of appropriate studies; and

- iv. Promoting and encouraging consumption of chocolate and cocoa-based products in order to increase demand for cocoa in close cooperation with the private sector.
2. In pursuing these objectives, Members shall, within the appropriate framework, encourage the greater participation of the private sector in the work of the Organization.

Chapter II: Definitions

Article 2: Definitions

For the purposes of this Agreement:

1. Cocoa means cocoa beans and cocoa products;
2. Cocoa products means products made exclusively from cocoa beans, such as cocoa paste/liquor, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs, as well as any other products containing cocoa as the Council may determine;
3. Cocoa year means the period of 12 months from 1 October to 30 September inclusive;
4. Contracting party means a Government, or an intergovernmental organization as provided for in article 4, which has consented to be bound by this Agreement provisionally or definitively;
5. Council means the International Cocoa Council referred to in article 6;
6. Daily price is the representative indicator of the international price of cocoa used for the purposes of this Agreement and computed in accordance with the provisions of article 40;
7. Entry into force means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively;
8. Exporting country or exporting Member means a country or a Member respectively whose exports of cocoa, expressed in terms of beans, exceed its imports. However, a country whose imports of cocoa, expressed in terms of beans, exceed its exports but whose production exceeds its imports may, if it so chooses, be an exporting Member;
9. Export of cocoa means any cocoa which leaves the customs territory of any country and import of cocoa means any cocoa which enters the customs territory of any country; provided that, for the purposes of these definitions, customs territory shall, in the case of a Member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that Member;
10. Fine or flavour cocoa is cocoa recognized for its unique flavour and colour, and produced in countries designated in annex C of this Agreement;
11. Importing country or importing Member means a country or a Member respectively whose imports of cocoa, expressed in terms of beans, exceed its exports;
12. Member means a Contracting Party as defined above;
13. Organization means the International Cocoa Organization referred to in article 5;
14. Private sector comprises all private sector entities which have main activities in the cocoa sector, including farmers, traders, processors, manufacturers and research institutes. In the framework of this Agreement, the private sector also comprises

public enterprises, agencies and institutions which, in certain countries, fulfil roles that are performed by private entities in other countries;

15. Producing country means a country which grows cocoa in commercially significant quantities;
16. Simple distributed majority vote means a majority of votes cast by exporting Members and a majority of votes cast by importing Members, counted separately;
17. Special Drawing Right (SDR) means the Special Drawing Right of the International Monetary Fund;
18. Special vote means two thirds of the votes cast by exporting Members and two thirds of the votes cast by importing Members, counted separately, on condition that at least five exporting Members and a majority of importing Members are present;
19. Sustainable cocoa economy is a system in which all stakeholders maintain productivity at levels that are economically viable, ecologically sound and culturally acceptable through the efficient management of resources;
20. Tonne means a mass of 1,000 kilograms or 2,204.6 pounds and pound means 453.597 grams;
21. Stocks of cocoa beans means all dry cocoa beans that can be identified as at the last day of the cocoa year (30 September), irrespective of location, ownership or intended use.

PART TWO: CONSTITUTIONAL PROVISIONS

Chapter III: Membership

Article 3: Membership in the Organization

1. Each Contracting Party shall be a Member of the Organization.
2. There shall be two categories of Members of the Organization, namely:
 - (a) Exporting Members; and
 - (b) Importing Members.
3. A Member may change its category on such conditions as the Council may establish.

Article 4: Membership by intergovernmental organizations

1. Any reference in this Agreement to “a Government” or “Governments” shall be construed as including the European Union and any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

2. In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with article 10. In such cases, the member States of such intergovernmental organizations shall not exercise their individual voting rights.

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3. Such organizations may participate in the Executive Committee on matters within their competence.

Chapter IV: Organization and Administration

Article 5: Establishment, headquarters and structure of the International Cocoa Organization

1. The International Cocoa Organization established by the International Cocoa Agreement, 1972, shall continue in being and shall administer the provisions and supervise the operation of this Agreement.
2. The Organization shall function through:
 - (a) The International Cocoa Council and its subsidiary bodies; and
 - (b) The Executive Director and other staff.
3. The headquarters of the Organization shall be in London unless the Council, by special vote, decides otherwise.

Article 6: Composition of the International Cocoa Council

1. The highest authority of the Organization shall be the International Cocoa Council, which shall consist of all the Members of the Organization.
2. Each Member shall be represented on the Council by a representative and, if it so desires, by one or more alternates. Each Member may also appoint one or more advisers to its representative or alternates.

Article 7: Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement.
2. The Council shall not have power, and shall not be taken to have been authorized by the Members, to incur any obligation outside the scope of this Agreement; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and

of article 24 in such a way as to bring them to the notice of the other parties entering into contracts with the Council, but any failure to incorporate such terms shall not invalidate such a contract or render it ultra vires the Council.

3. The Council may at any time, by special vote, delegate any of its powers to the Executive Committee, except the following:
 - (a) Redistribution of votes under article 10;
 - (b) Approval of the administrative budget and assessment of contributions under article 25;
 - (c) Revision of the list of producers of fine or flavour cocoa under article 46;
 - (d) Relief from obligations under article 47;
 - (e) Decision of disputes under article 50;
 - (f) Suspension of rights under paragraph 3 of article 51;
 - (g) Establishment of conditions for accession under article 56;
 - (h) Exclusion of a Member under article 61;
 - (i) Extension or termination of this Agreement under article 63; and
 - (j) Recommendation of amendments to Members under article 64.
4. The Council may, by special vote, decide on other exceptions in paragraph 3 above. It may revoke any delegation of power under paragraph 3 above by the same vote.
5. The Council shall, by special vote, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith, including its rules of procedure and those of its committees, and the financial and staff regulations of the Organization. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.
6. The Council shall keep such records as are required for the performance of its functions under this Agreement, and such other records as it considers appropriate.
7. The Council may set up any working group(s) as appropriate to assist it in carrying out its task.

Article 8: Chairman and Vice-Chairman of the Council

1. The Council shall elect a Chairman and a first and second Vice-Chairman for each cocoa year, who shall not be paid by the Organization.
2. Both the Chairman and the first Vice-Chairman shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members and the second Vice-Chairman from among the representatives of the other category. These offices shall alternate each cocoa year between the two categories.
3. In the temporary absence of both the Chairman and the two Vice-Chairmen or the permanent absence of one or more of them, the Council may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required.
4. Neither the Chairman nor any other officer presiding at meetings of the Council shall vote. His or her alternate may exercise the voting rights of the Member which he or she represents.

Article 9: Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.
2. The Council shall meet in special session whenever it so decides or at the request of:
 - (a) Any five Members;
 - (b) A Member or Members having at least 200 votes;
 - (c) The Executive Committee; or
 - (d) The Executive Director, for the purposes of articles 23 and 60.
3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency.
4. Sessions shall be held at the headquarters of the Organization unless the Council, by special vote, decides otherwise. If, on the invitation of any Member, the Council meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved.

Article 10: Votes

1. The exporting Members shall together hold 1,000 votes and the importing Members shall together hold 1,000 votes, distributed within each category of Members—that is, exporting and importing Members, respectively—in accordance with the following paragraphs of this article.
2. For each cocoa year, the votes of exporting Members shall be distributed as follows: each exporting Member shall have five basic votes. The remaining votes shall be divided among all the exporting Members in proportion to the average volume of their respective exports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the Quarterly Bulletin of Cocoa Statistics. For this purpose, exports shall be calculated as net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 41.
3. For each cocoa year, the votes of importing Members shall be distributed as follows: 100 shall be divided equally to the nearest whole vote for each Member. The remaining votes shall be distributed on the basis of the percentage which the average of each importing Member's annual imports, in the preceding three cocoa years for which final figures are available in the Organization, represents in the total of the averages for all the importing Members. For this purpose, imports shall be calculated as net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 41.
4. If, for any reason, difficulties should arise in the determination or the updating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this article, the Council may, by special vote, decide on a different statistical basis for the calculation of votes.
5. No Member shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this article shall be redistributed among the other Members on the basis of those paragraphs.

6. When the membership in the Organization changes or when the voting rights of a Member are suspended or restored under any provision of this Agreement, the Council shall provide for the redistribution of votes in accordance with this article.
7. There shall be no fractional votes.

Article 11: Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this article.
2. By written notification to the Chairman of the Council, any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in paragraph 5 of article 10 shall not apply.
3. A Member authorized by another Member to cast the votes held by the authorizing Member under article 10 shall cast such votes in accordance with the instructions of the authorizing Member.

Article 12: Decisions of the Council

1. All decisions of the Council shall be taken, and all recommendations shall be made, by a simple distributed majority vote unless this Agreement provides for a special vote.
2. In arriving at the number of votes necessary for any of the decisions or recommendations of the Council, votes of Members abstaining shall not be taken into consideration.
3. The following procedure shall apply with respect to any action by the Council which under this Agreement requires a special vote:
 - (a) If the required majority is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall, if the Council so decides by a simple distributed majority vote, be put to a vote again within 48 hours;
 - (b) If the required majority is again not obtained because of the negative vote of two or less exporting or two or less importing Members, the proposal shall, if the Council so decides by a simple distributed majority vote, be put to a vote again within 24 hours;
 - (c) If the required majority is not obtained in the third vote because of the negative vote cast by one exporting or one importing member, the proposal shall be considered adopted; or
 - (d) If the Council fails to put a proposal to a further vote, it shall be considered rejected.
4. Members undertake to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 13: Cooperation with other organizations

1. The Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development, and with the Food and Agriculture Organization of the United Nations and such other specialized agencies of the United Nations and intergovernmental organizations as may be appropriate.
2. The Council, bearing in mind the particular role of the United Nations Conference on Trade and Development in international commodity trade, shall, as appropriate, keep that organization informed of its activities and programmes of work.
3. The Council may also make whatever arrangements are appropriate for maintaining effective contact with international organizations of cocoa producers, traders and manufacturers.
4. The Council shall seek to involve the international financial agencies and other parties with an interest in the world cocoa economy in its work on cocoa production and consumption policy.

Article 14: Admission of observers

1. The Council may invite any non-member State to attend any of its meetings as an observer.
2. The Council may also invite any of the organizations referred to in article 13 to attend any of its meetings as an observer.

Article 15: Composition of the Executive Committee

1. The Executive Committee shall consist of ten exporting Members and ten importing Members. If, however, either the number of exporting Members or the number of importing Members in the Organization is less than ten, the Council may, while maintaining parity between the two categories of Members, decide, by special vote, the total number on the Executive Committee. Members of the Executive Committee shall be elected for each cocoa year in accordance with article 16 and may be re-elected.
2. Each elected member shall be represented on the Executive Committee by a representative and, if it so desires, by one or more alternates. Each such member may also appoint one or more advisers to its representative or alternates.
3. The Chairman and Vice-Chairman of the Executive Committee, elected for each cocoa year by the Council, shall both be chosen from among the representatives of the exporting Members or from among the representatives of the importing Members. These offices shall alternate each cocoa year between the two categories of Members. In the temporary or permanent absence of the Chairman and the Vice-Chairman, the Executive Committee may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required. Neither the Chairman nor any other officer presiding at meetings of the Executive Committee may

vote. His or her alternate may exercise the voting rights of the Member which he or she represents.

4. The Executive Committee shall meet at the headquarters of the Organization unless, by special vote, it decides otherwise. If, on the invitation of any Member, the Executive Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved.

Article 16: Election of the Executive Committee

1. The exporting and importing Members of the Executive Committee shall be elected in the Council by the exporting and importing Members respectively. The election within each category shall be held in accordance with paragraphs 2 and 3 of this article.
2. Each Member shall cast all the votes to which it is entitled under article 10 for a single candidate. A Member may cast for another candidate any votes which it is authorized to cast under paragraph 2 of article 11.
3. The candidates receiving the largest number of votes shall be elected.

Article 17: Voting procedure and decisions of the Executive Committee

1. Each Member of the Executive Committee shall be entitled to cast the number of votes received by it under the provisions of article 16, and no member of the Executive Committee shall be entitled to divide its votes.
2. Without prejudice to the provisions of paragraph 1 of this article and by written notification to the Chairperson, any exporting or importing Member which is not a Member of the Executive Committee and which has not cast its votes under paragraph 2 of article 16 for any of the members elected may authorize any exporting or importing Member of the Executive Committee, as appropriate, to represent its interests and to cast its votes in the Executive Committee.
3. In the course of any cocoa year a Member may, after consultation with the Member of the Executive Committee for which it voted under article 16, withdraw its votes from that member. The votes thus withdrawn may be reassigned to another exporting or importing Member of the Executive Committee, as appropriate, but may not be withdrawn from this Member for the remainder of that cocoa year. The Member of the Executive Committee from which the votes have been withdrawn shall nevertheless retain its seat on the Executive Committee for the remainder of that cocoa year. Any action taken pursuant to the provisions of this paragraph shall become effective after the Chairman has been informed in writing thereof.
4. Any decisions taken by the Executive Committee shall require the same majority as that decision would require if taken by the Council.
5. Any Member shall have the right of appeal to the Council against any decision of the Executive Committee. The Council shall prescribe, in its rules of procedure, the conditions under which such appeal may be made.

Article 18: Competence of the Executive Committee

1. The Executive Committee shall be responsible to, and work under the general direction of, the Council.
2. The Executive Committee shall follow up the administrative, financial and structural matters of the Organization, in particular:
 - (a) Examine the draft annual work programme of the Organization for submission to the Council for approval;
 - (b) Consider and evaluate the report presented by the Executive Director on the implementation of the work programme and the list of priorities;
 - (c) Review and recommend annual administrative budgets;
 - (d) Monitor the execution of the budget; in particular, analyse revenues and expenses;
 - (e) Assist the Council in the appointment of the Executive Director and senior officials of the Organization;
 - (f) Approve projects for financing by the Common Fund for Commodities and other donor organizations between Council sessions.

Article 19: Quorum for the Council and the Executive Committee

1. The quorum for the opening meeting of any session of the Council shall be constituted by the presence of at least five exporting Members and a majority of importing Members, provided that such Members together hold in each category at least two thirds of the total votes of the Members in that category.
2. If there is no quorum in accordance with paragraph 1 of this article on the day appointed for the opening meeting of any session, on the second day, and throughout the remainder of the session, the quorum for the opening session shall be constituted by the presence of exporting and importing Members holding a simple majority of the votes in each category.
3. The quorum for meetings subsequent to the opening meeting of any session pursuant to paragraph 1 of this article shall be that prescribed in paragraph 2 of this article.
4. Representation in accordance with paragraph 2 of article 11 shall be considered as presence.
5. The quorum for the opening meeting of any session of the Executive Committee shall be constituted by the presence of at least four exporting Members and four importing Members, provided that such Members together hold in each category at least the simple majority of the votes of the Members in that category.

Article 20: The staff of the Organization

1. The Council shall appoint the Executive Director by special vote for a period of not more than the duration of the Agreement and its extensions, if any. The rules for selection of candidates and the terms of appointment of the Executive Director shall be fixed by the Council.
2. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.
3. The staff of the Organization shall be responsible to the Executive Director.

4. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. In drawing up such regulations, the Council shall have regard to those applying to officials of similar intergovernmental organizations. Staff appointments shall be made insofar as is practicable from exporting and importing Members.
5. Neither the Executive Director nor the staff shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.
6. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.
7. No information concerning the operation or administration of this Agreement shall be revealed by the Executive Director or the staff of the Organization, except as may be authorized by the Council or as is necessary for the proper discharge of their duties under this Agreement.

Article 21: Work programme

1. At its last session of each cocoa year, and on the recommendation of the Executive Committee, the Council shall adopt a work programme for the Organization for the coming year prepared by the Executive Director. The work programme shall include projects, initiatives and activities to be undertaken by the Organization in the following cocoa year. The Executive Director shall implement the work programme.
2. During its last meeting of each cocoa year, the Executive Committee shall evaluate the implementation of the work programme for the current year on the basis of a report by the Executive Director. The Executive Committee shall report its findings to the Council.
3. At its first session under this Agreement and on the recommendation of the Executive Committee, the Council shall adopt a list of priorities for the duration and in accordance with the objectives of the Agreement. This list shall serve as the basis for the elaboration of the yearly work programme. During the last meeting of each cocoa year the Executive Committee shall, on the basis of a report by the Executive Director, review and update this list of priorities with particular emphasis on the following year.

Chapter V: Privileges and Immunities

Article 22: Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, its Executive Director, its staff and experts and of representatives of Members whilst in the territory of the United Kingdom of Great Britain and Northern Ireland for the purpose of exercising their functions, shall continue to be governed by the Headquarters Agreement concluded between the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the host Government) and the International Cocoa Organization in London on 26 March 1975, with such amendments as are necessary for the proper functioning of this Agreement.
3. If the headquarters of the Organization is moved to another country, the new host Government shall, as soon as possible, conclude with the Organization a headquarters agreement to be approved by the Council.
4. The Headquarters Agreement referred to in paragraph 2 of this article shall be independent of this Agreement. It shall, however, terminate:
 - (a) By agreement between the host Government and the Organization;
 - (b) In the event of the headquarters of the Organization being moved from the territory of the host Government; or
 - (c) In the event of the Organization ceasing to exist.
5. The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

PART THREE: FINANCIAL PROVISIONS

Chapter VI: Finance

Article 23: Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with article 25. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.
2. The Council may establish separate accounts for specific purposes that it may establish in accordance with the objectives of the present Agreement. These accounts shall be financed through voluntary contributions from Members or other bodies.
3. The financial year of the Organization shall be the same as the cocoa year.
4. The expenses of delegations to the Council, to the Executive Committee and to any of the Committees of the Council or of the Executive Committee shall be met by the Members concerned.
5. If the financial position of the Organization is or appears likely to be, insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 20 working days unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 24: Liabilities of Members

A Member's liability to the Council and to other Members is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Council shall be deemed to have notice of the provisions of this Agreement regarding the powers of the Council and the obligations of the Members, in particular, paragraph 2 of article 7 and the first sentence of this article.

Article 25: Approval of the administrative budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the administrative budget of the Organization for the following financial year, and shall assess the contribution of each Member to that budget.
2. The contribution of each Member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the Members. For the purpose of assessing contributions, the votes of each Member shall be calculated without regard to the suspension of any Member's voting rights and any redistribution of votes resulting therefrom.
3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by that Member and the period remaining in the current financial year, but the assessment made upon other Members for the current financial year shall not be altered.
4. If this Agreement enters into force before the beginning of the first full financial year, the Council shall, at its first session, approve an administrative budget covering the period up to the commencement of the first full financial year.

Article 26: Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organization shall be due on the date on which they become Members.
2. Contributions to the administrative budget approved under paragraph 4 of article 25 shall be payable within three months of the date of assessment.
3. If, at the end of five months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member has not paid its full contribution to the administrative budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council and the Executive Committee shall be suspended until such time as it has made full payment of the contribution.

4. A Member whose voting rights have been suspended under paragraph 3 of this article shall not be deprived of any of its other rights or relieved of any of its obligations under this Agreement unless the Council, by special vote, decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations under this Agreement.
5. The Council shall consider the question of membership of any Member with two years' contributions unpaid, and by special vote may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations under this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 27: Audit and publication of accounts

1. As soon as possible, but not later than six months after the close of each financial year, the statement of the Organization's accounts for that financial year and the balance sheet at the close of that financial year under the accounts referred to in article 23 shall be audited. The audit shall be carried out by an independent auditor of recognized standing in cooperation with two qualified auditors from Member Governments, one from exporting Members and one from importing Members, to be elected by the Council for each financial year. The auditors from Member Governments shall not be paid by the Organization for their professional services. However, travel and subsistence costs may be reimbursed by the Organization under terms and conditions to be determined by the Council.
2. The terms of appointment of the independent auditor of recognized standing, as well as the intentions and objectives of the audit, shall be laid down in the financial regulations of the Organization. The audited statement of the Organization's accounts and the audited balance sheet shall be presented to the Council at its next regular session for approval.
3. A summary of the audited accounts and balance sheet shall be published.

Article 28: Relationship with the Common Fund and with other multilateral and bilateral donors

1. The Organization shall take full advantage of the facilities of the Common Fund for Commodities in order to assist in the preparation and financing of projects of interest to the cocoa economy.
2. The Organization shall endeavour to cooperate with other international organizations, as well as with multilateral and bilateral donor agencies, in order to obtain financing for programmes and projects of interest to the cocoa economy as appropriate.
3. Under no circumstances shall the Organization undertake any financial obligations related to projects, either on its own behalf or in the name of Members. No Member of the Organization shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

Article 29: Role of the Organization concerning projects

1. The Organization shall endeavour to assist Members in preparing projects of interest to the cocoa economy, to be financed by other agencies or bodies.
2. In exceptional cases, the Council shall approve the involvement of the Organization in the implementation of approved projects. Under no circumstances shall this involvement bring about any additional costs for the administrative budget of the Organization.

Chapter VII: The Consultative Board on the World Cocoa Economy

Article 30: Establishment of the Consultative Board on the World Cocoa Economy

1. The Council shall establish the Consultative Board on the World Cocoa Economy with a view to encouraging the active participation of experts from the private sector, as defined in article 2 of this Agreement, in the work of the Organization and to promoting a continuous dialogue among experts from the public and private sectors.
2. The Board shall be a consultative body which may make recommendations to the Council on any matter within the scope of this Agreement.

Article 31: Composition of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall be composed of experts from all sectors of the cocoa economy, such as:
 - (a) Associations from the trade and industry;
 - (b) National and regional cocoa producer organizations, from both the public and private sectors;
 - (c) National cocoa exporter organizations;
 - (d) Cocoa research institutes; and
 - (e) Other private sector associations or institutions having an interest in the cocoa economy.
2. These experts shall act in their personal capacity or on behalf of their respective associations.
3. Members of the Organization may participate as observers.
4. The Board shall be composed of seven members from exporting countries and seven members from importing countries as defined in paragraph 1 of this article, appointed by the Council every two cocoa years. The members may designate one or more alternates and advisers. In the light of the experience of the Board, the Council may increase the number of members of the Board.
5. The Board may also invite eminent experts or personalities of high standing in a specific field, from the public and private sectors, to participate in its work.

6. The Chairman of the Board shall be chosen from among its members. The chairmanship shall alternate between exporting and importing countries every two cocoa years.
7. Upon its establishment, the Consultative Board shall draw up its own rules and recommend them for adoption by the Council.

Article 32: Mandate of the Consultative Board of the World Cocoa Economy

1. The Board, acting in an advisory capacity, shall inter alia:
 - (a) Contribute to the development of a sustainable cocoa economy;
 - (b) Identify threats to supply and demand and propose actions to meet the challenges;
 - (c) Facilitate the exchange of information on production, consumption and stocks; and
 - (d) Advise on other cocoa-related matters within the scope of the Agreement.
2. The Board may set up ad hoc working groups to assist in fulfilling its mandate provided that their operating costs have no budgetary implications for the Organization.
3. The Executive Director shall assist the Board as appropriate.

Article 33: Meetings of the Consultative Board on the World Cocoa Economy

1. As a general rule, the Board shall meet twice a year at the headquarters of the Organization at the same time as the regular sessions of the Council. The Board may hold additional meetings with the approval of the Council.
2. When the Council accepts an invitation by a Member to hold a meeting in its territory, the Board shall meet in that territory. In this case, the additional costs involved, above those incurred when the meeting is held at the headquarters of the Organization, shall be borne by that Member.
3. The Chairman of the Board shall establish the agendas for its meetings in liaison with the Executive Director.
4. The Board shall report regularly to the Council on its proceedings.

PART FOUR: MARKET-RELATED PROVISIONS

Chapter VIII: Supply and Demand

Article 34: Market Committee

1. In order to contribute to the greatest possible growth of the cocoa economy and the balanced development of production and consumption so as to secure a sustainable equilibrium between supply and demand, the Council shall establish a Market Committee composed of all exporting and importing Members. The aim of the

Committee shall be to review trends and prospects of cocoa production and consumption, stocks and prices, and to identify market imbalances at an early stage as well as obstacles to the expansion of cocoa consumption in both exporting and importing countries.

2. At its first session after the start of a new cocoa year, the Market Committee shall examine annual forecasts of world production and consumption for the next five cocoa years. The Executive Director shall provide the data necessary for the preparation of these forecasts. The forecasts provided shall be reviewed and revised, if necessary, every year.
3. The Executive Director shall also present, for illustrative purposes only, various scenarios based on indicative figures for annual levels of global production necessary to achieve and maintain equilibrium between supply and demand at given levels of real prices. The factors to be taken into consideration shall include the expected variations in production and consumption in accordance with movements in real prices and the estimated variations in stock levels.
4. On the basis of these forecasts, and in order to deal with the problems of market imbalances in the medium and long term, the exporting Members may undertake to coordinate their national production policies.
5. All Members shall endeavour to encourage cocoa consumption in their countries. Each Member shall be responsible for the means and methods it employs for that purpose. In particular, all Members shall endeavour to remove or reduce substantial domestic obstacles to the expansion of cocoa consumption. In this regard, Members shall regularly provide the Executive Director with information on pertinent domestic regulations and measures and with other information concerning cocoa consumption, including domestic taxes and customs tariffs.
6. The Committee shall submit detailed reports to each regular session of the Council, on the basis of which the Council shall review the general situation, in particular assessing the movement of global supply and demand in the light of the provisions of this article. The Council may make recommendations to Members on the basis of this assessment.
7. The Committee shall draw up its own rules and regulations.
8. The Executive Director shall assist the Committee as required.

Article 35: Market transparency

1. In order to promote market transparency, the Organization shall maintain up-to-date information on Members' grindings, consumption, production, exports (including re-exports) and imports of cocoa and cocoa products and stocks. For this purpose, insofar as possible, Members shall provide the Executive Director with the relevant statistics within a reasonable time and in as detailed and accurate a manner as is practicable.
2. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.

3. The Council shall take such additional measures as it deems necessary to deal with non-compliance with the provisions of this article.
4. The Council shall make appropriate arrangements for the regular collection of other information that it considers relevant for the monitoring of market developments and assessing current and potential cocoa production and consumption capacity.

Article 36: Stocks

1. In order to promote transparency in the market with regard to levels of world cocoa stocks, each Member shall assist the Executive Director in obtaining information on the volume of cocoa stocks in its country. Insofar as is possible, Members shall provide the Executive Director, by not later than the end of May, with information on stocks of cocoa held in their respective countries as at the end of the previous cocoa year in as detailed, timely and accurate a manner as is practicable.
2. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information on stocks required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.
3. The Executive Director shall seek the full cooperation of the private sector in this exercise, whilst fully respecting the issues of commercial confidentiality associated with this information.
4. The information shall pertain to stocks of cocoa beans.
5. The Executive Director shall make an annual report to the Market Committee on the information received on the levels of cocoa stocks worldwide.

Article 37: Promotion

1. Members undertake to encourage the consumption of chocolate and cocoa-based products in order to increase demand for cocoa by all possible means.
2. To achieve this purpose, the Council shall establish a Promotion Committee to promote cocoa consumption.
3. The Committee shall be open to all Members of the Organization.
4. The Committee shall operate and through the Executive Director administer a Promotion Fund which shall be used solely to finance promotion campaigns, to sponsor research and studies related to the consumption of cocoa and to cover associated administrative expenses.
5. The Committee shall seek the collaboration of the private sector for the implementation of its activities.
6. The promotion activities of the Committee shall be financed by resources which may be pledged by Members, non-Members, other organizations and the private sector. Private sector participants or institutions may also contribute to the promotion programmes in accordance with modalities to be established by the Committee.
7. All decisions of the Committee related to promotion campaigns and activities shall be taken by Members contributing to the Fund.

8. The Committee shall seek the approval of a country before conducting a promotion campaign in the territory of that country.
9. The Committee shall draw up its own rules and regulations, and shall report regularly to the Council.
10. The Executive Director shall assist the Committee as required.

Article 38: Cocoa substitutes

1. Members recognize that the use of substitutes may have negative effects on the expansion of cocoa consumption and the development of a sustainable cocoa economy. In this regard, Members shall take full account of the recommendations and decisions of competent international bodies.
2. The Executive Director shall make regular reports to the Market Committee on the development of the situation. On the basis of these reports, the Market Committee shall assess the situation and, if necessary, make recommendations to the Council for appropriate decisions.

Chapter IX: Development of a Sustainable Cocoa Economy

Article 39: Sustainable cocoa economy

1. Members shall give due consideration to the sustainable management of cocoa resources in order to provide fair economic returns to all stakeholders in the cocoa economy, bearing in mind the principles and objectives of sustainable development contained in Agenda 21, adopted by the United Nations Conference on Environment and Development (UNCED) on 14 June 1992.
2. The Organization shall serve as a focal point for a permanent dialogue among all stakeholders as appropriate to foster the development of a sustainable cocoa economy.
3. The Council shall adopt and periodically review programmes and projects related to a sustainable cocoa economy and in accordance with paragraph 1 of this Article.
4. In doing so, the Council shall coordinate with other bodies as necessary in order to avoid duplication of effort.

Chapter X: Market-Monitoring Provisions

Article 40: Daily price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish a daily price of cocoa beans. This price shall be expressed in Special Drawing Rights (SDRs) per tonne.
2. The daily price shall be the average taken daily of the quotations for cocoa beans of the nearest three active future trading months on the London International Financial Futures and Options Exchange (LIFFE) and on the Board of Trade of the City of New York at the time of the London close. The London prices shall be converted into

United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States dollar-denominated average of the London and New York prices shall be converted into its SDR equivalent at the appropriate daily official United States dollar/ SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.

3. The Council may, by special vote, decide on any other method of computing the daily price if it considers such other method to be more satisfactory than that prescribed in this article.

Article 41: Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste/liquor and nibs 1.25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.
2. The Council may, by special vote, revise the conversion factors in paragraph 1 of this article.

Chapter XI: Information, Studies and Research

Article 42: Information

1. The Organization shall act as a global information centre for the efficient collection, collation, exchange and dissemination of information on all factors relating to cocoa and cocoa products. Such information shall include:
 - (a) Statistical information on world production, prices, exports and imports, consumption and stocks of cocoa;
 - (b) Insofar as is considered appropriate, technical information on the cultivation, marketing, transportation, processing, utilization and consumption of cocoa; and
 - (c) Information on government policies, taxation, national standards, regulations and legislation relating to cocoa.
2. The Council shall at appropriate times, but not less than twice in any cocoa year, publish estimates of production of cocoa beans and grindings for that cocoa year.

Article 43: Studies

The Council shall, to the extent it considers necessary, promote studies of the economics of cocoa production and distribution, including trends and projections, the impact of

governmental measures in exporting and importing countries on the production and consumption of cocoa, the opportunities for expansion of cocoa consumption for traditional and possible new uses, and the effects of the operation of this Agreement on exporters and importers of cocoa, including their terms of trade. It may submit recommendations to Members on the subject of these studies. In the promotion of these studies, the Council may cooperate with international organizations and other appropriate institutions and the private sector. The Council may also promote studies likely to contribute to greater market transparency.

Article 44: Scientific research and development

The Council shall encourage and promote scientific research and development in the areas of cocoa production, transportation, processing and consumption as well as the dissemination and practical application of the results obtained in this field. To this end, the Organization may cooperate with international organizations, research institutions and the private sector.

Article 45: Annual report

The Council shall publish an Annual Report.

PART FIVE: OTHER PROVISIONS

Chapter XII: Fine or Flavour Cocoa

Article 46: Fine or flavour cocoa

1. The Council shall, at its first session following the entry into force of this Agreement, review annex C of this Agreement and, if necessary, revise it by special vote, determining the proportions in which the countries listed therein produce and export exclusively or partially fine or flavour cocoa. Thereafter, the Council may at any time during the lifetime of this Agreement review annex C and, if necessary, revise it by special vote. The Council shall seek expert advice on this matter, as appropriate.
2. The Market Committee may make proposals for the Organization to devise and implement a system of statistics on production of and trade in fine or flavour cocoa.
3. Giving due consideration to the importance of fine or flavour cocoa, Members shall examine, and adopt as appropriate, projects relating to fine or flavour cocoa in accordance with the provisions of articles 37 and 39.

Chapter XIII: Relief From Obligations and Differential and Remedial Measures

Article 47: Relief from obligations in exceptional circumstances

1. The Council may, by special vote, relieve a Member of an obligation on account of exceptional or emergency circumstances, force majeure, or international obligations under the Charter of the United Nations for territories administered under the trusteeship system.
2. The Council, in granting relief to a Member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the Member is relieved of the obligation and the reasons for which the relief is granted.
3. Notwithstanding the foregoing provisions of this article, the Council shall not grant relief to a Member in respect of the obligation under article 26 to pay contributions, or the consequences of a failure to pay them.
4. The basis for the calculation of the distribution of votes of an exporting Member, for which the Council has recognized a case of force majeure, shall be the effective volume of its exports for the year in which the force majeure occurred and subsequently for the ensuing three years following the force majeure.

Article 48: Differential and remedial measures

Developing importing Members, and least developed countries which are Members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in the light of the provisions of resolution 93(IV) adopted by the United Nations Conference on Trade and Development.

Chapter XIV: Consultations, Disputes and Complaints

Article 49: Consultations

Each member shall accord full and due consideration to any representations made to it by another member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such a procedure shall not be chargeable to the Organization. If such a procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with article 50.

Article 50: Disputes

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by the parties to the dispute shall, at the request of either party to the dispute, be referred to the Council for decision.
2. When a dispute has been referred to the Council under paragraph 1 of this article and has been discussed, Members holding not less than one third of the total votes, or any five Members, may require the Council, before giving its decision, to seek the opinion

on the issues in dispute of an ad hoc advisory panel to be constituted as described in paragraph 3 of this article.

3.

(a) Unless the Council by special vote decides otherwise, the ad hoc advisory panel shall consist of:

- i. Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;
- ii. Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members; and
- iii. A chairman selected unanimously by the four persons nominated under (i) and (ii) above or, if they fail to agree, by the Chairman of the Council.

(b) Nationals of Members shall not be ineligible to serve on the ad hoc advisory panel.

(c) Persons appointed to the ad hoc advisory panel shall act in their personal capacities and without instructions from any Government.

(d) The costs of the ad hoc advisory panel shall be paid by the Organization.

4. The opinion of the ad hoc advisory panel and the reasons therefor shall be submitted to the Council, which, after considering all the relevant information, shall decide the dispute.

Article 51: Complaints and action by the Council

1. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council, which shall consider it and take a decision on the matter.
2. Any finding by the Council that a Member is in breach of its obligations under this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.
3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to such other measures as are specifically provided for in other articles of this Agreement, including article 61, by special vote:
 - (a) Suspend that Member's voting rights in the Council and in the Executive Committee; and
 - (b) If it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.
4. A Member whose voting rights are suspended under paragraph 3 of this article shall remain liable for its financial and other obligations under this Agreement.

Chapter XV: Standard of Living and Working Conditions

Article 52: Standard of living and working conditions

Members shall give consideration to improving the standard of living and working conditions of populations engaged in the cocoa sector, consistent with their stage of development, bearing in mind internationally recognized principles on these matters. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.

CHAPTER XVI: FINAL PROVISIONS

Article 53: Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 54: Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 May 2001 until and including 31 December 2002 by parties to the International Cocoa Agreement, 1993, and Governments invited to the United Nations Cocoa Conference, 2000. The Council under the International Cocoa Agreement, 1993, or the Council under this Agreement may, however, extend once the period of signature of this Agreement. The Council shall immediately notify the depositary of such extension.

Article 55: Ratification, acceptance, approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures.
2. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 31 December 2003. The Council under the International Cocoa Agreement, 1993, or the Council under this Agreement may, however, grant extensions of time to signatory Governments which are unable to deposit their instruments by that date.
3. Each Government depositing an instrument of ratification, acceptance or approval shall, at the time of such deposit, indicate whether it is an exporting Member or an importing Member.

Article 56: Accession

1. This Agreement shall be open to accession by the Government of any State entitled to sign it.

2. The Council shall determine under which of the annexes to this Agreement the acceding State is to be deemed to be listed, if such State is not listed in any of these annexes.
3. Accession shall be effected by deposit of an instrument of accession with the depositary.

Article 57: Notification of provisional application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government which intends to accede to the Agreement, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 58 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.
2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 58: Entry into force

1. This Agreement shall enter into force definitively on 1 October 2003, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.
2. This Agreement shall enter into force provisionally on 1 January 2002 if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.
3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement into force definitively or

provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 57.

Article 59: Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 60: Withdrawal

1. At any time after the entry into force of this Agreement, any Member may withdraw from this Agreement by giving written notice of withdrawal to the depositary. The Member shall immediately inform the Council of the action it has taken.
2. Withdrawal shall become effective 90 days after the notice is received by the depositary. If, as a consequence of withdrawal, membership in this Agreement falls below the requirements provided for in paragraph 1 of article 58 for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions.

Article 61: Exclusion

If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude such Member from the Organization. The Council shall immediately notify the depositary of any such exclusion. Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.

Article 62: Settlement of accounts with withdrawing or excluded Members

The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member, and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective, except that, in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph 2 of article 64, the Council may determine any settlement of accounts which it finds equitable.

Article 63: Duration, extension and termination

1. This Agreement shall remain in force until the end of the fifth full cocoa year after its entry into force, unless extended under paragraph 3 of this article, or terminated earlier under paragraph 4 of this article.
2. While this Agreement is in force, the Council may, by special vote, decide to renegotiate it with a view to having the renegotiated agreement enter into force at the end of the fifth cocoa year referred to in paragraph 1 of this article, or at the end of any period of extension decided upon by the Council under paragraph 3 of this article.
3. The Council may, by special vote, extend this Agreement in whole or in part for two periods not exceeding two cocoa years each. The Council shall notify the depositary of any such extension.
4. The Council may at any time, by special vote, decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 26 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the depositary of any such decision.
5. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.
6. Notwithstanding the provisions of paragraph 2 of article 60, a Member which does not wish to participate in this Agreement as extended under this article shall so inform the depositary and the Council. Such Member shall cease to be a party to this Agreement from the beginning of the period of extension.

Article 64: Amendments

1. The Council may, by special vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the depositary has received notifications of acceptance from Contracting Parties representing at least 75 per cent of the exporting Members holding at least 85 per cent of the votes of the exporting Members, and from Contracting Parties representing at least 75 per cent of the importing Members holding at least 85 per cent of the votes of the importing Members, or on such later date as the Council may, by special vote, have determined. The Council may fix a time within which Contracting Parties shall notify the depositary of their acceptance of the amendment, and, if the amendment has not become effective by such time, it shall be considered withdrawn.
2. Any Member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall, as of that date, cease to participate in this Agreement, unless the Council decides to extend the period fixed for acceptance for such Member to enable it to complete its internal procedures. Such Member shall not be bound by the amendment before it has notified its acceptance thereof.
3. Immediately upon adoption of a recommendation for an amendment the Council shall communicate to the depositary copies of the text of the amendment. The Council shall

provide the depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.

Chapter XVII: Supplementary and Transitional Provisions

Article 65: Special Reserve Fund

1. A Special Reserve Fund shall be maintained for the sole purposes of meeting the eventual liquidation expenses of the Organization. The Council shall decide how the interest earned on this Fund will be used.
2. The Special Reserve Fund established by the Council under the International Cocoa Agreement, 1993, shall be transferred to this Agreement for the purpose set out under paragraph 1.
3. A non-member of the International Cocoa Agreement, 1993, which becomes a Member of this Agreement shall be required to contribute to the Special Reserve Fund. The contribution of such Member shall be assessed by the Council on the basis of the number of votes to be held by the Member.

Article 66: Other supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement, 1993.
2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement, 1993, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

[The three annexes to the Agreement are not reproduced here. They consist of: Annex A, on Exports of Cocoa, and Annex B, on Imports of Cocoa, both calculated for the purposes of article 58 (entry into force); and Annex C, on Producing Countries Exporting either Exclusively or Partially Fine or Flavour Cocoa.]

CHAPTER SEVENTY-THREE

Agreement Establishing the Terms of Reference of the International Jute Study Group

Geneva, 13 March 2001

INTRODUCTION

The Agreement Establishing the Terms of Reference of the International Jute Study Group replaced the International Agreement on Jute and Jute Products (originally signed in 1982, renewed in 1989) and its International Jute Organization. Both were negotiated under the aegis of the UN Conference on Trade and Development (UNCTAD). This commodity agreement is much more restricted regionally than usual, mainly because of the product that the Agreement covers. Jute is produced and exported mainly by countries in South Asia; specifically Bangladesh and India. The importing countries are much more diffuse—such as BelgiumLuxembourg, the People’s Republic of China, Iran, Pakistan, Syria and the USA. However, countries consuming about one-third of total world production are not members of the International Jute Study Group, with the non-producer parties consisting only of the European Community (EC—European Union) and its member countries and Switzerland. All the same, the Agreement satisfies Part IV of the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO) accord in having participation from both exporting and importing countries.

The objectives of the Agreement and, so, of the Study Group include: the promotion of international trade in jute and jute products; the provision of a forum for the active participation of the private sector in the development of the jute business; providing a framework for co-operation and consultation among countries involved in the trade; addressing poverty issues; improving quality and productivity; educating the public on the environmental and other benefits of jute; and the improvement of market intelligence and transparency in the trade. To achieve these goals, a structure is put in place that is not very different from those of other recent commodity agreements. There is a Council, which is made up of representatives of all the members and meets annually. Voting in the Council is slightly weighted in favour of countries according to their ‘Jute-Related Importance’. The Council, in turn, establishes the Committee on Projects, which is open to all members, advises the Council on all projects and may perform functions delegated to it by the Council. There is also a Private Sector Consultative Board, which is the forum

for associate members of the Study Group, as well as private-sector entities interested in the jute business. The Private Sector Consultative Board is to submit regular reports to the Council on its deliberations. Other committees may be established as and when deemed necessary by the Council. A Secretariat, with a Secretary-General as head, is to service the activities of the Jute Study Group. The Study Group is to maintain consultative and co-operative arrangements with the UN specialized agencies, especially the Food and Agriculture Organization (FAO), and also with governments of countries that are not party to the Agreement.

There is a certain curiosity regarding the title of this Agreement. Why 'Study Group' and why 'Terms of Reference'? There is hardly anything in the Agreement that distinguishes it from other commodity agreements. Anyway, as with the other commodity agreements, the Jute Study Group offers little by way of radical promotion of the business or protection of the interests of the producers. There is no provision on buffer stocks, or on hedging and other instruments that could secure the financial interests of producers. The Group may apply for some funding from the Common Fund for Commodities, to support various projects, but there is no specification of projects and the provision is generally couched in permissive rather than obligatory language. In the end, the weaknesses of such commodity agreements is a manifestation of the withdrawal of governments from business, but more so a play of the demand and supply positions dictated by the products in question. The position of producers here, as elsewhere, is further weakened by the availability of synthetic substitutes to jute and its products. The real benefit to be attained from jute by its producers will be from the addition of value by transforming it into a processed or semi-processed state. At that stage, the commodity agreement idea may itself be redundant

The Agreement came into force on 15 April 2002. There are two producing members and 27 non-producing members, including one institutional member (EC), as well as its member states, and Switzerland.

AGREEMENT ESTABLISHING THE TERMS OF REFERENCE OF THE INTERNATIONAL JUTE STUDY GROUP*

Preamble

The Parties to this Agreement,

RECOGNIZING the importance of jute and jute products to the economies of a number of countries,

CONSIDERING that close international cooperation in finding solutions to the problems facing this commodity will further the economic development of the exporting countries and strengthen cooperation between exporting and importing countries,

CONSIDERING FURTHER the contribution made by the International Agreements on Jute and Jute Products, 1982 and 1989 towards such cooperation between exporting and importing countries and the desirability of enhancing the effectiveness of such cooperation in the future,

CONSCIOUS of the need to promote and undertake projects and activities designed to increase the jute-derived earnings in developing jute-producing countries, thereby contributing to the alleviation of poverty in these countries,

Have agreed as follows:

Establishment

1. The International Jute Study Group, hereinafter referred to as “the Group”, is hereby established to administer the provisions and supervise the operation of these Terms of Reference. For legal, administrative, financial and operational purposes, the Group, when these Terms of Reference enter into force, shall be considered as the successor entity to the International Jute Organization, initially established under the International Agreement on Jute and Jute Products, 1982 and maintained in existence under the International Agreement on Jute and Jute Products, 1989.

Definitions

2. For the purpose of these Terms of Reference:
 - (a) “Jute” means raw jute, kenaf and other allied fibres, including *Urena lobata*, *Abutilon avicennae* and *cephalonema polyandrum*;
 - (b) “Jute product” means a product made wholly or almost wholly of jute, or products whose substantial component by weight is jute;
 - (c) “Member” means any State, the European Community, or any intergovernmental organization as provided for in paragraph 5 below which have notified their acceptance or provisional application of this Agreement pursuant to paragraph 23 below;
 - (d) “Associate Member” means any organization or any entity referred to in paragraph 6 below;
 - (e) “Special vote” means a vote requiring at least two thirds of the votes cast by members present and voting provided that those votes are cast by a numerical majority of members present and voting;
 - (f) “Simple majority vote” means a vote requiring more than half of the total votes of members present and voting provided that these votes are cast by a numerical majority of members present and voting;
 - (g) “Financial year” means the period from 1 July to 30 June inclusive;
 - (h) “Jute year” means the international crop year for jute that runs from 1 July to 30 June inclusive;
 - (i) “Terms of Reference” means this Agreement establishing the Terms of Reference of the International Jute Study Group, 2001

Objectives

3. The objectives of the Group shall be:

- (a) To provide an effective framework for international cooperation, consultation and policy development among members with regard to all relevant aspects of the world jute economy;
- (b) To promote the expansion of international trade in jute and jute products by maintaining existing markets and by developing new markets, including the introduction of new jute products and the development of new end-uses;
- (c) To provide a forum for the active participation of the private sector in the development of the jute sector;
- (d) To address the issues of poverty alleviation, employment and development of human resources, particularly women, in the jute sector;
- (e) To facilitate the improvement of structural conditions in the jute sector through improvement of productivity and quality, and promotion of the application of new processes and technologies;
- (f) To create and increase awareness of the beneficial effects of the use of jute as an environmentally friendly, renewable and biodegradable natural fibre;
- (g) To improve market intelligence with a view to ensuring greater transparency in the international jute market in collaboration with other organizations, including the Food and Agriculture Organization of the United Nations (FAO).

Functions

4. In pursuance of its objectives, the Group shall have the following functions:

- (a) To develop an appropriate strategy for the improvement of the world jute economy with particular emphasis on generic promotion of jute and jute products;
- (b) To conduct consultations and exchanges of information on the international jute economy;
- (c) To initiate, sponsor, supervise, monitor, and act as a catalyst with respect to projects and related activities aimed at improving the structural conditions of the world jute economy and the general economic well-being of those employed therein. In exceptional cases, the involvement of the Group in the implementation of projects shall be approved by the Council, provided that this involvement shall not bring about any additional costs for the administrative budget of the Group;
- (d) To provide and improve statistics and market intelligence on jute and jute-based products in consultation with the Food and Agriculture Organization of the United Nations and other appropriate bodies;
- (e) To undertake studies on various aspects of the world jute economy and related issues; and
- (f) To consider problems or difficulties which may arise in the international jute economy.

In implementing its functions above, the Group shall take into account the activities of other relevant international organizations, including the Food and Agriculture Organization of the United Nations (FAO).

Membership

5. Membership of the Group shall be open to all States and the European Community which are interested in the production or consumption of, or international trade, in jute and jute products, and, with the agreement of the Council, to any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements.
6. Associate membership of the Group shall be open, with the agreement of the Council, to those organizations and entities not entitled to full membership under the provisions of paragraph 5 above. The Council shall make rules concerning the eligibility, rights and obligations of such associate members. Composition and Powers of the Council
7.
 - (a) The highest authority of the Group established under these Terms of Reference shall be vested in the Council comprising all members. The Council shall meet at least once every year;

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- (b) The Council shall exercise such powers and take such action or arrange for such action to be taken as may be necessary to carry out and ensure the application of the provisions of these Terms of Reference;
 - (c) The Council shall adopt, by special vote, such rules as are considered necessary to carry out the functions of the Group which shall be subject to, and not inconsistent with these Terms of Reference. These rules shall include:
 - i. the Rules of Procedure,
 - ii. Financial Rules and Rules relating to Projects,
 - iii. the Staff Regulations and Rules and
 - iv. the Staff Provident Fund Rules;
 - (d) The Council shall not have the power and shall not be deemed to have been authorized by its members to incur, any obligation outside the scope of these Terms of Reference or any of the rules referred to in subparagraph (c) above;
 - (e) In order to achieve the objectives listed in paragraph 3 above, the Council shall approve a work programme which shall be revised periodically.

Headquarters

8. The Headquarters of the Group shall be in Dhaka, Bangladesh, unless the Council, by special vote, decides otherwise. The Council shall conclude a Headquarters Agreement with the host Government as soon as possible after these Terms of Reference have entered into force.

Decision-making and Distribution of Votes

9.

- (a) Except where otherwise specified, and subject to the provisions of subparagraph (d) below, the Council, the Committee on Projects referred to in paragraph 10 below, and such committees and subsidiary bodies as may be established, shall wherever possible take decisions by consensus. Where no such consensus can be reached, any member may request that such a decision be taken by a simple majority vote, unless a special vote is specified;
- (b) Each member shall be entitled to the number of votes allocated to it in accordance with the provisions of sub-paragraph (c) below. In the case of voting, the European Community and member intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their Member States;
- (c) All members shall together hold 2,000 votes. Fifty per cent of the total votes of members shall be distributed equally among all members, subject to the provisions of subparagraph (b) above. The remaining Fifty per cent of the total votes shall be allocated to each member in proportion to its "Coefficient of Jute-related Importance" (COJI) as defined in sub-paragraph (d) below. The total of the basic votes and the COJI-related votes of each member shall be appropriately rounded so that there are no fractional votes and the total number of votes of members does not exceed 2,000, subject, however, to the provision of sub-paragraph (e) below;
- (d) For the purposes of these Terms of Reference the "Coefficient of Jute-related Importance" (COJI) of each member shall be its share in the total value attributed to all member countries in accordance with the following formulae:
 - i. In the case of jute-producing countries, the weighted average volume of production of 40 per cent and the average volume of net trade of 60 per cent of jute and jute products over the most recent three-year period for which relevant statistics are available;
 - ii. In the case of non-jute-producing and net jute importing-countries, the average volume of their net imports of jute and jute products over the most recent three-year period for which relevant statistics are available.
- (e) No member representing a single country shall have more than 450 votes. Any votes over this figure arising from the methodology prescribed in sub-paragraphs (c) and (d), and provided for in sub-paragraph (i) below, shall be redistributed among all other members on the same basis of computation as provided for under those subparagraphs;
- (f) If, for any reason, difficulties should arise in the determination of votes through the use of the methodology prescribed in sub-paragraphs (c), (d) and (e) above, the Group may, by special vote, decide on a different methodology for the distribution of votes;
- (g) The presence of members holding together 1,000 votes shall be required for the commencement of any Council meeting. The presence of members holding together 1,200 votes shall be required for any decision to be taken by the Council;
- (h) The Council shall distribute the votes for each financial year at the beginning of the last session of the preceding year in accordance with the provisions of this

paragraph. Such distribution of votes shall remain in effect for the full jute year, except as provided for in sub-paragraph (i) below;

- (i) Whenever the membership of the Group changes or when any member has its voting rights suspended or restricted under any provisions of the rules of procedure, the Council shall re-distribute the votes of all other members in accordance with the provisions of this paragraph. The Council shall decide the date on which the redistribution of votes shall become effective;
- (j) A member authorized by another member to cast the votes held by the authorizing member under this paragraph shall cast such votes in accordance with the instructions of the authorizing member.

Committee on Projects (COP)

10.

- (a) The Council shall establish a Committee on Projects (COP), which shall be open to all members. The Committee may invite associate members and other interested parties to participate in its work;
- (b) The Committee on Projects shall advise the Council on all aspects of projects and related activities in accordance with the rules to be established by the Council;
- (c) The Council may, in certain circumstances, delegate to the Committee on Projects its powers relating to the approval of projects and related activities. The Council shall establish rules governing such delegation of powers to the Committee on Projects.

Private Sector Consultative Board

11.

- (a) To facilitate interaction with the private sector, the Council shall establish a Private Sector Consultative Board (hereinafter referred to as the "Consultative Board"). The Consultative Board shall be a consultative body, which may make recommendations to the Council in matters related to these Terms of Reference;
- (b) The Consultative Board shall consist of associate members. Other private sector entities which express a relevant interest may participate by invitation;
- (c) The Consultative Board shall submit regular reports to the Council;
- (d) The Consultative Board shall establish its own rules of procedure, consistent with the provisions of these Terms of Reference.

Committees and Subsidiary Bodies

- 12. The Council may establish other committees or subsidiary bodies, in addition to the Committee on Projects and the Private Sector Consultative Board on such terms and conditions as it may determine.

Secretariat

13.

- (a) The Group shall have a Secretariat consisting of a Secretary-General and such staff as may be required;
- (b) The Secretary-General shall be appointed by the Council by special vote. The terms and conditions of appointment of the Secretary-General shall be governed by the rules of procedure of appointment except for the appointment of the first Secretary-General;
- (c) The Secretary-General shall be the chief administrative officer of the Group and shall be responsible to it for the administration and operation of these Terms of Reference in accordance with the decisions of the Council;
- (d) The Secretary-General shall appoint the staff in accordance with the regulations established by the Council. The staff shall be responsible to the Secretary-General.

Consultation and cooperation with others

14.

- (a) The Group may make arrangements for consultations and cooperation with the United Nations, its organs or specialized agencies, and with other intergovernmental organizations and institutions, as appropriate;
- (b) The Group may also make such arrangements as it considers appropriate for maintaining contact with interested Governments of non-member countries, with national and international non-governmental institutions, with private sector organizations and with research institutions which are not associate members;
- (c) Observers may be invited to attend meetings of the Council or its subsidiary bodies on such terms and conditions as the Council or those bodies may decide.

Relationship with the Common Fund

15. The Group may apply to be designated as an International Commodity Body (ICB) under article 7(9) of the Agreement establishing the Common Fund for Commodities (CFC), for the purpose of sponsoring, in accordance with the provisions of these Terms of Reference, projects on jute and jute products to be financed by the Fund. Decisions on the sponsoring of such projects shall normally be taken by consensus. If consensus cannot be reached, decisions shall be taken by a special vote. No member shall be responsible by reason of its membership in the Council for any liability arising from borrowing or lending by any other member or entity in connection with projects. The Secretary-General is authorized to conclude Agreements with the Fund for approved projects.

Legal Status

16.

- (a) The Group shall have international legal personality. In the territory of each member, and subject to its national legislation, the Group shall, in particular, but

subject to paragraph 7(b) above, have the capacity to enter into contracts, to acquire and to dispose of movable and immovable property, and to institute legal proceedings;

- (b) The status of the Group in the territory of the host country shall be governed by the Headquarters Agreement between the host Government and the Council, referred to in para- graph 8 above;
- (c) As the legal successor to the International Jute Organization, the Group shall assume responsibility for all the assets and liabilities of the former Organization.

Financial Accounts and Budget Contributions

17.

- (a) For the purposes of these Terms of Reference, the Group shall establish the following accounts:
 - i. The Administrative Account; and
 - ii. The Special Account
- (b) Each member shall contribute to the Administrative Account in accordance with the provisions of the rules of procedure, within the framework of an annual administrative budget which shall be approved by the Council. The contribution of members shall be directly proportional to the votes allocated to them under the provisions of paragraph 9. The payment of the contribution by each member shall be made in accordance with its constitutional procedures;
- (c) In addition to the contributions to the Administrative Account within the framework of the Annual Administrative Budget, the Group may accept contributions to the Special Account. The Special Account shall be established for the purpose of financing projects, and pre-project and related activities. The possible sources of finance for the Special Account may include:
 - i. Voluntary contributions from members, associate members and other sources; and
 - ii. Regional and international financial institutions, including the Common Fund for Commodities, the United Nations Development Programme, the World Bank, the Asian Development Bank, the International Fund for Agricultural Development, the Inter-American Development Bank and the African Development Bank.

Statistics, Studies and Market Information

18.

- (a) The Group shall analyse and process jute trade information and statistics collected from the Food and Agriculture Organization of the United Nations (FAO), other international and national institutions and the private sector. The Group shall provide and make available to members, associate members and other interested parties the market outlooks and intelligence, including information on stocks and

consumption by specific markets and end-use industries. The Group shall also encourage national institutions in producing member countries to improve data collection in the jute sector and to disseminate the results to all interested parties. In so doing, every effort shall be made, as far as practicable, to minimize duplication.

- (b) The Group shall undertake such studies related to the international jute economy as may be agreed to by the Council;
- (c) The Group shall endeavour to ensure that information made available by it does not prejudice the confidentiality of the operations of Governments or persons or enterprises producing, processing, marketing or consuming jute.

Annual Assessment and Reports

19.

- (a) The Group shall undertake an annual assessment of the world jute situation and related matters in the light of information supplied by members and supplemented by information from all other relevant sources, including periodic evaluation reports by donors. The annual assessment shall include a review of expected jute production capacity for future years and an outlook for jute production, consumption and trade for the following calendar year, for the purpose of assisting members in their individual assessments of the evolution of the international jute economy;
- (b) The Group shall prepare a report incorporating the results of the annual assessment and distribute it to members. If the Group deems it appropriate, this report, as well as other reports and studies distributed to members, may be made available to other interested parties in accordance with the rules of procedure;
- (c) The Group shall undertake periodic evaluations of its activities at least every two years, and compare their conformity to the objectives and functions of the Group as set out in paragraphs 3 and 4 above.

Market Development

20. The Group shall, in consultation with members, associate members and interested parties, identify constraints and opportunities in the world market for jute and jute products with a view to undertaking appropriate activities, with particular reference to increasing the demand and developing the market for jute and jute products, as well as dissemination and commercial exploitation of emerging technologies.

Obligations of Members

21. Members shall use their best endeavours to cooperate and to promote the attainment of the objectives of the Group, in particular by providing the data referred to in paragraph 19(a) above.

Reservations

22. No reservations may be made to any of the provisions of these Terms of Reference.

Entry into force

23.

- (a) These Terms of Reference shall enter into force when States, the European Community or any intergovernmental organization referred to in paragraph 5 above together accounting for 60 per cent of trade (imports and exports combined) in jute and jute products, as set out in Annex A to these Terms of Reference, have notified the Secretary-General of the United Nations (hereinafter referred to as “the depositary”) pursuant to sub-paragraph (b) below of their provisional application or definitive acceptance of these Terms of Reference;
- (b) Any State, the European Community or any intergovernmental organization referred to in paragraph 5 above which desires to become a member of the Group shall notify the depositary that it accepts definitively these Terms of Reference or that it accepts to apply them provisionally, pending the conclusion of its internal procedures. Any State, the European Community or intergovernmental organization which has notified its provisional application of these Terms of Reference shall endeavour to complete its internal procedures as soon as possible, and shall notify the depositary of its definitive acceptance of these Terms of Reference;
- (c) If the requirements for entry into force of these Terms of Reference have not been met on 31 December 2001, the Secretary-General of the United Nations Conference on Trade and Development shall invite those States, the European Community and intergovernmental organizations that have notified their acceptance or provisional application of these Terms of Reference to decide whether or not to put these Terms of Reference into force among themselves;
- (d) When these Terms of Reference enter into force, the Secretary-General of the United Nations Conference on Trade and Development shall convene an inaugural meeting of the Council as soon as possible thereafter. Members shall be notified at least one month, where possible, prior to that meeting.

Amendment

24. These Terms of Reference may be amended only by consensus of the Council. The Secretary-General shall notify the depositary of any amendments adopted under this paragraph. An amendment shall enter into force 90 days after the depositary has received the notification of acceptance from members holding together at least 60 per cent of the votes.

Duration, Extension and Renegotiation

25.

- (a) The Group shall remain in force for a period of eight years, unless the Council, by special vote, decides to extend or renegotiate these Terms of Reference as provided for in subparagraphs (b) and (c) below or to terminate them as provided for in paragraph 27 below;
- (b) The Council may, by special vote, decide to extend the duration of these Terms of Reference for not more than two periods of two years each;
- (c) The Council may, by special vote, decide to renegotiate these Terms of Reference.

Withdrawal

26.

- (a) A member may withdraw from the Group at any time by giving written notice of withdrawal to the depositary and to the Secretary-General of the Group;
- (b) Withdrawal shall be without prejudice to any financial obligations already incurred by the withdrawing member and shall not entitle it to any rebate of its contribution for the year in which the withdrawal occurs;
- (c) Withdrawal shall become effective 12 months after the notice is received by the depositary;
- (d) The Secretary-General of the Group shall promptly notify each member of any notification received under this paragraph.

Termination

27. The Council may at any time, by special vote, decide to terminate these Terms of Reference. Such termination shall take effect on such date as the Council shall decide. The Secretary-General shall notify the decision taken under this paragraph to the depositary.

Liquidation

28. Notwithstanding the expiry or the termination of these Terms of Reference, the Council shall continue in being for as long as is necessary, but not exceeding a period of 12 months, to carry out liquidation of the Group including settlement of the accounts.

DONE at Geneva, this thirteenth day of March, two thousand and one, the texts of this Agreement in Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic.

[Neither the signatures nor Annex A, on Statistical Information on Net World Trade in Jute and Jute Products, are reproduced here.]

CHAPTER SEVENTY-FOUR

Multilateral Agreement on the Liberalization of International Air Transportation

Washington, DC, 1 May 2001

INTRODUCTION

This Agreement is one of the most ambitious developments in air transportation. Although not yet global in scope, it eclipses earlier ‘open skies’ agreements entered into between the USA and Canada and between the USA and the European Union (EU). It is open, first, to the Brunei Darussalam, Chile, New Zealand, Singapore and the USA. The other members of the Asia-Pacific Economic Co-operation (APEC) are eligible and, indeed, expected to sign on next. Ultimately, it is expected to cover the whole of the APEC region and serve as model for a global agreement. Indeed, once in force, it replaces bilateral agreements existing between any parties to this Agreement. The paradigm that the Agreement extols is competition and what it calls ‘minimum interference and regulation’.

Each party to this Agreement grants over-flight rights and the right to stop-over for non-traffic reasons. Such rights can be for either or both directions of the airline’s traffic or for a combination of flight numbers, including the transfer of traffic and the carriage of transit traffic. The only requirement is that the service in question, excepting all cargo services, serves a point in the territory of the party in which the airline is registered. The right of states parties to register or designate airlines is not affected in any way. States still retain the right to register or designate as many airlines as it wants to be involved in international air transportation. All such registrations must be notified to other states parties. The other states parties must process and grant authorizations and permissions expeditiously. They must, however, satisfy themselves that the airline is incorporated and effectively controlled from the registering state party. The airline must meet the regulatory requirements of the country considering its application for rights under the Agreement and compliance with the provisions on safety and security.

Airlines registered in member states have the freedom to establish offices and to promote their business in the territory of other parties. They also have the right to bring in their own staff, subject to the laws on immigration, residence and employment, to perform their own ground-handling work or to select among competing agents any agency to do the work on their behalf. The party on whose territory the airline is operating may impose user charges, but such charges must be fair, reasonable and not

‘unjustly discriminatory’, applying most-favoured-nation or nationality principles. The activities for which charges may be imposed include security, environmental management, air navigation, etc. Given the competition paradigm of this Agreement, it is not surprising that significant attention is given to ‘Fair Competition’ and ‘Pricing’ (articles 11 and 12, respectively). Parties are prohibited from imposing restrictions on the capacity, volume of traffic, frequency or regularity of service, type of aircraft and uplift ratios of airlines from other states parties, except on health, environmental, operational or customs grounds. Where any requirement is made for filing of schedules, operational plans, etc., for uniformity and record purposes, it must not be discriminatory nor burdensome administratively. Prices must not be determined nor approved by any government. If they have to be filed, it must be done under due process of law. In general, each party must allow fair and equal opportunity for the designated airlines of other countries in the Agreement to compete in the international air transport business.

Provisions are made for the safety and security of airlines operating under this Agreement. Each party is to recognize the validity of certificates of airworthiness and the competency of officials. Parties are urged to consult on safety and related matters. Parties are also to co-operate on matters of security. For one thing, airlines are to comply with the security requirements and procedures of the country in which they have operations. This is one issue on which countries appear to have individual leverage. All the same, the relatively general provisions on safety and security give an indication of the date of the Agreement. If it were concluded after 11 September 2001, instead of four months earlier, the provisions on the two subjects would have been more robust.

The Convention came into force on 21 December 2001. By the beginning of 2004 there were eight parties to the Agreement, although Peru then gave notice of withdrawal (which took effect in January 2005).

MULTILATERAL AGREEMENT ON THE LIBERALIZATION OF INTERNATIONAL AIR TRANSPORTATION*

The Parties to this Agreement (hereinafter, “the Parties”);

DESIRING to promote an international aviation system based on competition among airlines in the marketplace with minimum interference and regulation;

DESIRING to facilitate the expansion of international air transport opportunities;

RECOGNIZING that efficient and competitive international air services enhance trade, benefit consumers, and promote economic growth;

RECOGNIZING the contribution made by the Asia-Pacific Economic Cooperation forum in facilitating discussions on the liberalization of air services;

DESIRING to make it possible for airlines to offer the traveling and shipping public a variety of service options and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

DESIRING to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

NOTING the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;
Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. "Agreement" means this Agreement, its Annex and Appendix, and any amendments thereto;
2. "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
3. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
 - (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by all Parties to this Agreement; and
 - (b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for all Parties to this Agreement;
4. "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;
5. "Full cost" means the cost of providing service, including a reasonable amount for administrative overhead;
6. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State or APEC member economy as identified in the Appendix to the Annex;
7. "Price" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
8. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
9. "Territory" means the land areas under the sovereignty, jurisdiction, authority, administration, protection, or trusteeship of a Party, and the territorial waters adjacent thereto; and
10. "User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities.

Article 2 Grant of Rights

1. Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:
 - (a) the right to fly across its territory without landing;

- (b) the right to make stops in its territory for non-traffic purposes;
- (c) the right, in accordance with the terms of their designations, to perform scheduled and charter international air transportation between points on the following route:
 - i. from points behind the territory of the Party designating the airline via the territory of that Party and intermediate points to any point or points in the territory of the Party granting the right and beyond;
 - ii. for all-cargo service or services, between the territory of the Party granting the right and any point or points; and
- (d) the rights otherwise specified in this Agreement.

2. Each designated airline may on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- (d) omit stops at any point or points;
- (e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;
- (f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
- (g) make stopovers at any points whether within or outside the territory of any Party; carry transit traffic through any other Party's territory; and
- (h) combine traffic on the same aircraft regardless of where such traffic originates;
- (i) without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

- 3. The provisions of paragraph 2 of this Article shall apply subject to the requirement that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.
- 4. On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.
- 5. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of another Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

Article 3 Designation and Authorization

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the concerned Parties in

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the International Civil Aviation Organization (<http://www.icao.int/>).

writing through diplomatic or other appropriate channels and to the Depositary.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, each Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided that:
 - (a) effective control of that airline is vested in the designating Party, its nationals, or both;
 - (b) the airline is incorporated in and has its principal place of business in the territory of the Party designating the airline;
 - (c) the airline is qualified to meet the conditions prescribed under the laws, regulations, and rules normally applied to the operation of international air transportation by the Party considering the application or applications; and
 - (d) the Party designating the airline is in compliance with the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security).
3. Notwithstanding paragraph 2, a Party need not grant authorizations and permissions to an airline designated by another Party if the Party receiving the designation determines that substantial ownership is vested in its nationals.
4. Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depositary.
5. Nothing in this Agreement shall be deemed to affect a Party's laws and regulations concerning the ownership and control of airlines that it designates. Acceptance of such designations by the other Parties shall be subject to paragraphs 2 and 3 of this Article.

Article 4 Revocation of Authorization

1. Each Party may withhold, revoke, suspend, limit or impose conditions on the operating authorizations or technical permissions of an airline designated by another Party where:
 - (a) effective control of that airline is not vested in the designating Party, its nationals, or both;
 - (b) the first Party determines that substantial ownership is vested in its nationals;
 - (c) the airline is not incorporated or does not have its principal place of business in the territory of the party designating the airline;

- (d) the airline has failed to comply with the laws, regulations, and rules referred to in Article 5 (Application of Laws) of this Agreement; or
 - (e) the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).
2. Unless immediate action is essential to prevent further non-compliance with subparagraphs 1(d) or 1(e) of this Article, the rights established by this Article shall be exercised only after consultation with the Party designating the airline.
 3. A Party that has exercised its right to withhold, revoke, suspend, limit or impose conditions on the operating authorizations of an airline or airlines in accordance with paragraph 1 of this Article shall notify its action to the Depositary.
 4. This Article does not limit the rights of any Party to withhold, revoke, suspend, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of other Parties in accordance with the provisions of Article 7 (Aviation Security).

Article 5 Application of Laws

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the airlines designated by any other Party.
2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the airlines of any other Party.
3. No Party shall give preference to its own or any other airline over a designated airline of the other Parties engaged in similar international air transport in the application of its customs, immigration and quarantine regulations.
4. Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

Article 6 Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Parties and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses for its own nationals granted or validated by another Party.

2. Each Party may request consultations with another Party concerning the safety standards maintained by that other Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. If, following such consultations, the first Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, suspend, or limit or impose conditions on the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

Article 7 Aviation Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on February 24, 1988.
2. Each Party shall provide upon request of another Party all necessary assistance to that other Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
3. Each Party shall, in its relations with the other Parties, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; it shall require that operators of aircraft of its registry, operators of aircraft who have their principal place of business or permanent residence in its territory, and the operators of airports in its territory act in conformity with such aviation security provisions.
4. Each Party shall observe the security provisions required by the other Parties for entry into, for departure from, and while within their respective territories and each Party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from another Party for special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.
6. When a Party has reasonable grounds to believe that another Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.
7. Any Party that has exercised its right to withhold, revoke, suspend, or limit or impose conditions on the operating authorization of an airline or airlines in accordance with paragraph 6 of this Article shall notify such action to the Depositary.

Article 8 Commercial Opportunities

1. The airlines of each Party shall have the right to:
 - (a) establish offices in the territory of the other Parties for the promotion and sale of air transportation;
 - (b) engage in the sale of air transportation in the territory of the other Parties directly and, at the airlines' discretion, through their agents. The airlines shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in local currency or in freely convertible currencies;
 - (c) convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance; and
 - (d) pay for local expenses, including purchases of fuel, in the territories of the other Parties in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Parties in freely convertible currencies according to local currency regulation.
2. The designated airlines of each Party shall have the right:
 - (a) in accordance with the laws, regulations and rules of the other Parties relating to entry, residence, and employment, to bring in and maintain in the territories of the other Parties managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation;
 - (b) to perform their own ground-handling in the territory of the other Parties ("self-handling") or, at their option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-

handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible; and

(c) in operating or holding out the authorized services on the agreed routes, to enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements, with:

- i. an airline or airlines of any Party;
- ii. an airline or airlines of any State or APEC member economy as identified in the Appendix to the Annex that is not party to this Agreement; and
- iii. a surface transportation provider of any State or APEC member economy as identified in the Appendix to the Annex;

provided that all participants in such arrangements hold the appropriate authority and meet the requirements applied to such arrangements.

3. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted without restriction to employ in connection with international air transportation any surface transportation for cargo to or from any points within or outside the territories of the Parties, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 9 Customs Duties and Charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airline or airlines of any other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (i) imposed by the national or central authorities, and (ii) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
 - (a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of airlines of the other Parties engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;
 - (b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of airlines of the other Parties used in international air transportation;
 - (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of airlines of the other Parties engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and
 - (d) promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Parties engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.
3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.
4. The exemptions provided by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from another Party or Parties, for the loan or transfer in the territory of the other Party or Parties of the items specified in paragraphs 1 and 2 of this Article.

Article 10 User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Parties shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Parties on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.
2. User charges imposed on the airlines of the other Parties may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange

such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. No Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by another Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 11 Fair Competition

1. Each Party shall allow a fair and equal opportunity for the designated airlines of all Parties to compete in providing the international air transportation governed by this Agreement.
2. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, no Party shall act to limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Parties, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. No Party shall impose on another Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic.
4. No Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Parties for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article. If a Party requires filings to enforce the uniform conditions as foreseen by paragraph 2 of this Article or requires filings for informational purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Parties.
5. Subject to the provisions of this Agreement, no Party may apply its laws, regulations, and rules to restrict the operation or sale of the charter international air transportation provided for in this Agreement, except that the Parties may require compliance with their own requirements relating to the protection of charter passenger funds and charter passenger cancellation and refund rights.
6. Pursuant to paragraph 1 of this Article, the airlines of each Party shall be entitled to market their services on a fair and non-discriminatory basis through computer reservations systems (CRSs) used by travel agencies or travel companies in the territories of the Parties. In addition, CRS vendors of each Party that are not in-violation of the CRS rules, if any, that apply in the territories of the Parties in which they are operating shall be entitled to non-discriminatory, effective, and unimpaired access to market, maintain, operate and freely make available their CRSs to travel agencies or

travel companies in the territories of the Parties. In particular, if any airline of any Party chooses to participate in a CRS offered to travel agents or travel companies in the territory of another Party, that airline shall participate in CRSs of that other Party operated in the territory of its incorporation as fully as it does in any CRS in the territory of that other Party, unless it can show that the fees charged by that CRS for participation in the territory of its incorporation are not commercially reasonable (fees are presumed to be commercially reasonable if the fees charged the airline for participation in the territory of its incorporation by any other CRS that is used by travel agents or travel companies equal or exceed those charged by the CRS of the other Party for such participation). Airlines and CRS vendors of one Party shall not discriminate against travel agencies or travel companies in that Party's territory because of their use of a CRS of another Party.

Article 12 Pricing

Prices for international air transportation operated pursuant to this Agreement shall not be subject to the approval of any Party, nor may they be required to be filed with any Party, provided that a Party may require that they be filed for informational purposes for so long as the laws of that Party continue to so require.

Article 13 Consultations

Each Party shall have the right to request consultations with one or more other Parties relating to the implementation or application of this Agreement. Unless otherwise agreed, such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party or Parties receive, through diplomatic or other appropriate channels, a written request, including an explanation of the issues to be raised. When the date for consultations has been agreed, the requesting Party shall also notify all other Parties of the consultations and the issues to be raised. Any Party may attend, subject to the consent of the Parties involved in the consultations. Once the consultations have been concluded, all Parties shall be notified of the results.

Article 14 Settlement of Disputes

1. Any dispute arising under this Agreement that is not resolved by a first round of consultations may be referred by agreement of the Parties involved for decision to some person or body. If the Parties involved do not so agree, the dispute shall at the request of one Party be submitted to arbitration with respect to another Party in accordance with the procedures set forth below. The Party submitting the dispute to arbitration shall notify all other Parties of the dispute at the same time that it submits its arbitration request.
2. Arbitration shall be by a panel of three arbitrators to be constituted as follows:
 - (a) within 30 days after the receipt of a request for arbitration, each Party to the dispute shall name one arbitrator. Within 60 days after these two arbitrators have

been named, the Parties to the dispute shall by agreement appoint a third arbitrator, who shall act as President of the arbitral panel;

- (b) if either Party to the dispute fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties to the dispute, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed by the Parties to the dispute, the arbitral panel shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The arbitral panel, once formed, may recommend interim measures pending its final determination. At the direction of the arbitral panel or at the request of either of the Parties to the dispute, a conference concerning the precise issues to be arbitrated and the specific procedures to be followed shall be held on a date determined by the arbitral panel, in no event later than 15 days after the third arbitrator has been appointed. If the Parties to the dispute are unable to reach agreement on these issues, the arbitral panel shall determine the precise issues to be arbitrated and the specific procedures to be followed.
4. Except as otherwise agreed by the Parties to the dispute or as directed by the panel, the complaining Party shall submit a memorandum within 45 days of the time the third arbitrator is appointed, and the reply of the responding Party shall be due 60 days after the complaining Party submits its memorandum. The complaining Party may submit a pleading in response to such reply within 30 days after the submission of the responding Party's reply and the responding Party may submit a pleading in response to the complaining Party's pleading within 30 days after the submission of such pleading. The arbitral panel shall hold a hearing at the request of either Party or on its own initiative within 15 days after the last pleading is due.
5. The arbitral panel shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date the last pleading is submitted. The decision of the majority of the arbitral panel shall prevail.
6. The Parties to the dispute may submit requests for clarification of the decision within 15 days after it is rendered, and any clarification given shall be issued within 15 days of such request.
7. In the case of a dispute involving more than two Parties, multiple Parties may participate on either or both sides of a proceeding described in this Article. The procedures set out in this Article shall be applied with the following exceptions:
 - (a) with respect to paragraph 2(a), the Parties on each side of a dispute shall together name one arbitrator;
 - (b) with respect to paragraph 2(b), if the Parties on one side of a dispute fail to name an arbitrator within the permitted time, the Party or Parties on the other side of the dispute may utilize the procedures in paragraph 2(b) to secure the appointment of an arbitrator; and
 - (c) with respect to paragraphs 3, 4, and 6, each of the Parties on either side of the dispute has the right to take the action provided to a Party.

8. Any other Party that is directly affected by the dispute has the right to intervene in the proceedings, under the following conditions:
- (a) a Party desiring to intervene shall file a declaration to that effect with the arbitral panel no later than 10 days after the third arbitrator has been named;
 - (b) the arbitral panel shall notify the Parties to the dispute of any such declaration, and the Parties to the dispute shall each have 30 days from the date such notification is sent to submit to the arbitral panel any objection to an intervention under this paragraph. The arbitral panel shall decide whether to allow any intervention within 15 days after the date such objections are due;
 - (c) if the arbitral panel decides to allow an intervention, the intervening Party shall notify all other Parties to the Agreement of the intervention, and the arbitral panel shall take the necessary steps to make the documents of the case available to the intervening Party, who may file pleadings of a type and within a time limit to be set by the arbitral panel, within the timetable set out in paragraph 4 of this Article to the extent practical, and may participate in any subsequent proceedings; and
 - (d) the decision of the arbitral panel will be equally binding upon the intervening Party.
9. All Parties to the dispute, including intervening Parties, shall, to the degree consistent with their law, give full effect to any decision or award of the arbitral panel.
10. The arbitral panel shall transmit copies of its decision or award to the Parties to the dispute, including any intervening Parties. The arbitral panel shall provide to the Depositary a copy of the decision or award, provided that appropriate treatment shall be accorded to confidential business information.
11. The expenses of the arbitral panel, including the fees and expenses of the arbitrators, shall be shared equally by all of the Parties to the dispute, including intervening Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral panel.

Article 15 Relationship to Other Agreements

Upon entry into force of this Agreement between one Party and any other Party, any bilateral air transport agreement existing between them at the time of such entry into force shall be suspended and shall remain suspended for so long as this Agreement shall remain in force between them.

Article 16 Relationship to Annex

The Annex is an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annex relating thereto.

Article 17 Amendment

1. Any Party may propose amendments to this Agreement by forwarding a proposed amendment to the Depositary. Upon receiving such a proposal, the Depositary shall forward the proposal to the other Parties through diplomatic or other appropriate channels.
2. The Agreement may be amended in accordance with the following procedures:
 - (a) if agreed by at least a simple majority of all Parties as of the date of proposal of the amendment, negotiations shall be held to consider the proposal;
 - (b) unless otherwise agreed, the Party proposing the amendment shall host the negotiations, which shall begin not more than 90 days after agreement is reached to hold such negotiations. All Parties shall have a right to participate in the negotiations;
 - (c) if adopted by at least a simple majority of the Parties attending such negotiations, the Depositary shall then prepare and transmit a certified copy of the amendment to the Parties for their acceptance;
 - (d) any amendment shall enter into force, as between the Parties which have accepted it, 30 days following the date on which the Depositary has received written notification of acceptance from a simple majority of the Parties; and
 - (e) following entry into force of such an amendment, it shall enter into force for any other Party 30 days following the date the Depositary receives written notification of acceptance from that Party;
3. In lieu of the procedures set forth in paragraph 2, the Agreement may be amended in accordance with the following procedures:
 - (a) if all Parties as of the time of proposal of the amendment give written notice through diplomatic or other appropriate channels to the Party proposing the amendment of their consent to its adoption, the Party proposing the amendment shall so notify the Depositary, which shall then prepare and transmit a certified copy of such amendment to all of the Parties for their acceptance; and
 - (b) an amendment so adopted shall enter into force for all Parties 30 days following the date on which the Depositary has received written notification of acceptance from all of the Parties.

Article 18 Withdrawal

A Party may withdraw from this agreement by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective 12 months after receipt of the notice by the Depositary, unless the Party withdraws its notice by written communication to the Depositary prior to the end of the 12-month period.

Article 19 Responsibilities of the Depositary

1. The original of this Agreement shall be deposited with the Government of New Zealand, which is hereby designated as the Depositary of the Agreement.

2. The Depositary shall transmit certified copies of this Agreement and any amendments or protocols to all signatory and acceding States and all APEC member economies which have agreed to be bound by this Agreement in accordance with the Annex.
3. The Depositary shall notify all signatory and acceding States and all APEC member economies which have agreed to be bound by this Agreement in accordance with the Annex of:
 - (a) expressions of consent to be bound by this Agreement and any amendments in accordance with Articles 20 and 17, and instruments of APEC member economies indicating their agreement to be bound by this Agreement in accordance with the Annex or their acceptance of any amendments in accordance with Article 17;
 - (b) the respective dates on which the Agreement enters into force in accordance with Article 20, paragraphs 2, 3, and 6, and the respective dates on which the rights and obligations described in paragraph 2 of the Annex become effective following the deposit of a written instrument by APEC member economies pursuant to paragraph 1 of the Annex;
 - (c) notifications regarding non-application of the Agreement received in accordance with Article 20, paragraph 5;
 - (d) any notification of withdrawal received in accordance with Article 18;
 - (e) the convening of negotiations to consider amendments in accordance with Article 17, paragraph 2(a);
 - (f) the respective dates on which an amendment enters into force in accordance with Article 17, paragraphs 2(d), 2(e) and 3(b); and
 - (g) notifications received pursuant to Article 4, paragraph 3 and Article 7, paragraph 7.
4. Following entry into force of this Agreement, the Depositary shall transmit a certified true copy of this Agreement to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations and to the Secretary General of the International Civil Aviation Organization in accordance with Article 83 of the Convention. The Depositary shall likewise transmit certified true copies of any amendments which enter into force.
5. The Depositary shall maintain a centralized register of airline designations and operating authorizations in accordance with Article 3, paragraphs 1 and 4 of this Agreement.
6. The Depositary shall make available to the Parties copies of any arbitral decision or award issued under Article 14 of this Agreement.

Article 20 Entry into Force

1. This Agreement shall be open for signature by Brunei Darussalam, Chile, New Zealand, Singapore, and the United States of America.
2. This Agreement shall enter into force on the date four of the States identified in paragraph 1 of this Article have signed not subject to ratification, acceptance or approval, or have deposited with the Depositary an instrument of ratification, acceptance or approval. The signatories to this Agreement may permit services consistent with the terms of the Agreement upon signature pending entry into force of the Agreement with respect to all of the States identified in paragraph 1 of this Article.

3. After this Agreement has entered into force in accordance with paragraph 2 of this Article, it shall enter into force for a remaining signatory on the date the Depositary receives the instrument of ratification, acceptance or approval of that signatory.
4. After this Agreement has entered into force in accordance with paragraph 2 of this Article, any State which is a party to the aviation security conventions listed in Article 7, paragraph 1 may accede to this Agreement by deposit of an instrument of accession with the Depositary.
5. This Agreement shall not apply between an acceding State or an APEC member economy which agrees to be bound by this Agreement in accordance with the Annex and any Party to this Agreement or APEC member economy which, within 90 days of the date of the Depositary's notification to the Parties of the deposit of the instrument of accession or written instrument indicating agreement to be bound, notifies the Depositary in writing that it shall not apply between that Party or such APEC member economy and such acceding State or APEC member economy. Any signatory that expresses its consent to be bound after the Agreement has entered into force pursuant to paragraph 2 of this Article, upon expressing its consent to be bound, may notify the Depositary in writing that the Agreement shall not apply between that signatory and any State that acceded to the Agreement, or any APEC member economy that agreed to be bound by the Agreement in accordance with the Annex, before the Agreement entered into force for that signatory.
6. This Agreement shall enter into force as between the acceding State and all Parties other than those which, pursuant to paragraph 5 of this Article, have notified the Depositary of the nonapplication of the Agreement, on the 30th day after the expiry of the 90-day period referred to in paragraph 5 of this Article.

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

DONE at Washington, this 1st day of May, 2001, in the English, Spanish and Malay languages, each text being authentic. In case of divergence between the three language texts, the English language text shall prevail.

[The signatures, the short annex and appendix, as well as the Protocol to this Agreement, have all been omitted.]

CHAPTER SEVENTY-FIVE

New Partnership for Africa's Development (NEPAD)

Abuja, October 2001

INTRODUCTION

More than half of the countries in the continent of Africa gained independence from European countries during the 1960s. Since then there have been a number of debates, documents and initiatives to move the continent forward economically. The most notable was the Lagos Plan of Action, adopted in 1981. Most of these initiatives have achieved very little. The main reason for the failure has been the instability and bad governance on the continent, and the consequent effect on investment, etc. This is where the current New Partnership for Africa's Development (NEPAD) makes a difference. It acknowledges the failures of past initiatives and places the problems in their historical context, but also accepts African responsibility and confers authorship of NEPAD on Africans. It also relies heavily on African contributions to make it successful, although it welcomes support from development partners.

The document seeks to move Africa from the margins to the centre of global development, by showing the economic, ecological and cultural importance of the continent. The concrete strategies for achieving this objective include—first, peace, security, democracy and political governance. There is no doubt that without good governance there would be little progress on the continent. Good governance would be the effective answer to insecurity, conflict and instability. Good governance should have, as its cornerstone, political pluralism and respect for human rights. Leaders like Paul Biya (Cameroon), Omar Bongo (Gabon), the late Gnassingbé Eyadéma (Togo), Robert Mugabe (Zimbabwe), Yoweri Museveni (Uganda), Denis Sassou-Nguesso (Congo) or Dr Samuel Nujoma (Namibia)—elected or otherwise—staying in power for over a decade should stop. 'Overstaying' tends to engender the personalization of power and the institutions of governance, resulting in their ultimate breakdown.

Governance is particularly important where the state is to play a complementary, if not crucial, role in development. The NEPAD advocates an economic and corporate governance initiative in the form of effective policy and regulatory frameworks that would galvanize private sector-led development. Particular areas have been targeted for capacity building. A priority area is the financial sector. Ministries of finance, central

banks, commercial banks and related financial institutions are to be strengthened. Regional institutions and sub-regional co-operation is to be strengthened. Essential regional public goods include transport, information and communications technology, energy, agriculture, health, environmental protection and research. The focus is on sub-regional or continent-wide infrastructures. This is imperative in view of the interdependence of many countries. For example, land-locked states like Burkina Faso and Mali or Zimbabwe and Botswana will need the seaports of Ghana or South Africa, respectively, for their maritime trade. The main vehicle for financing the infrastructural needs of the continent would be private-public partnerships (PPP). An interesting feature of NEPAD is the emphasis on human resource development. Education, science and technology, and reversal of the 'brain drain' are all priority areas.

All of the ideals and goals of NEPAD will ultimately hinge on three things: governance, finance and trade. Governance is enthusiastically covered, but finance and trade are also covered. The continent needs an estimated US \$64,000m. in order to attain a sustained gross domestic product (GDP) growth rate of 7% per year, on average. That would require increased domestic savings and revenue collection, as well as heavy external flows. It is expected that foreign debt reduction and the overseas assistance programmes of the developed countries would be the main forms of mobilizing external resources for Africa. It is also hoped that the PPP mechanism would mobilize private finance for NEPAD's objectives. As far as trade is concerned, vigorous marketing campaigns are urged, to counter the negative international image of the continent. Intra-African trade is also to be enhanced. At the multilateral level, concerted efforts are to be made to reduce the tariff and non-tariff barriers that exist in the developed world against African trade products. Existing preferential trade systems—such as the generalized systems of preferences (GSP), the Cotonou Agreement of the European Union and the Africa Growth and Opportunity Act of the USA (see above)—must be expanded and stabilized. If the goals of good governance, capital mobilization and infrastructure and trade development are attained, as was the case with the Marshall Plan (see above), NEPAD will have attained an indelible place in history.

NEPAD came into effect in October 2001, when the African Union (AU) approved the framework document prepared by the five initiating nations (Algeria, Egypt, Nigeria, Senegal and South Africa), as requested at the July summit of heads of state and government. As a programme of the AU, it does not have separate membership, but does have its own secretariat.

NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT*

ABBREVIATIONS AND ACRONYMS

AGOA	Africa Growth and Opportunity Act
AU	African Union
CGIAR	Consultative Group on International Agricultural Research
DAC	Development Assistance Committee
EBA	"Everything But Arms"

ECA	Economic Commission on Africa
ECOWAS	Economic Community of West African States
FAO	Food and Agriculture Organisation
FARA	Forum for Agricultural Research in Africa
GDP	Gross Domestic Product
GEF	Global Environment Facility
GESI	Global Environmental Sanitation Initiative
GIS	Geographic Information System
GNP	Gross National Product
GSP	Generalised System of Preferences
HIPC	Highly Indebted Poor Country
IAF	International Accreditation Forum
ICT	Information and Communications Technology
DA	International Development Assistance
IDG	International Development Goal
IEC	International Electrotechnical Commission
IMF	International Monetary Fund
ISO	International Standards Organisation
NBI	National Business Incubator
OAU	Organisation of African Unity
ODA	Overseas Development Assistance
OECD	Organisation for Economic Co-operation and Development
PPP	Public-Private Partnership
PRSP	Poverty Reduction Strategy Paper
RETOSA	Regional Tourism Organisation of Southern Africa
SADC	Southern African Development Community
TBT	Agreement on Technical Barriers to Trade
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

CONTENTS

[The Contents are not reproduced here.]

I. INTRODUCTION

1. This New Partnership for Africa's Development is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic. The Programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.
2. The poverty and backwardness of Africa stand in stark contrast to the prosperity of the developed world. The continued marginalisation of Africa from the globalisation process and the social exclusion of the vast majority of its peoples constitute a serious threat to global stability.
3. Historically accession to the institutions of the international community, the credit and aid binomial has underlined the logic of African development. Credit has led to the debt deadlock, which, from instalments to rescheduling, still exists and hinders the growth of African countries. The limits of this option have been reached. Concerning the other element of the binomial—aid—we can also note the reduction of private aid and the upper limit of public aid, which is below the target set in the 1970s.
4. In Africa, 340 million people, or half the population, live on less than US \$1 per day. The mortality rate of children under 5 years of age is 140 per 1000, and life expectancy at birth is only 54 years. Only 58 per cent of the population have access to safe water. The rate of illiteracy for people over 15 is 41 per cent. There are only 18 mainline telephones per 1000 people in Africa, compared with 146 for the world as a whole and 567 for high-income countries.
5. The New Partnership for Africa's Development calls for the reversal of this abnormal situation by changing the relationship that underpins it. Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions.
6. We are convinced that an historic opportunity presents itself to end the scourge of underdevelopment that afflicts Africa. The resources, including capital, technology and human skills, that are required to launch a global war on poverty and underdevelopment exist in abundance, and are within our reach. What is required to mobilise these resources and to use them properly, is bold and imaginative leadership that is genuinely committed to a sustained human development effort and poverty eradication, as well as a new global partnership based on shared responsibility and mutual interest.
7. Across the continent, Africans declare that we will no longer allow ourselves to be conditioned by circumstance. We will determine our own destiny and call on the rest of the world to complement our efforts. There are already signs of progress and hope. Democratic regimes that are committed to the protection of human rights, people-centred development and market-oriented economies are on the increase. African peoples have begun to demonstrate their refusal to accept poor economic and political

leadership. These developments are, however, uneven and inadequate and need to be further expedited.

8. The New Partnership for Africa's Development is about consolidating and accelerating these gains. It is a call for a new relationship of partnership between Africa and the international community, especially the highly industrialised countries, to overcome the development chasm that has widened over centuries of unequal relations.

II. AFRICA IN TODAY'S WORLD: BETWEEN POVERTY AND PROSPERITY

9. Africa's place in the global community is defined by the fact that the continent is an indispensable resource base that has served all humanity for so many centuries.

10. These resources can be broken down into the following components:

The rich complex of mineral, oil and gas deposits, its flora and fauna, and its wide unspoiled natural habitat, which provide the basis for mining, agriculture, tourism and industrial development (Component I);

The ecological lung provided by the continent's rain forests, and the minimal presence of emissions and effluents that are harmful to the environment—a global public good that benefits all humankind (Component II);

The paleontological and archaeological sites containing evidence of the evolution of the earth, life and the human species. The natural habitats containing a wide variety of flora and fauna, unique animal species and the open uninhabited spaces that are a feature of the continent (Component III);

The richness of Africa's culture and its contribution to the variety of the cultures of the global community (Component IV).

11. The first of these, Component I, is the one with which the world is most familiar. The second, Component II, has only come to the fore recently, as humanity came to understand the critical importance of the issue of the environment. The third, Component III, is also

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now coming into its own, emerging as a matter of concern not only to a narrow field of science or of interest only to museums and their curators. The fourth of these, Component IV, represents the creativity of African people, which in many important ways remains under-exploited and under-developed.

12. Africa has a very important role to play with regard to the critical issue of the protection of the environment. African resources include rain forests, the virtually carbon dioxide-free atmosphere above the continent and the minimal presence of toxic effluents in the rivers and soils that interact with the Atlantic and Indian Oceans and the Mediterranean and Red Seas. The New Partnership for Africa's Development will contain a strategy for nurturing these resources and using them for the development of the African continent, while at the same time preserving them for all humanity.

13. It is obvious that, unless the communities in the vicinity of the tropical forests are given alternative means of earning a living, they will co-operate in the destruction of the forests. As the preservation of these environmental assets is in the interests of humanity, it is imperative that Africa be placed on a development path that does not put them in danger.
14. Modern science recognises Africa as the cradle of humankind. As part of the process of reconstructing the identity and self-confidence of the peoples of Africa, it is necessary that this contribution to human existence be understood and valued by Africans themselves. Africa's status as the birthplace of humanity should be cherished by the whole world as the origin of all its peoples. Accordingly, the New Partnership for Africa's Development must preserve this common heritage and use it to build a universal understanding of the historic need to end the under-development and marginalisation of the continent.
15. Africa also has a major role to play in maintaining the strong link between human beings and the natural world. Technological developments tend to emphasise the role of human beings as a factor of production, competing for their place in the production process with their contemporary or future tools. The open uninhabited spaces, the flora and fauna, and the diverse animal species that are unique to Africa offer an opportunity for humanity to maintain its link with nature.
16. Africa has already made a significant contribution to world culture through literature, music, visual arts and other cultural forms, but her real potential remains untapped because of her limited integration into the global economy. The New Partnership for Africa's Development will enable Africa to increase her contribution to science, culture and technology.
17. In this new millennium, when humanity is searching for a new way to build a better world, it is critical that we bring to bear the combination of these attributes and the forces of human will to place the continent on a pedestal of equal partnership in advancing human civilisation.

The Historical Impoverishment of a Continent

18. The impoverishment of the African continent was accentuated primarily by the legacy of colonialism, the Cold War, the workings of the international economic system and the inadequacies of and shortcomings in the policies pursued by many countries in the post-independence era.
19. For centuries, Africa has been integrated into the world economy mainly as a supplier of cheap labour and raw materials. Of necessity, this has meant the draining of Africa's resources rather than their use for the continent's development. The drive in that period to use the minerals and raw materials to develop manufacturing industries and a highly skilled labour force to sustain growth and development was lost. Thus, Africa remains the poorest continent despite being one of the most richly endowed regions of the world.
20. In other countries and on other continents, the reverse was the case. There was an infusion of wealth in the form of investments, which created larger volumes of wealth through the export of value-added products. It is time that African resources are harnessed to create wealth for the well-being of her peoples.

21. Colonialism subverted hitherto traditional structures, institutions and values or made them subservient to the economic and political needs of the imperial powers. It also retarded the development of an entrepreneurial class, as well as a middle class with skills and managerial capacity.
22. At independence, virtually all the new states were characterised by a shortage of skilled professionals and a weak capitalist class, resulting in a weakening of the accumulation process. Post-colonial Africa inherited weak states and dysfunctional economies that were further aggravated by poor leadership, corruption and bad governance in many countries. These two factors, together with the divisions caused by the Cold War, hampered the development of accountable governments across the continent.
23. Many African governments did not empower their peoples to embark on development initiatives to realise their creative potential. Today, the weak state remains a major constraint to sustainable development in a number of countries. Indeed, one of Africa's major challenges is to strengthen the capacity to govern and to develop long-term policies. At the same time, there is also the urgent need to implement far-reaching reforms and programmes in many African states.
24. The structural adjustment programmes of the 1980s provided only a partial solution. They promoted reforms that tended to remove serious price distortions, but gave inadequate attention to the provision of social services. As a consequence, only a few countries managed to achieve sustainable higher growth under these programmes.
25. Indeed, Africa's experience shows that the rate of accumulation in the post-colonial period has not been sufficient to rebuild societies in the wake of colonial underdevelopment, or to sustain improvement in the standard of living. This has had deleterious consequences on the political process and led to sustained patronage and corruption.
26. The net effect of these processes has been the entrenchment of a vicious cycle, in which economic decline, reduced capacity and poor governance reinforce each other, thus confirming Africa's peripheral and diminishing role in the world economy. Thus, over the centuries, Africa has come to become the marginalised continent.
27. The New Partnership for Africa's Development seeks to build on and celebrate the achievements of the past, as well as to reflect on the lessons learned through painful experience, so as to establish a partnership that is both credible and capable of implementation. In doing so, the challenge is for the peoples and governments of Africa to understand that development is a process of empowerment and self-reliance. Accordingly, Africans must not be wards of benevolent guardians; rather they must be the architects of their own sustained upliftment.

Africa and the Global Revolution

28. The world has entered the new millennium in the midst of an economic revolution. This revolution could provide both the context and the means for Africa's rejuvenation. While globalisation has increased the cost of Africa's ability to compete, we hold that the advantages of an effectively managed integration present the best prospects for future economic prosperity and poverty reduction.

29. The current economic revolution has, in part, been made possible by advances in information and communications technology (ICT), which have reduced the cost of and increased the speed of communications across the globe, abolishing pre-existing barriers of time and space, and affecting all areas of social and economic life. It has made possible the integration of national systems of production and finance, and is reflected in an exponential growth in the scale of cross-border flows of goods, services and capital.
30. The integration of national systems of production has made it possible to “slice up the value chain” in many manufacturing and service-sector production processes. At the same time, the enhanced mobility of capital means that borrowers, whether governments or private entities, must compete with each other for capital in global rather than national markets. Both these processes have increased the costs to those countries that are unable to compete effectively. To a large extent, these costs have been borne disproportionately by Africa.
31. While no corner of the world has escaped the effects of globalisation, the contributions of the various regions and nations have differed markedly. The locomotive for these major advances is the highly industrialised nations. Outside this domain, only a few countries in the developing world play a substantial role in the global economy. Many developing countries, especially in Africa, contribute passively, and mainly on the basis of their environmental and resource endowments.
32. It is in the distribution of benefits that the global imbalance is most glaring. On the one hand, opportunities have increased to create or expand wealth, acquire knowledge and skills, and improve access to goods and services—in brief, to improve the quality of life. In some parts of the world, the pursuit of greater openness of the global economy has created opportunities for lifting millions of people out of poverty.
33. On the other hand, greater integration has also led to the further marginalisation of those countries that are unable to compete effectively. In the absence of fair and just global rules, globalisation has increased the ability of the strong to advance their interests to the detriment of the weak, especially in the areas of trade, finance and technology. It has limited the space for developing countries to control their own development, as the system has no provision for compensating the weak. The conditions of those marginalised in this process have worsened in real terms. A fissure between inclusion and exclusion has emerged within and among nations.
34. In part, Africa’s inability to harness the process of globalisation is a result of structural impediments to growth and development in the form of resource outflows and unfavourable terms of trade. At the same time, we recognise that failures of political and economic leadership in many African countries impede the effective mobilisation and utilisation of scarce resources into productive areas of activity in order to attract and facilitate domestic and foreign investment.
35. The low level of economic activity means that the instruments necessary for the real injection of private funds and risk-taking are not available, and the result is a further decline. In this self-perpetuating cycle, Africa’s capacity to participate in the globalisation process is severely weakened, leading to further marginalisation. The increasing polarisation of wealth and poverty is one of a number of processes that have accompanied globalisation, and which threaten its sustainability.

36. The closing years of the last century saw a major financial collapse in much of the developing world, which not only threatened the stability of the global financial system, but also the global economy as a whole. One of the immediate effects of the financial crisis was the exacerbation of existing levels of deep, structural poverty in which about half of the world's population lives on less than US \$2 per day, and a fifth on less than US \$1 per day.
37. There also exist other factors that pose serious longer-term risks. These include the rapid increase in the numbers of the socially excluded in different parts of the world, contributing to political instability, civil war and military conflict on the one hand, and a new pattern of mass migration on the other. The expansion of industrial production and the growth in poverty contribute to environmental degradation of our oceans, atmosphere and natural vegetation. If not addressed, these will set in motion processes that will increasingly slip beyond the control of governments, both in developed and developing countries.
38. The means to reverse this gloomy scenario are not yet beyond our reach. Improvements in the living standards of the marginalised offer massive potential for growth in the entire international economy, through the creation of new markets and by harnessing increased economic capacity. This will bring with it greater stability on a global scale, accompanied by a sense of economic and social well-being.
39. The imperative of development, therefore, not only poses a challenge to moral conscience; it is in fact fundamental to the sustainability of the globalisation process. We readily admit that globalisation is a product of scientific and technological advances, many of which have been market-driven. Yet, governments—particularly those in the developed world—have, in partnership with the private sector, played an important role in shaping its form, content and course.
40. The case for the role of national authorities and private institutions in guiding the globalisation agenda along a sustainable path and, therefore, one in which its benefits are more equally spread, remains strong. Experience shows that, despite the unparalleled opportunities that globalisation has offered to some previously poor countries, there is nothing inherent in the process that automatically reduces poverty and inequality.
41. What is needed is a commitment on the part of governments, the private sector and other institutions of civil society, to the genuine integration of all nations into the global economy and body politic. This requires the recognition of global interdependence in respect of production and demand, the environmental base that sustains the planet, cross-border migration, a global financial architecture that rewards good socio-economic management, and global governance that recognises partnership among all peoples. We hold that it is within the capacity of the international community to create fair and just conditions in which Africa can participate effectively in the global economy and body politic.

III. THE NEW POLITICAL WILL OF AFRICAN LEADERS

42. The New Partnership for Africa's Development recognises that there have been attempts in the past to set out continent-wide development programmes. For a variety of reasons, both internal and external, including questionable leadership and

ownership by Africans themselves, these have been less than successful. However, there is today a new set of circumstances, which lend themselves to integrated practical implementation.

43. The new phase of globalisation coincided with the reshaping of international relations in the aftermath of the Cold War. This is associated with the emergence of new concepts of security and self-interest, which encompass the right to development and the eradication of poverty. Democracy and state legitimacy have been redefined to include accountable government, a culture of human rights and popular participation as central elements.
44. Significantly, the numbers of democratically elected leaders are on the increase. Through their actions, they have declared that the hopes of Africa's peoples for a better life can no longer rest on the magnanimity of others.
45. Across the continent, democracy is spreading, backed by the African Union (AU), which has shown a new resolve to deal with conflicts and censure deviation from the norm. These efforts are reinforced by voices in civil society, including associations of women, youth and the independent media. In addition, African governments are much more resolute about regional and continental goals of economic cooperation and integration. This serves both to consolidate the gains of the economic turnaround and to reinforce the advantages of mutual interdependence.
46. The changed conditions in Africa have already been recognised by governments across the world. The United Nations Millennium Declaration, adopted in September 2000, confirms the global community's readiness to support Africa's efforts to address the continent's underdevelopment and marginalisation. The Declaration emphasises support for the prevention of conflict and the establishment of conditions of stability and democracy on the continent, as well as for the key challenges of eradicating poverty and disease. The Declaration further points to the global community's commitment to enhance resource flows to Africa, by improving aid, trade and debt relationships between Africa and the rest of the world, and by increasing private capital flows to the continent. It is now important to translate these commitments into reality.
47. The New Partnership for Africa's Development centres around African ownership and management. Through this programme, African leaders are setting an agenda for the renewal of the continent. The agenda is based on national and regional priorities and development plans that must be prepared through participatory processes involving the people. We believe that while African leaders derive their mandates from their people, it is their role to articulate these plans as well as lead the processes of implementation on behalf of their people.
48. The programme is a new framework of interaction with the rest of the world, including the industrialised countries and multilateral organisations. It is based on the agenda set by African peoples through their own initiatives and of their own volition, to shape their own destiny.
49. To achieve these objectives, African leaders will take joint responsibility for the following:

Strengthening mechanisms for conflict prevention, management and resolution at the regional and continental levels, and to ensure that these mechanisms are used to restore and maintain peace;

Promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels;
Restoring and maintaining macroeconomic stability, especially by developing appropriate standards and targets for fiscal and monetary policies, and introducing appropriate institutional frameworks to achieve these standards;
Instituting transparent legal and regulatory frameworks for financial markets and auditing of private companies and the public sector;
Revitalising and extend the provision of education, technical training and health services, with high priority given to tackling HIV/AIDS, malaria and other communicable diseases;
Promoting the role of women in social and economic development by reinforcing their capacity in the domains of education and training; by the development of revenue-generating activities through facilitating access to credit; and by assuring their participation in the political and economic life of African countries;
Building the capacity of the states in Africa to set and enforce the legal framework, as well as maintaining law and order;
Promoting the development of infrastructure, agriculture and its diversification into agro-industries and manufacturing to serve both domestic and export markets.

IV. APPEAL TO THE PEOPLES OF AFRICA

50. The African Renaissance project, which should allow our continent, plundered for centuries to take its rightful place in the world, depends on the building of a strong and competitive economy as the world moves towards greater liberalisation and competition.
51. The New Partnership for Africa's Development will be successful only if it is owned by the African peoples united in their diversity.
52. Africa, impoverished by slavery, corruption and economic mismanagement is taking off in a difficult situation. However, if her enormous natural and human resources are properly harnessed and utilised, it could lead to equitable and sustainable growth of the continent as well as enhance its rapid integration into the world economy.
53. This is why our peoples, in spite of the present difficulties must regain confidence in their genius and their capacity to face obstacles and be involved in the building of the new Africa. The present initiative is an expression of the commitment of Africa's leaders to translate the deep popular will into action.
54. But the struggle they would be waging will be successful only if our peoples are the masters of their own destiny.
55. This is why the political leaders of the continent appeal to all the peoples of Africa, in all their diversity, to become aware of the seriousness of the situation and the need to mobilise themselves in order to put an end to further marginalisation of the continent and ensure its development by bridging the gap with the developed countries.
56. We are, therefore, asking the African peoples to take up the challenge of mobilising in support of the implementation of this initiative by setting up, at all levels, structures for organisation, mobilisation and action.

57. The leaders of the continent are aware of the fact that the true genius of a people is measured by its capacity for bold and imaginative thinking, and determination in support of their development.
58. We must not relent in implementing this ambitious programme of building sound and resilient economies, and democratic societies. In this respect, the African leaders are convinced that Africa, a continent whose development process has been marked by false starts and failures will succeed with this initiative.

V. PROGRAMME OF ACTION: THE STRATEGY FOR ACHIEVING SUSTAINABLE DEVELOPMENT IN THE 21ST CENTURY

59. The New Partnership for Africa's Development differs in its approach and strategy from all previous plans and initiatives in support of Africa's development, although the problems to be addressed remain largely the same.
60. The New Partnership for Africa's Development is envisaged as a long-term vision of an African-owned and African-led development programme.
61. The Action Programme includes the top priorities structured in the same way as the strategy outlined and these priorities may be revised from time to time by the Heads of State Implementation Committee. The Programme covers what needs to be done in the short term, despite the wide scope of the actions to be taken.
62. Although long-term funding, is envisaged under the initiative, the projects can, however, be expedited to help eradicate poverty in Africa and place African countries, both individually and collectively, on a path of sustainable growth and development and thus halt the marginalisation of Africa in the globalisation process.
63. Although, there are other urgent priorities, those selected here would have a catalytic effect for intervention in other priority areas in the future.
64. While growth rates are important, they are not by themselves sufficient to enable African countries achieve the goal of poverty reduction. The challenge for Africa, therefore, is to develop the capacity to sustain growth at levels required to achieve poverty reduction and sustainable development. This, in turn depends on other factors such as infrastructure, capital accumulation, human capital, institutions, structural diversification, competitiveness, health and good stewardship of the environment.
65. The objective of the New Partnership for Africa's Development is, to provide an impetus to Africa's development by bridging existing gaps in priority sectors to enable the continent catch up with developed parts of the world.
66. The new long-term vision will require massive and heavy investment to bridge existing gaps. The challenge ahead for Africa is to be able to raise the required funding under the best conditions possible. We therefore call on our development partners to assist in this endeavour.
67. Long-Term Objective:
To eradicate poverty in Africa and to place African countries, both individually and collectively, on a path of sustainable growth and development and thus halt the marginalisation of Africa in the globalisation process;
To promote the role of women in all activities.
68. Goals:

To achieve and sustain an average gross domestic product (GDP) growth rate of above 7 per cent per annum for the next 15 years;
To ensure that the continent achieves the agreed International Development Goals (IDGs), which are:
To reduce the proportion of people living in extreme poverty by half between 1990 and 2015;
To enrol all children of school age in primary schools by 2015;
To make progress towards gender equality and empowering women by eliminating gender disparities in the enrolment in primary and secondary education by 2005;
To reduce infant and child mortality ratios by two-thirds between 1990 and 2015;
To reduce maternal mortality ratios by three-quarters between 1990 and 2015;
To provide access for all who need reproductive health services by 2015;
To implement national strategies for sustainable development by 2005, so as to reverse the loss of environmental resources by 2015.

69. The strategy has the following expected outcomes:

Economic growth and development and increased employment;
Reduction in poverty and inequality;
Diversification of productive activities, enhanced international competitiveness and increased exports; Increased African integration.

70. Realising that unless something new and radical is done, Africa will not achieve the IDGs and the 7 per cent annual GDP growth rate, the African Heads of State propose the programme described below. The programme is anchored on key themes and is supported by detailed programmes of action.

A. CONDITIONS FOR SUSTAINABLE DEVELOPMENT

The Peace, Security, Democracy, and Political Governance Initiative

71. African leaders have learnt from their own experiences that peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development. They are making a pledge to work, both individually and collectively, to promote these principles in their countries, sub-regions and the continent.

(i) Peace and Security Initiative

72. The Peace and Security Initiative consists of three elements as follows:

Promoting long-term conditions for development and security;
Building the capacity of African institutions for early warning, as well as enhancing African institutions' capacity to prevent, manage and resolve conflicts;
Institutionalising commitment to the core values of the New Partnership for Africa's Development through the leadership.

73. Long-term conditions for ensuring peace and security in Africa require policy measures to address the political and social vulnerabilities on which conflict is premised. These are dealt with by the Political and Economic Governance Initiatives,

the Capital Flows and Market Access Initiatives and the Human Development Initiative.

74. Efforts to build Africa's capacity to manage all aspects of conflict must focus on the means necessary to strengthen existing regional and sub-regional institutions, especially in four key areas:
 - Prevention, management and resolution of conflict;
 - Peacemaking, peacekeeping and peace enforcement;
 - Post-conflict reconciliation, rehabilitation and reconstruction;
 - Combating the illicit proliferation of small arms, light weapons and landmines.
75. The leadership of the New Partnership for Africa's Development will consider, within six months of its establishment, setting out detailed and costed measures required in each of the four areas above. The exercise will also include actions required of partners, and the nature and sources of financing such activities.
76. The envisaged Heads of State Forum will serve as a platform for the New Partnership for Africa's Development leadership to seek to enhance the capacity of African institutions to promote peace and security on the continent, to share experience and to mobilise collective action. The Forum will ensure that the principles and commitments implicit in the initiative are fulfilled.
77. Aware of that requirement, Africans must make all efforts to find a lasting solution to existing conflicts; strengthen their internal security and promote peace among the countries.
78. At the Lusaka Summit, the African Union decided to take drastic measures in reviving the organs responsible for conflict prevention and resolution.

(ii) Democracy and Political Governance Initiative

79. It is now generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the New Partnership for Africa's Development, Africa undertakes to respect the global standards of democracy, which core components include political pluralism, allowing for the existence of several political parties and workers' unions, fair, open, free and democratic elections periodically organised to enable the populace choose their leaders freely.
80. The purpose of the Democracy and Governance Initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law. It is strengthened by and supports the Economic Governance Initiative, with which it shares key features, and taken together will contribute to harnessing the energies of the continent towards development and poverty eradication.
81. The Initiative consists of the following elements:
 - A series of commitments by participating countries to create or consolidate basic governance processes and practices;
 - An undertaking by participating countries to take the lead in supporting initiatives that foster good governance;

The institutionalisation of commitments through the New Partnership for Africa's Development leadership to ensure that the core values of the initiative are abided by.

82. The New Partnership for Africa's Development states will also undertake a series of commitments towards meeting basic standards of good governance and democratic behaviour while, at the same time, giving support to each other. Participating states will be supported in undertaking such desired institutional reforms where required. Within six months of its institutionalisation, the New Partnership for Africa's Development leadership will identify recommendations on appropriate diagnostic and assessment tools, in support of compliance with the shared goals of good governance, as well as to identify institutional weaknesses and to seek resources and expertise for addressing these weaknesses.
83. In order to strengthen political governance and build capacity to meet these commitments, the New Partnership for Africa's Development leadership will undertake a process of targeted capacity-building initiatives. These institutional reforms will focus on:
- Administrative and civil services;
 - Strengthening parliamentary oversight;
 - Promoting participatory decision-making;
 - Adopting effective measures to combat corruption and embezzlement;
 - Undertaking judicial reforms.
84. Countries participating in the initiative will take the lead in supporting and building institutions and initiatives that protect these commitments. They will dedicate their efforts towards creating and strengthening national, sub-regional and continental structures that support good governance.
85. The Heads of State Forum on the New Partnership for Africa's Development will serve as a mechanism through which the leadership of the New Partnership for Africa's Development will periodically monitor and assess the progress made by African countries in meeting their commitment towards achieving good governance and social reforms. The Forum will also provide a platform for countries to share experiences with a view to fostering good governance and democratic practices.

The Economic and Corporate Governance Initiative

86. State capacity-building is a critical aspect of creating conditions for development. The State has a major role to play in promoting economic growth and development, and in the implementation of poverty reduction programmes. However, the reality is that many governments lack the capacity to fulfil this role. As a consequence, many countries lack the necessary policy and regulatory frameworks for private sector-led growth. They also lack the capacity to implement programmes even when funding is available.
87. It is for this reason that targeted capacity building should be given a high priority. Programmes in every area must be preceded by an assessment of capacity, followed by the provision of appropriate support.

OBJECTIVE

88. To promote throughout the participating countries a set of concrete and time-bound programmes aimed at enhancing the quality of economic and public financial management as well as corporate governance.

ACTIONS

89. A Task Force from Ministries of Finance and Central Banks will be commissioned to review economic and corporate governance practices in the various countries and regions, and make recommendations on appropriate standards and codes of good practice for consideration by the Heads of State Implementation Committee within six months.
90. The Implementation Committee will refer its recommendations to African states for implementation.
91. The Implementation Committee will give high priority to public financial management. Countries will develop a programme for improving public financial management and targets, and assessment mechanisms will also be set.
92. The Heads of State Implementation Committee will mobilise resources for capacity-building to enable all countries to comply with the mutually agreed minimum standards and codes of conduct.

Sub-Regional and Regional Approaches to Development

93. Most African countries are small, both in terms of population and per capita incomes. As a consequence of limited markets, they do not offer attractive returns to potential investors, while progress in diversifying production and exports is retarded. This limits investment in essential infrastructure that depends on economies of scale for viability.
94. These economic conditions point to the need for African countries to pool their resources and enhance regional development and economic integration on the continent, in order to improve international competitiveness. The five sub-regional economic groupings of the continent must, therefore, be strengthened.
95. The New Partnership for Africa's Development focuses on the provision of essential regional public goods (such as transport, energy, water, ICT, disease eradication, environmental preservation, and provision of regional research capacity), as well as the promotion of intra-African trade and investments. The focus will be on rationalising the institutional framework for economic integration, by identifying common projects compatible with integrated country and regional development programmes, and on the harmonisation of economic and investment policies and practices. There needs to be co-ordination of national sector policies and effective monitoring of regional decisions.
96. The New Partnership for Africa's Development will give priority to the capacity building in order to enhance the effectiveness of existing regional structures and the rationalisation of existing regional organisations. The African Development Bank must play a leading role in financing regional studies, programmes and projects.
97. The sectors covered by the current Programme include the following priority areas:

- i. Infrastructure, especially information and communications technology (ICT) and energy
 - ii. Human resources, including education, skills development, and reversing the brain drain
 - iii. Health
 - iv. Agriculture
 - v. Access to the markets of developed countries for African exports
98. For each sector, however, the objective is to bridge existing gaps between Africa and the developed countries so as to improve the continent's international competitiveness and to enable her to participate in the globalisation process. The special circumstances of African island and land-locked states will also be addressed in this context.

B. SECTORAL PRIORITIES

Bridging the Infrastructure Gap

(i) All Infrastructure Sectors

99. The infrastructures considered include roads, highways, airports, seaports, railways, waterways, and telecommunication facilities. However, only sub-regional or continental infrastructures will be the focus of the Plan.
100. Infrastructure is one of the major parameters of economic growth, and solutions should be found to permit Africa to rise to the level of developed countries in terms of the accumulation of material and human capital.
101. If Africa had the same basic infrastructure as developed countries, it would be in a more favourable position to focus on production and improving productivity for international competition. The structural gap in infrastructure constitutes a very serious handicap to economic growth and poverty reduction. Improved infrastructure, including the cost and reliability of services, would benefit both Africa and the international community, which would be able to obtain African goods and services more cheaply.
102. In many African countries, the colonial powers built the infrastructure to foster exportation of African raw materials and importation of industrial goods into Africa.
103. We recognise also that if infrastructure is to improve in Africa, private foreign finance is essential to complement the two major funding methods, namely credit and aid.
104. The Infrastructure Initiative comprises elements that are common to all the infrastructure sectors. It also includes elements that are sector-specific.
105. Objectives:
- To improve access to and affordability and reliability of infrastructure services for both firms and households;
 - To enhance regional co-operation and trade through expanded cross-border development of infrastructure;

To increase financial investments in infrastructure by lowering risks facing private investors, especially in the area of policy and regulatory frameworks;
 To build adequate knowledge and skills in technology and engineering with a view to installing, operating and maintaining “hard” infrastructure networks in Africa.

106. Actions:

With the assistance of sector-specialised agencies, put in place policy and legislative frameworks to encourage competition. At the same time, introduce new regulatory frameworks as well as build capacity for regulators, so as to promote policy and regulatory harmonisation in order to facilitate cross-border interaction and market enlargement;

Increase investment in infrastructure, especially refurbishment, and improve system maintenance practices that will sustain infrastructure;

Initiate the development of training institutions and networks which can develop and produce high-skill technicians and engineers in all infrastructure sectors;

Promote community and user involvement in infrastructure construction, maintenance and management, especially in poor urban and rural areas, in collaboration with the New Partnership for Africa’s Development Governance Initiatives;

Work with the African Development Bank and other development finance institutions on the continent to mobilise sustainable financing especially through multilateral processes, institutions and donor governments, with a view to securing grant and concessional finance to mitigate medium term risks;

Promote PPPs as a promising vehicle for attracting private investors, and focus public funding on the pressing needs of the poor, by building capacity to implement and monitor such agreements;

In addition to these common issues, the following are sector-specific strategies for the different types of infrastructure.

(ii) Bridging the Digital Divide: Investing in Information and Communication Technologies

107. Information and Communication Technologies (ICTs), driven by the convergence of computers, telecommunications and traditional media, are crucial for the knowledge-based economy of the future. Rapid advances in technology and the diminishing cost of acquiring the new ICT tools have opened new windows of opportunity for African countries to accelerate economic growth and development. The goals of achieving a Common Market and an African Union can benefit immensely from the revolution in information technology. In addition to fostering intra-regional trade, the use of ICTs could also accelerate Africa’s integration into the global economy.

108. Intensive use of ICTs can bring, unprecedented comparative advantages to the continent. It can:

Provide an impetus to the democratisation process and good governance;

Facilitate the integration of Africa into the new information society, using its cultural diversity as a leverage;

ICTs can be helpful tools for a wide range of applications, such as remote sensing and environmental, agricultural and infrastructural planning;

The existing complementarities can be better utilised to provide training that would allow for the production of a critical mass of professionals on the use of ICTs;

In the research sector, we can establish African programmes as well as technological exchange programmes capable of meeting the continent's specific needs, with particular regard to the fight against illiteracy;

ICTs can be used to identify and exploit opportunities for trade, investment and finance;

Can be used to establish regional distance learning and health education programmes to improve the situation in the health and education sectors;

In conflict management and control of pandemic diseases, ICTs will help towards the organisation of an efficient early warning mechanism by providing the tools for constant monitoring of tension spots.

109. In Africa, poor ICT infrastructure, combined with weak policy and regulatory frameworks and limited human resources, has resulted in inadequate access to affordable telephones, broadcasting, computers and the Internet. African teledensity remains below one line per 100 people. Service costs are also high: the connection cost in Africa averages 20 per cent of GDP per capita, compared with the world average of 9 per cent, and 1 per cent for high-income countries. Africa has been unable to capitalise on ICT as a tool in enhancing livelihoods and creating new business opportunities, and cross-border linkages within the continent and with global markets have been constrained. Though many countries in Africa have started ICT policy reforms, service penetration, quality or tariffs have not yet improved.

110. Objectives:

To double teledensity to two lines per 100 people by 2005, with an adequate level of access for households;

To lower the cost and improve reliability of service;

To achieve e-readiness for all countries in Africa;

To develop and produce a pool of ICT-proficient youth and students from which Africa can draw trainee ICT engineers, programmers and software developers;

To develop local content software, based especially on Africa's cultural legacy.

111. Actions:

Work with regional agencies such as the African Telecommunications Union and Africa Connection to design model policy and legislation for telecommunications reform, and protocols and templates for e-readiness assessments;

Work with the regional agencies to build regulatory capacity;

Establish a network of training and research institutions to build high-level manpower;

Promote and accelerate existing projects to connect schools and youth centres;
 Work with development finance institutions in Africa, multilateral initiatives (G-8 DotForce, UN Task Force) and bilateral donors to establish financial mechanisms to mitigate and reduce sector risks,

(iii) Energy

112. Objectives:

Energy plays a critical role in the development process, first as a domestic necessity but also as a factor of production whose cost directly affects prices of other goods and services, and the competitiveness of enterprises. Given the uneven distribution of these resources on the continent, it is recommended that the search for abundant and cheap energy to focus on rationalising the territorial distribution of existing but unevenly allocated energy resources. Furthermore, Africa should strive to develop its solar energy resources which is abundantly available.

To increase from 10 per cent to 35 per cent *or more*, access to reliable and affordable commercial energy supply by Africa's population in 20 years;

To improve the reliability as well as lower the cost of energy supply to productive activities in order to enable economic growth of 6 per cent per annum;

To reverse environmental degradation that are associated with the use of traditional fuels in rural areas;

To exploit and develop the hydropower potential of river basins of Africa;

To integrate transmission grids and gas pipelines so as to facilitate cross-border energy flows;

To reform and harmonise petroleum regulations and legislation in the continent.

113. Actions:

Establish an African Forum for Utility Regulation and establish regional regulatory associations;

Establish a task force to recommend priorities and implementation strategies for regional projects, including hydropower generation, transmission grids and gas pipelines;

Establish a task team to accelerate the development of energy supply to low-income housing;

Broaden the scope of the programme for biomass energy conservation from the Southern African Development Community (SADC) to the rest of the continent,

(iv) Transport

114. Objectives:

To reduce delays in cross-border movement of people, goods and services;

To reduce waiting-time in ports;

To promote economic activity and cross-border trade through improved land transport linkages;

To increase air passenger and freight linkages across Africa's sub-regions.

115. Actions:

Establish customs and immigration task teams to harmonise border crossing and visa procedures;

Establish and nurture PPPs as well as grant concessions towards the construction, development and maintenance of ports, roads, railways and maritime transportation;

Promote harmonisation of transport modal standards and regulations, and the increased use of multimodal transport facilities;

Work with the regional organisations to develop transport development corridors;

Promote PPPs in the rationalisation of the airline industry and build capacity for air traffic control,

(v) Water and Sanitation

116. Objectives:

To ensure sustainable access to safe and adequate clean water supply and sanitation, especially for the poor;

To plan and manage water resources to become a basis for national and regional co-operation and development;

To systematically address and sustain ecosystems, biodiversity and wildlife;

To co-operate on shared rivers among member states;

To effectively address the threat of climate change;

To ensure enhanced irrigation and rain-fed agriculture to improve agricultural production and food security.

117. Actions:

Accelerate work on multipurpose water resource projects; for example, the SADC Water Secretariat's investigation of the utilisation of the Congo River, and the Nile Basin Initiative;

Establish a task team to make plans for mitigating the negative impact of climate change in Africa;

Collaborate with the Global Environmental Sanitation Initiative (GESI) in promoting sanitary waste disposal methods and projects;

Support the UN Habitat programme on Water Conservation in African Cities.

Human Resource Development Initiative [including reversing the brain drain]

(i) Poverty Reduction

118. Objectives:

To provide focused leadership by prioritising poverty reduction in all the programmes and priorities of the New Partnership for Africa's Development as well as national macroeconomic and sectoral policies;

To give special attention to the reduction of poverty among women;

To ensure empowerment of the poor in poverty reduction strategies;
 To support existing poverty reduction initiatives at the multilateral level, such as the Comprehensive Development Framework of the World Bank and the Poverty Reduction Strategy approach linked to the HIPC debt relief initiative.

119. Actions:

Require that country plans prepared for initiatives in this programme of action assess their poverty reduction impact, both before and after implementation;
 Work with the World Bank, the International Monetary Fund (IMF), the ADB, and the United Nations (UN) agencies to accelerate implementation and adoption of the Comprehensive Development Framework, the Poverty Reduction Strategy and related approaches;
 Establish a gender task team to ensure that the specific issues faced by poor women are addressed in the poverty reduction strategies, of the New Partnership for Africa's Development;
 Establish a task team to accelerate the adoption of participatory and decentralised processes for the provision of infrastructural and social services.

(ii) Bridging the Education Gap

120. Objectives:

To work with donors and multilateral institutions to ensure that the IDG of achieving universal primary education by 2015 is realised;
 To work for improvements in curriculum development, quality improvements and access to ICT;
 To expand access to secondary education and improve its relevance to Africa's development;
 Promote networks of specialised research and higher education institutions.

121. Actions:

Review current initiatives jointly with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and other major international donors;
 Review levels of expenditure on education by African countries, and lead the process of developing norms and standards for government expenditure on education;
 Set up a task force to accelerate the introduction of ICT in primary schools;
 Set up a task force to review and put forward proposals for the research capacity needed in each region of the continent.

122. The key problems in education in Africa are the poor facilities and inadequate systems under which the vast majority of Africans receive their training. Africans who have had the opportunity of obtaining training elsewhere in the world have demonstrated their ability to compete successfully.

123. The plan supports the immediate strengthening of the university system across Africa, including the creation of specialised universities where needed, building on available African teaching staff. The need to establish and strengthen institutes of technology is especially emphasised.

(iii) Reversing the Brain Drain

124. Objectives:

- To reverse the brain drain and turn it into a "brain gain" for Africa
- To build and retain within the continent critical human capacities for Africa's development
- To develop strategies for utilising the scientific and technological know-how and skills of Africans in the diaspora for the development of Africa

125. Actions:

- Create the necessary political, social and economic conditions in Africa that would serve as incentives to curb the brain drain and attract much-needed investment.
- Establish a reliable data base on the brain drain both to determine the magnitude of the problem, and to promote networking and collaboration between experts in the country of origin and those in the diaspora.
- Develop scientific and technical networks to channel the repatriation of scientific knowledge to the home country, and establish cooperation between those abroad and at home.
- Ensure that the expertise of Africans living in the developed countries is utilised in the execution of some of the projects envisaged under the New Partnership for Africa's Development.

(iv) Health

126. Objectives:

- To strengthen programmes for containing communicable diseases, so that they do not fall short of the scale required in order to reduce the burden of disease;
- To have a secure health system that meets needs and supports disease control effectively;
- To ensure the necessary support capacity for the sustainable development of an effective health care delivery system;
- To empower the people of Africa to act to improve their own health and to achieve health literacy;
- To successfully reduce the burden of disease on the poorest people in Africa;
- To encourage cooperation between medical doctors and traditional practitioners.

127. Actions:

- Strengthen Africa's participation in processes aimed at procuring affordable drugs, including those involving the international pharmaceutical companies and the international civil society, and explore the use of alternative delivery systems for essential drugs and supplies;
- Mobilise the resources required to build effective disease interventions and secure health systems;
- Lead the campaign for increased international financial support for the struggle against HIV/AIDS and other communicable diseases;
- Join forces with other international agencies such as the WHO and donors to ensure support for the continent is increased by at least US \$10 billion per annum;
- Encourage African countries to give higher priority to health in their own budgets and to phase such increases in expenditure to a level to be mutually determined;

Jointly mobilise resources for capacity-building in order to enable all African countries to improve their health infrastructures and management.

128. Africa is home to major endemic diseases. Bacteria and parasites carried by insects, the movement of people and other carriers thrive, favoured as they are by weak environmental policies and poor living conditions. One of the major impediments facing African development efforts is the widespread incidence of communicable diseases, in particular HIV/AIDS, tuberculosis and malaria. Unless these epidemics are brought under control, real gains in human development will remain a pipe dream.
129. In the health sector, Africa compares very poorly with the rest of the world. In 1997, child and juvenile death rates were 105 and 169 per 1000, as against 6 and 7 per 1000 respectively in developed countries. Life expectancy is 48.9 years, as against 77.7 years in developed countries. Only 16 doctors are available per 100 000 inhabitants against 253 in industrialised countries. Poverty, reflected in very low per capita incomes, is one of the major factors limiting the populations' capacity to address their health problems.
130. Nutrition is an important ingredient of good health. The average daily intake of calories varies from 2384 in low-income countries to 2846 in middle-income countries to 3390 in the Organisation for Economic Co-operation and Development (OECD) countries.
131. Health, defined by the World Health Organisation (WHO) as a state of complete physical and mental well-being, contributes to increase in productivity and consequently to economic growth. The most obvious effects of health improvement on the working population are the reduction in lost working days due to sick leave, the increase in productivity, and the chance to get better paid jobs. Eventually, improvement in health and nutrition directly contributes to improved well-being as the spread of diseases is controlled, infant mortality rates are reduced, and life expectancy is higher. The link with poverty reduction is clearly established.

Agriculture

132. The majority of Africa's people live in rural areas. However, the agrarian systems are generally weak and unproductive. Coupled with external setbacks such as climatic uncertainty, biases in economic policy and instability in world commodity prices, these systems have held back agricultural supply and incomes in the rural areas, leading to poverty.
133. The urgent need to achieve food security in African countries requires that the problem of inadequate agricultural systems be addressed, so that food production can be increased and nutritional standards raised.
134. Improvement in agricultural performance is a prerequisite of economic development on the continent. The resulting increase in rural peoples' purchasing power will also lead to higher effective demand for African industrial goods. The induced dynamics would constitute a significant source of economic growth.
135. Productivity improvement in agriculture rests on the removal of a number of structural constraints affecting the sector. A key constraint is climatic uncertainty, which raises the risk factor facing intensive agriculture based on the significant inflow of private investment. Consequently, governments must support the

provision of irrigation equipments and develop arable lands when private agents are unwilling to do so. The improvement of other rural infrastructure (roads, rural electrification, etc.) is also essential.

136. The institutional environment for agriculture also significantly affects the sector's productivity and performance. Institutional support in the form of research centres and institutes, the provision of extension and support services, and agricultural trade fairs will further boost the production of marketable surpluses. The regulatory framework for agriculture must also be taken into account, including the encouragement of local community leadership in rural areas, and the involvement of these communities in policy and the provision of services.
137. Too little attention has been paid by bilateral donors and multilateral institutions to the agriculture sector and rural development, where more than 70 per cent of the poor people in Africa reside. For example, in the World Bank lending portfolio, credits to agriculture amounted to 39 per cent in 1978, but dropped to 12 per cent in 1996 and even further to 7 per cent in 2000. The entire donor community must reverse such negative trends.

The Environment Initiative

138. It has been recognised that a healthy and productive environment is a prerequisite for the New Partnership for Africa's Development. It is further recognised that the range of issues necessary to nurture this environmental base is vast and complex, and that a systematic combination of initiatives is necessary in order to develop a coherent environmental programme. This will necessitate that choices be made, and particular issues be prioritised for initial interventions.
139. It is also recognised that a core objective of the Environment Initiative must be to help in combating poverty and contributing to socio-economic development in Africa. It has been demonstrated in other parts of the world that measures taken to achieve a healthy environmental base can contribute greatly to employment, social and economic empowerment, and reduction of poverty.
140. It should be mentioned, here, that Africa will host the World Summit on Sustainable Development in September 2002, and that environmental management form the basis of the Summit. In this regard, we propose that the event put particular emphasis on the deliberations on this theme in the New Partnership for Africa's Development.
141. The Environment Initiative has targeted eight sub-themes for priority interventions:

COMBATING DESERTIFICATION. Initial interventions are envisaged to rehabilitate degraded land and to address the factors that led to such degradation. Many of these steps will need to be labour intensive, along the lines of "public works programmes", thereby contributing to the social development needs of the continent. The initial interventions will serve as best practices or prototypes for future interventions in this area;

WETLAND CONSERVATION. This involves implementation of African best practices on wetland conservation, where social and ecological benefits are derived from private sector investment in this area;

INVASIVE ALIEN SPECIES. Partnerships are sought to prevent and control invasive alien species. These partnerships are critical for both the preservation of the eco systems and economic well-being. Major labour-intensive initiatives are possible;

COASTAL MANAGEMENT. In protecting and utilising coastal resources to optimal effect, best practices are again suggested from which a broader programme can be drawn up;

GLOBAL WARMING. The initial focus will be on monitoring and regulating the impact of climate change. Labour-intensive work is essential and critical to integrated fire management projects;

CROSS-BORDER CONSERVATION AREAS. This subtheme seeks to build on the emerging initiatives, seeking partnerships across countries to boost conservation and tourism, and, therefore, create jobs;

ENVIRONMENTAL GOVERNANCE. This relates to the securing of institutional, legal, planning, training and capacity-building requirements that underpin all of the above;

FINANCING. A carefully structured and fair system for financing is required.

142. The Environment Initiative has a distinct advantage in that many of the projects can start within relatively short time frames, and they also offer exceptionally good returns on investment in terms of creating the social and ecological base upon which the New Partnership for Africa's Development can thrive.

Culture

143. Culture is an integral part of development efforts on the continent. Consequently, it is essential to protect and effectively utilise indigenous knowledge that represents a major dimension of the continent's culture, and to share this knowledge for the benefit of humankind. The New Partnership for Africa's Development will give special attention to the protection and nurturing of indigenous knowledge, which includes tradition-based literacy, artistic and scientific works, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The term also includes genetic resources and associated knowledge.

144. The New Partnership for Africa's Development leaders will take urgent steps to ensure that indigenous knowledge in Africa is protected through appropriate legislation. They will also promote its protection at the international level, by working closely with the World Intellectual Property Organisation (WIPO).

Science and Technology Platforms

145. Objectives

To promote cross-border co-operation and connectivity by utilising knowledge currently available in existing centres of excellence on the continent;

To develop and adapt information collection and analysis capacity to support productive activities as well as for exports;

To generate a critical mass of technological expertise in targeted areas that offer high growth potential, especially in biotechnology and natural sciences;
To assimilate and adapt existing technologies to diversify manufacturing production.

146. Actions

Establish regional co-operation on product standards development and dissemination, and on geographic information systems (GIS);
Develop networks among existing centres of excellence, especially through the Internet, for cross-border staff exchanges and training programmes, and develop schemes to assist displaced African scientists and researchers;
Work with UNESCO, the Food and Agriculture Organisation (FAO), and other international organisations to harness biotechnology in order to develop Africa's rich biodiversity and indigenous knowledge base by improving agricultural productivity and developing pharmaceutical products;
Expand geo-science research to enhance the exploitation of the mineral wealth of the African continent;
Establish and develop skills-based product engineering and quality control to support diversification in manufacturing.

C. MOBILISING RESOURCES

The Capital Flows Initiative

147. To achieve the estimated 7 per cent annual growth rate needed to meet the IDGs—particularly, the goal of reducing by half the proportion of Africans living in poverty by the year 2015—Africa needs to fill an annual resource gap of 12 per cent of its GDP, or US \$64 billion. This will require increased domestic savings, as well as improvements in the public revenue collection systems. However, the bulk of the needed resources will have to be obtained from outside the continent. The New Partnership for Africa's Development focuses on debt reduction and ODA as complementary external resources required in the short to medium term, and addresses private capital flows as a longer-term concern. A basic principle of the Capital Flows Initiative is that improved governance is a necessary requirement for increased capital flows, so that participation in the Economic and Political Governance Initiatives is a prerequisite for participation in the Capital Flows Initiative.

(i) Increasing domestic resource mobilisation

148. To achieve higher levels of growth and more effective poverty reduction, Africa needs to mobilise additional resources, both domestic and foreign. Domestic resources include national savings by firms and households, which need to be substantially increased. In addition, more effective tax collection is needed to increase public resources, as well as the rationalising of government expenditures. A significant proportion of their domestic savings is lost to African countries as a result of capital flight. This can only be reversed if African economies become

attractive locations for residents to hold their wealth. Therefore, there is also an urgent need to create conditions that promote private sector investments by both domestic and foreign investors. Furthermore, there are other resources which can be mobilised within Africa, while, at the same time, requesting the developed countries to pledge their Treasury Bills to finance the Plan. By so doing they would not directly commit their liquid assets. Finally, we suggest the establishment of Special Drawing Rights for Africa.

(ii) Debt Relief

149. The New Partnership for Africa's Development seeks the extension of debt relief beyond its current levels (based on debt "sustainability"), which still require debt service payments amounting to a significant portion of the resource gap. The long-term objective of the New Partnership for Africa's Development is to link debt relief with costed poverty reduction outcomes. In the interim, debt service ceilings should be fixed as a proportion of fiscal revenue, with different ceilings for IDA and non-IDA countries. To secure the full commitment of concessional resources—debt relief plus ODA—that Africa requires, the leadership of the New Partnership for Africa's Development will negotiate these arrangements with creditor governments. Countries would engage with existing debt relief mechanisms—the HIPC and the Paris Club—before seeking recourse through the New Partnership for Africa's Development. The Debt Initiative will require agreed poverty reduction strategies, debt strategies and participation in the Economic Governance Initiative to ensure that countries are able to absorb the extra resources. In addition to seeking further debt relief through the interim debt strategy set out above, the New Partnership for Africa's Development leadership will establish a forum in which African countries will share experience and mobilise for the improvement of debt relief strategies.

150. Actions:

The New Partnership for Africa's Development heads of state will secure an agreement, negotiated with the international community, to provide further debt relief for countries participating in the New Partnership for Africa's Development, based on the principles outlined above.

The leadership of the New Partnership for Africa's Development will establish a forum in which African countries may share experiences and mobilise for the improvement of debt relief strategies. They will exchange ideas that may end the process of reform and qualification in the HIPC process.

(iii) ODA Reforms

151. The New Partnership for Africa's Development seeks increased ODA flows in the medium term, as well as reform of the ODA delivery system, to ensure that flows are more effectively utilised by recipient African countries. The New Partnership for Africa's Development will establish an ODA forum of African countries so as to develop a common African position on ODA reform, and to engage with the Development Assistance Committee of the OECD (OECD/DAC) and other donors in developing a charter underpinning the development partnership. This charter will identify the Economic Governance Initiative as a pre-

requisite for enhancing African countries' capacity to utilise increased ODA flows, and will propose a complementary, independent assessment mechanism for monitoring donor performance. The New Partnership for Africa's Development will support a Poverty Reduction Strategy Paper (PRSP) Learning Group to engage in the PRSP process together with the IMF and the World Bank.

152. Actions:

- Constitute an ODA forum for developing a common African position on ODA reform, as a counterpart to the OECD/DAC structure;
- Engage, through the ODA forum, with donor agencies to establish a charter for the development partnership, which would embody the principles outlined above;
- Support ECA's efforts to establish a PRSP Learning Group;
- Establish an independent mechanism for assessing donor and recipient country performance.

(iv) The Private Capital Flows

153. The New Partnership for Africa's Development seeks to increase private capital flows to Africa, as an essential component of a sustainable long-term approach to filling the resource gap.

154. The first priority is to address investors' perception of Africa as a "high risk" continent, especially with regard to security of property rights, regulatory framework and markets. Several key elements of the New Partnership for Africa's Development will help to lower these risks gradually, and include initiatives relating to peace and security, political and economic governance, infrastructure and poverty reduction. Interim risk mitigation measures will be put in place, including credit guarantee schemes and the strong regulatory and legislative frameworks. The next priority is the implementation of a Public-Private sector partnership (PPP) capacity-building programme through the African Development Bank and other regional development institutions, to assist national and sub-national governments in structuring and regulating transactions in the provision of infrastructural and social services. The third priority is to promote the deepening of financial markets within countries, as well as cross-border harmonisation and integration, via a Financial Market Integration Task Force. Initially, this will focus on the legislative and regulatory environment for the financial system.

155. Actions:

- Establish a task team to carry out audits of investment-related legislation and regulation, with a view to risk reduction and harmonisation within Africa;
 - Carry out a needs assessment of and feasibility study on financial instruments to mitigate risks associated with doing business in Africa;
 - Establish an initiative to enhance the capacity of countries to implement PPPs;
 - Establish a Financial Market Integration Task Force that will speed up financial market integration through the establishment of an international standard legislative and regulatory framework and the creation of a single African trading platform.
- Equally important, however, especially in the short to medium term, is the need for additional ODA and debt reduction. Additional ODA is required to

enable least developed countries to achieve the international development goals, especially in the areas of primary education, health and poverty eradication. Further debt reduction is also crucial. The enhanced Highly Indebted Poor Countries (HIPC) debt relief initiative still leaves many countries within its scope with very high debt burdens, hence the need to direct more resources towards poverty reduction. In addition, there are countries not included in the HIPC that also require debt relief to release resources for poverty reduction.

The Market Access Initiative

(i) Diversification of Production

156. African economies are vulnerable because of their dependence on primary production and resource-based sectors, and their narrow export bases. There is an urgent need to diversify production and the logical starting point is to harness Africa's natural resource base. Value added in agro-processing and mineral beneficiation must be increased and a broader capital goods sector developed, through a strategy of economic diversification based on inter-sectoral linkages. Private enterprise must be supported, both micro-enterprises in the informal sector and small and medium enterprises in the manufacturing sector, which are principal engines of growth and development. Governments should remove constraints to business activity and encourage the creative talents of African entrepreneurs.

157. Objectives:

- To improve the productivity of agriculture, with particular attention to small-scale and women farmers;
- To ensure food security for all people and increase the access of the poor to adequate food and nutrition;
- To promote measures against natural resource degradation and encourage production methods that are environmentally sustainable;
- To integrate the rural poor into the market economy and provide them with better access to export markets;
- To develop Africa into a net exporter of agricultural products;
- To become a strategic player in agricultural science and technology development.

158. Actions:

AT THE AFRICAN LEVEL:

- Increase the security of water supply for agriculture by establishing small-scale irrigation facilities, improving local water management, and increasing the exchange of information and technical know-how with the international community;
- Improve land tenure security under traditional and modern forms of tenure, and promote necessary land reform;
- Foster regional, sub-regional, national and household food security through the development and management of increased production, transport, storage and marketing of food crops, as well as livestock and fisheries. Particular attention

must also be given to the needs of the poor, as well as the establishment of early warning systems to monitor droughts and crop production;
Enhance agricultural credit and financing schemes, and improve access to credit by small-scale and women farmers;
Reduce the heavy urban bias of public spending in Africa by transferring resources from urban to rural activities.

AT THE INTERNATIONAL LEVEL:

Develop new partnership schemes to address donor fatigue for individual, high-profile agricultural projects;
Developing countries should assist Africa in carrying out and developing its research and development capabilities in agriculture;
Promote access for African food and agricultural products, particularly processed products, to meet international markets by improving quality to meet the standards required by those markets;
Support African networking with external partners in the areas of agricultural technology and know-how, extension services and rural infrastructure;
Support investment in research in the areas of high-yield crops and durable preservation and storage methods;
Provide support for building national and regional capacity for multilateral trade negotiations, including food sanitation and other agricultural trade regulations,

(ii) Mining

159. Objectives:

To improve the quality of mineral resource information;
To create a regulatory framework conducive to the development of the mining sector;
To establish best practices that will ensure efficient extraction of natural resources and minerals of high quality.

160. Actions:

AT THE AFRICAN LEVEL:

Harmonise policies and regulations to ensure compliance with minimum levels of operational practices;
Harmonise commitments to ensure reduction in the perceived investment risk in Africa;
Harmonise information sources on business opportunities for investments;
Enhance collaboration for knowledge-sharing and value addition to natural resources;
Enforce principles of value-addition (beneficiation) for investments in the African mining sector;
Establish an African School of Mining System (for the development and production of education, skills and training at all levels). This could be achieved through collaboration among existing schools,

(iii) Manufacturing

161. Objectives:

- To increase the production, and improve the competitiveness and diversification of the domestic private sector, especially in the agro-industrial, mining and manufacturing sub-sectors, with potential for exports and employment creation;
- To establish organisations on national standards in African countries;
- To harmonise the technical regulatory frameworks of African countries.

162. Actions:

AT THE AFRICAN LEVEL:

- Develop new industries, or upgrade existing ones, where African countries have comparative advantages, including agro-based industries, energy and mineral resource-based industries;
- Acquire membership of the relevant international standards organisations. Active membership would give Africa a stronger voice in these bodies, and would enable African industry to participate meaningfully in the development of international standards. Membership would also result in the transfer of copyright of international standards to the national associations;
- Establish national measurement institutions to ensure harmonisation with the international metrology system. Such activities will always remain the responsibility of government;
- Ensure that testing laboratories and certification organisations are set up to support the relevant national technical regulations. Such organisations should be established, as soon as possible, where they do not exist;
- Establish an accreditation infrastructure, such as the International Standards Organisation (ISO) system, which is acceptable internationally. Such an accreditation infrastructure can be nationally based where the industry is strong enough to maintain it, otherwise regional structures should be contemplated. Appropriate funding to ensure membership of international structures such as the International Accreditation Forum (IAF) and the International Electrotechnical Commission (IEC) should be made available;
- Pursue mutual recognition of test and certification results with Africa's major trading partners. Generally, this will only be possible if the framework for standards, technical regulations, measurement, tractability and accreditation are in place and can be shown to meet international requirements.

AT THE INTERNATIONAL LEVEL:

- Facilitate partnership through the development of mechanisms, such as joint business councils, for information-sharing between non-African and African firms, and for working towards the establishment of joint ventures and subcontracting arrangements;
- Assist in strengthening African training institutions for industrial development, particularly through the promotion of networking with international partners;
- Promote the transfer of new and appropriate technologies to African countries;
- Develop and accept a best-practice framework for technical regulations that meets both the requirements of the World Trade Organisation's Agreement on Technical Barriers to Trade (WTO/TBT) and the needs of Africa. The

technical regulation frameworks of the developed countries may be too complex for many African countries;

Establish Standards Bureaux, which would provide the industry and government with the necessary information on international, regional and national standards, thereby facilitating market access. These centres should be linked to the relevant international, regional and national standards information centres so that the latter can act as the national WTO/TBT Enquiry Points;

Ensure the development of appropriate regional and national standards through the establishment of appropriate technical committee structures representing the stakeholders of the countries, as well as managing such committees in line with ISO/IEC Directives and WTO/ TBT Agreement requirements,

(iv) Tourism

163. Objectives:

To identify key “anchor” projects at the national and sub-regional levels, which will generate significant spin-offs and assist in promoting interregional economic integration;

To develop a regional marketing strategy;

To develop a research capacity in tourism;

To promote partnerships such as those formed via sub-regional bodies.

Examples include the Regional Tourism Organisation of Southern Africa (RETOSA), the Economic Community of West African States (ECOWAS) and the SADC.

164. Actions:

AT THE AFRICAN LEVEL:

Forge co-operative partnerships to capture the benefits of shared knowledge, as well as provide a base for other countries to entering into tourist-related activities;

Provide the African people with the capacity to be actively involved in sustainable tourism projects at the community level;

Prioritise consumer safety and security issues;

Market African tourism products, especially in adventure tourism, eco-tourism and cultural tourism;

Increase regional co-ordination of tourism initiatives in Africa for the expansion and increased diversity of products;

Maximise our benefits from the strong interregional demand for tourism activities, by developing specialised consumer-targeted marketing campaigns.

(v) Services

165. Services can constitute very important activities for African countries in particular those that are well equipped in the field of ICTs (téléservices)

(vi) Promoting the private sector

166. Objectives:

To ensure a sound and conducive environment for private sector activities, with particular emphasis on domestic entrepreneurs;
 To promote foreign direct investment and trade, with particular emphasis on exports;
 To develop micro, small and medium enterprises, including the informal sector.

167. Actions:

AT THE AFRICAN LEVEL:

Undertake measures to enhance the entrepreneurial, managerial and technical capacities of the private sector by supporting technology acquisition, production improvements, and training and skills development;

Strengthen chambers of commerce, trade and professional associations, and their regional networks;

Organise dialogue between the government and the private sector to develop a shared vision of economic development strategy and remove constraints to private sector development;

Strengthen and encourage the growth of micro, small and medium-scale industries through appropriate technical support from service institutions and civil society, and improve access to capital by strengthening micro-financing schemes, with particular attention to women entrepreneurs.

AT THE INTERNATIONAL LEVEL:

Promote entrepreneurial development programmes for training managers of African firms;

Provide technical assistance in relation to the development of an appropriate regulatory environment, promotion of small, medium and micro-enterprises and, establish micro-financing schemes for the African private sector,

(vii) Promoting African Exports

168. Objectives:

To improve procedures for customs and drawback/ rebate schemes;

To tackle trade barriers in international trade through the improvement of standards;

To increase intra-regional trade via promoting cross-border interaction among African firms;

To improve Africa's negative image through conflict resolution and marketing;

To deal with short-term skills shortages through appropriate firm-level incentives and training.

169. Actions:

AT THE AFRICAN LEVEL:

Promote intra-African trade with the aim of sourcing within Africa, imports formerly sourced from other parts of the world;

Create marketing mechanisms and institutions to develop marketing strategies for African products;

Publicise African exporting and importing companies and their products, through trade fairs;
Reduce the cost of transactions and operations;
Promote and improve regional trade agreements, foster interregional trade liberalisation, and harmonise rules of origin, tariffs and product standards;
Reduce export taxes.

AT THE INTERNATIONAL LEVEL:

Negotiate measures and agreements to facilitate market access for African products to the world market;
Encourage foreign direct investment;
Assist in capacity-building in the private sector, as well as strengthening country and sub-regional capacity in trade negotiations, implementing the rules and regulations of the WTO, and identifying and exploiting new trading opportunities that emerge from the evolving multilateral trading system;
The African heads of state must ensure active participation in the world trading system, which has been managed under the auspices of the WTO since 1995. If a new round of multilateral trade negotiations is started, it must recognise and provide for the African continent's special concerns, needs and interests in future WTO rules.

170. Participation in the world trading system must enhance:

Open, predictable and geographically diversified market access for exports from Africa;
The provision of a forum in which developing countries can collectively put up their demand call for structural adjustment by developed countries in those industries in which the natural competitive advantage now lies with the developing world;
Transparency and predictability as preconditions for increased investment in return for boosting supply capacity and enhancing the gains from existing market access;
Technical assistance and support to enhance institutional capacity of African States to use the WTO and to engage in multilateral trade negotiations.

171. In addition to broad-based support for the WTO, African heads of state must identify strategic areas of intervention and, together with the international community, strengthen the contribution of trade to the continent's recovery. The strategic areas include:

The identification of key areas in export production in which supply-side impediments exist;
The diversification of production and exports especially in existing and potential areas of competitive advantage, and bearing in mind the need to move towards higher value-added production;
An assessment of the scope for further liberalisation in manufacturing, given the concentration of access in low value-added sectors, and its restrictiveness in high value-added activities with the greatest economic and growth potential;
Renewed political action by African countries to intensify and deepen the various integration initiatives on the continent. To this end, consideration needs to be given to: (1) a discretionary preferential trade system for intra-

African trade; (2) the alignment of domestic and regional trade and industrial policy objectives, thereby increasing the potential for intra-regional trade critical to the sustainability of regional economic arrangements.

172. Heads of State must act to: (1) secure and stabilise preferential treatment by key developed country partners, e.g. the Generalised System of Preferences (GSP), the Cotonou Agreement, the “Everything But Arms” (EBA) initiative, and the Africa Growth and Opportunity Act (AGOA); (2) ensure that further multilateral liberalisation does not erode the preferential gains of these arrangements; (3) identify and address deficiencies in their design and application.

(viii) Removal of non-tariff barriers

173. African leaders believe that improved access to the markets of industrialised countries for products in which Africa has a comparative advantage is crucial. Although there have been significant improvements in terms of lowered tariffs in recent years, there remain significant exceptions on tariffs while non-tariff barriers also constitute major impediments. Progress on this issue would greatly enhance economic growth and diversification of African production and exports. Dependence on ODA would decline and infrastructure projects would become more viable as a result of increased economic activity.

VI. A NEW GLOBAL PARTNERSHIP

174. Africa recognises the centuries-old historical injustice and the need to correct it. The central injunction of the new partnership is, however, for combined efforts to improve the quality of life of Africa’s people as rapidly as possible. In this, there are shared responsibilities and mutual benefits for Africa and her partners.
175. The global technological revolution needs an expanding base of resources, a widening sphere of markets, new frontiers of scientific endeavour, the collective capacity of human wisdom, and a well-managed ecological system. We are aware that much of Africa’s mineral and other material resources are critical inputs into production processes in developed countries.
176. In addition to its indispensable resource base, Africa offers a vast and growing market for producers across the world. A developing Africa, with increased numbers of employed and skilled workers and a burgeoning middle class, would constitute an expanding market for world manufactured products, intermediate goods and services.
177. At the same time, Africa provides a great opportunity for investment. The New Partnership for Africa’s Development creates opportunities for joint international efforts in the development of infrastructure, especially in ICT and transportation.
178. Africa also provides prospects for creative partnerships between the public and private sectors in beneficiation, agro-industries, tourism, human resource development and in tackling the challenges of urban renewal and rural development.
179. Furthermore, Africa’s biodiversity—including its rich flora and fauna and the rain forests—is an important global resource in combating the environmental

degradation posed by the depletion of the ozone layer and climate change, as well as the pollution of air and water by industrial emissions and toxic effluents.

180. The expansion of educational and other opportunities in Africa would enhance the continent's contribution to world science, technology and culture, to the benefit of all humankind. After all, modern science recognises Africa as the cradle of humanity. Fossils, artefacts, artistic works and the versions of ancient human settlements are to be found throughout Africa, providing material evidence of the emergence of *Homo sapiens* and the progression of humanity.
181. A part of the process of the reconstruction of the identity and self-confidence of the peoples of Africa, it is necessary that this be understood and valued by Africans themselves. In the same vein, Africa's status as the birthplace of humanity should be cherished by the whole world as the origin of all its peoples.
182. Africa's rich cultural legacy is reflected in its artefacts of the past, its literature, philosophies, art and music. These should serve both as a means of consolidating the pride of Africans in their own humanity and of confirming the common humanity of the peoples of the world.
183. The New Partnership for Africa's Development has, as one of its foundations, the expansion of democratic frontiers and the deepening of the culture of human rights. A democratic Africa will become one of the pillars of world democracy, human rights and tolerance. The resources of the world currently dedicated to resolving civil and interstate conflict could therefore be freed for more rewarding endeavours.
184. The converse of such an initiative, that is the collapse of more African states, poses a threat not only to Africans, but also to global peace and security. For industrialised countries, development in Africa will reduce the levels of global social exclusion and mitigate a major potential source of global social instability.
185. Africa is committed to the development and strengthening of South-South partnerships.

Establishing a New Relationship with Industrialised Countries and Multilateral Organisations

186. A critical dimension of Africans taking responsibility for the continent's destiny is the need to negotiate a new relationship with their development partners. The manner in which development assistance is delivered in itself creates serious problems for developing countries. The need to negotiate and account separately to donors supporting the same sector or programme is both cumbersome and inefficient. Also, the tying of development assistance generates further inefficiencies. The appeal is for a new relationship that takes the country programmes as a point of departure. The new relationship should set out mutually agreed performance targets and standards for both donor and recipient. There are many cases that clearly show that the failure of projects is not caused only by the poor performance of recipients, but also by bad advice given by donors.
187. The various partnerships between Africa and the industrialised countries on the one hand, and multilateral institutions on the other, will be maintained. The partnerships in question include, among others: the United Nations New Agenda

for the Development of Africa in the 1990s; the Africa-Europe Summit's Cairo Plan of Action; the World Bank-led Strategic Partnership with Africa; the International Monetary Fund-led Poverty Reduction Strategy Papers; the Japan-led Tokyo Agenda for Action; the Africa Growth and Opportunity Act of the United States; and the Economic Commission on Africa-led Global Compact with Africa. The objective will be to rationalise these partnerships and to ensure that real benefits to Africa flow from them.

188. The African leaders envisage the following responsibilities and obligations of the developed countries and multilateral institutions:

- To support materially mechanisms for and processes of conflict prevention, management and resolution in Africa, as well as peacekeeping initiatives;
- To accelerate debt reduction for heavily indebted African countries, in conjunction with more effective poverty reduction programmes, of which the Strategic Partnership with Africa and the PRSP initiatives are an important starting point;
- To improve debt relief strategies for middle-income countries;
- To reverse the decline in ODA flows to Africa and to meet the target level of ODA flows equivalent to 0.7 per cent of each developed country's gross national product (GNP) within an agreed period. Increased aid flows will be used to complement funds released by debt reduction for accelerating the fight against poverty;
- To translate into concrete commitments the international strategies adopted in the fields of education and health;
- To facilitate the development of a partnership between countries, international pharmaceutical corporations and civil society organisations to urgently secure access to existing drugs for Africans suffering from infectious diseases;
- To admit goods into markets of the developed countries through bilateral initiatives, and to negotiate more equitable terms of trade for African countries within the WTO multilateral framework;
- To work with African leaders to encourage investment in Africa by the private sector in developed countries, including the establishment of insurance schemes and financial instruments that will help lower risk premiums on investments in Africa;
- To raise consumer protection standards for exports from developed countries to developing countries as applicable to the domestic markets in the developed countries;
- To ensure that the World Bank and other multilateral development finance institutions participate as investors in the key economic infrastructure projects, in order to facilitate and the secure private sector participation;
- To provide technical support to accelerate the implementation of the programme of action, including strengthening Africa's capacity in planning and development management, financial and infrastructure regulation, accounting and auditing, and development, construction and management of infrastructure;
- To support governance reforms of multilateral financial institutions to better cater for the needs and concerns of countries in Africa;

To set up co-ordinated mechanisms to combat corruption effectively, as well as commit themselves to the return of monies (proceeds) of such practices to Africa.

VIII. IMPLEMENTATION OF THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT

189. Recognising the need to sequence and prioritise, the initiating Presidents propose that the following programmes be fast-tracked, in collaboration with development partners:

- a. Communicable diseases—HIV/AIDS, malaria and tuberculosis;
- b. Information and Communications Technology;
- c. Debt reduction;
- d. Market access.

190. Work has already been done on all these programmes by a variety of international partnerships and institutions. However, Africa's participation and leadership need to be strengthened for better delivery. We believe that addressing these issues could fast-track the renewal of the continent. (Detailed proposals on each programme are available as annexes.)

Projects

191. Much as the promoters of the New Partnership for Africa's Development appreciate the dangers of a project approach to development, they are proposing a number of projects that are crucial to an integrated regional development, as conceived by the New Partnership for Africa's Development. Not only will these projects strengthen country and regional development programmes, but they will also go a long way in kick-starting the regeneration of the continent.

192. The projects presented below are for illustrative purposes only. A detailed list of projects can be found on the web site of the New Partnership for Africa's Development (<http://www.mapstrategy.com/>).

(i) Agriculture

193. Expand the ambit and operation of the integrated land and water management action plan for Africa. The project addresses the maintenance and upgrading of Africa's fragile agricultural natural resources base. Many African governments are already implementing these initiatives as part of this programme. Partners include the Global Environment Facility (GEF), the World Bank, ADB the FAO and other bilateral donor agencies.

194. Strengthen and refocus the capacity of Africa's agricultural research and extension systems. The project addresses the issue of upgrading of the physical and institutional infrastructure that supports Africa's agriculture. Technological innovation and technology diffusion hold enormous potential for accelerating agricultural output and productivity, but the continent lacks the research capacity

that is necessary for major breakthroughs. Major players include the Forum for Agricultural Research in Africa (FARA), the World Bank, the FAO and the Consultative Group on International Agricultural Research (CGIAR).

(ii) Promotion of the Private Sector

195. International experience suggests that one of the best practices in promoting enterprises in highly innovative areas is through the establishment of business incubators. This project will formulate required guidelines and policies for the establishment of such incubators at the national level, drawing on international experience and established best practice, tailored to African needs and conditions.

(iii) Infrastructure and Regional Integration

196. The New Partnership for Africa's Development process has identified many energy, transport, telecommunications and water projects that are crucial to Africa's integrated development. The projects are at various stages of development and require funding. The next step is to accelerate their continued development in collaboration with the African Development Bank, the World Bank and other multilateral institutions.

197. The view of the initiating Presidents is that, unless the issue of infrastructure development is addressed on a planned basis—that is, linked to regional integrated development—the renewal process of the continent will not take off. Therefore, the international community is urged to support Africa in accelerating the development of infrastructure. Detailed infrastructure projects can be found on the web site of the New Partnership for Africa's Development (<http://www.mapstrategy.com/>).

Needs Assessment

198. As part of assessing the required action in the priority sectors, a needs assessment will be undertaken, progressing from the national level, to the sub-regional and sub-regional levels. The aim is to assess the needs in the five priority sectors in terms of structures and staff.

199. The assessment of sub-regional sectoral needs will start from the national needs assessment. The proposal is that the experts and ministers in each sub-sector meet in one of the sub-regional capitals. For each sector, national data would have been aggregated and used to elaborate a sub-regional sectoral plan. Once sub-regional sectoral needs are assessed in the five sectors, they can be aggregated to formulate over all regional plan.

200. It should be stressed that sub-regional sectoral needs are not to be simply added up—the starting point is a sub-regional perspective leading to at least two new elements: Specific needs of the sub-region perceived as a single space for all states in the sub-region. For instance, roads and railroads will not be conceived from a national perspective but from a sub-regional one;

Needs that should be rationalised on a sub-regional basis. For instance, the universities should be distributed according to a sub-regional territorial rationale; Finally, the continent's needs will be assessed in the five sectors considered as priority sectors in the light of the global sub-regional plans. The details can be

found on the web site of the New Partnership for Africa's Development (<http://www.mapstrategy.com/>).

Management Mechanism of the New Partnership for Africa's Development

THE HEADS OF STATE PROMOTING THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT WILL ADVISE OAU ON AN APPROPRIATE MECHANISM FOR ITS IMPLEMENTATION.

201. There will be a need for core technical support for the implementing mechanism in the areas of research and policy formulation.

HEADS OF STATE IMPLEMENTATION COMMITTEE

202. A Heads of State Implementation Committee composed of the five Heads of State, promoters of the New Partnership for Africa's Development and ten others (2 from each region), will be appointed for the implementation.
203. The functions of the Implementation Committee will consist of: Identifying strategic issues that need to be researched, planned and managed at the continental level;
- Setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and compliance with mutually agreed standards;
 - Reviewing progress in the implementation of past decisions and taking appropriate steps to address problems and delays.

IX. CONCLUSION

204. The objective of the New Partnership for Africa's Development is to consolidate democracy and sound economic management on the continent. Through the programme, African leaders are making a commitment to the African people and the world to work together in rebuilding the continent. It is a pledge to promote peace and stability, democracy, sound economic management and people-centred development and to hold each other accountable in terms of the agreements outlined in the programme.
205. In proposing the partnership, Africa recognises that it holds the key to its own development. We affirm that the New Partnership for Africa's Development offers an historic opportunity for the developed countries of the world to enter into a genuine partnership with Africa, based on mutual interest, shared commitments and binding agreements.
206. The adoption of a development strategy as set out in the broad approach outlined above, together with a detailed programme of action, will mark the beginning of a new phase in the partnership and co-operation between Africa and the developed world.
207. In fulfilling its promise, this agenda must give hope to the emaciated African child that the 21st century is indeed Africa's century.

CHAPTER SEVENTY-SIX

The UN Convention on the Assignment of Receivables in International Trade

New York, NY, 12 December 2001

INTRODUCTION

With the phenomenal growth in international trade and the need for faster international transactions as well as the flow of investments both in production and infrastructure development, the off-loading of receivables or the availability of competitive financing schemes have created a complicated field of transfers of debts and credits. The continued complications of international financial transactions are not conducive for stability, confidence and continued growth of the sector. Worse still, it is conducive to money laundering and other criminal activities. The enactment of an international convention in this area provides, at the least, a basis for achieving uniformity, coherence and simplification of the practice of transferring receivables.

The Convention applies to international receivables and to international assignments of receivables, if, at the time of the contract of assignment, the assignor is based in a state party to the Convention. Once the first contract of assignment is covered by this Convention, all subsequent contracts would be so governed. The Convention could alter the rights and obligations of the debtor only if at the time of the original contract the debtor was based in a state party or that a state party's laws governed the original contract. It is difficult to appreciate an assignment where the debtor may not be consulted regarding the direction of payments and the implications arising. All that is required under article 13 is notification by either the assignor or the assignee or both of them. All the same, article 15 insulates the debtor against changes in his or its rights and obligations, including the currency and country of payments, without prior consent.

The Convention excludes: assignments made to individuals for personal or private purposes; assignments that formed part of the acquisition or change in legal status of a business; foreign exchange transactions; bank deposits; inter-bank payments systems; letters of credit; and transactions regulated by an exchange.

The debtor may raise rights of set-off and all other defences that were available to it in the original contract prior to the assignment in cases where the assignee brings a claim against the debtor. However, the debtor may agree in writing with the assignor, waiving his rights to the defences available to him. More than that, the debtor is barred from claiming breach of the original contract, with the assignor limiting his rights of assignment or raising defences of set-off that lay against the assignor against the assignee.

In complicated cross-border transfer of receivables there is bound to be issues of conflict of laws and priority of creditors. The Convention is cognizant of this and provides that the law of the state in which the assignor is based governs the priority of an assignee in receivables over the right of a competing claimant. An exception is made where the application of a particular law in the assignor's state is clearly incompatible with the public policy of the forum state. The law of the forum state regarding preferential rights may be applied notwithstanding any law of the state in which the assignor is located to the contrary. This does not invalidate an agreement or a decision by an assignee entitled to priority to subordinate his priority in favour of any other assignee. In general and for the purposes of clarity, it can be said that the agreement of the parties regarding the applicable law and within the context of the Convention would be upheld.

At mid-2005 the Convention had not yet come into force.

UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE*

PREAMBLE

THE CONTRACTING STATES,

REAFFIRMING their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

CONSIDERING that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

DESIRING to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

DESIRING ALSO to ensure adequate protection of the interests of debtors in assignments of receivables,

BEING OF THE OPINION that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

HAVE AGREED AS FOLLOWS:

CHAPTER I SCOPE OF APPLICATION

Article 1: Scope of application

1. This Convention applies to:

- (a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

- (b) Subsequent assignments, provided that any prior assignment is governed by this Convention.
- 2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1(a) of this article, even if it did not apply to any prior assignment of the same receivable.
- 3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.
- 4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.
- 5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2: Assignment of receivables

For the purposes of this Convention:

- (a) “Assignment” means the transfer by agreement from one person (“assignor”) to another person (“assignee”) of all or part of or an undivided interest in the assignor’s contractual right to payment of a monetary sum (“receivable”) from a third person (“the debtor”). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;
- (b) In the case of an assignment by the initial or any other assignee (“subsequent assignment”), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3: Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4: Exclusions and other limitations

- 1. This Convention does not apply to assignments made:
 - (a) To an individual for his or her personal, family or household purposes;
 - (b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.
- 2. This Convention does not apply to assignments of receivables arising under or from:
 - (a) Transactions on a regulated exchange;
 - (b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

- (c) Foreign exchange transactions;
 - (d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;
 - (e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;
 - (f) Bank deposits;
 - (g) A letter of credit or independent guarantee.
3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.
4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.
5. Nothing in this Convention:
- (a) Affects the application of the law of a State in which real property is situated to either:
 - i. An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or
 - ii. The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or
 - (b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

CHAPTER II GENERAL PROVISIONS

Article 5: Definitions and rules of interpretation

For the purposes of this Convention:

- (a) “Original contract” means the contract between the assignor and the debtor from which the assigned receivable arises;
- (b) “Existing receivable” means a receivable that arises upon or before conclusion of the contract of assignment and “future receivable” means a receivable that arises after conclusion of the contract of assignment;
- (c) “Writing” means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person’s approval of the information contained in the writing;
- (d) “Notification of the assignment” means a communication in writing that reasonably identifies the assigned receivables and the assignee;

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document

should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

- (e) “Insolvency administrator” means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor’s assets or affairs;
- (f) “Insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;
- (g) “Priority” means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;
- (h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;
- (i) “Law” means the law in force in a State other than its rules of private international law;
- (j) “Proceeds” means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;
- (k) “Financial contract” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;
- (l) “Netting agreement” means an agreement between two or more parties that provides for one or more of the following:
 - i. The net settlement of payments due in the same currency on the same date whether by novation or otherwise;
 - ii. Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or
 - iii. The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;
- (m) “Competing claimant” means:
 - i. Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its

- right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;
- ii. A creditor of the assignor; or
 - iii. The insolvency administrator.

Article 6: Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7: Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

CHAPTER III EFFECTS OF ASSIGNMENT

Article 8: Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:
 - (a) Individually as receivables to which the assignment relates; or
 - (b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.
2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.
3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9: Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.
2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.
3. This article applies only to assignments of receivables:
 - (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;
 - (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;
 - (c) Representing the payment obligation for a credit card transaction; or
 - (d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10: Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.
2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.
3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.
4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:
 - (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;
 - (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;
 - (c) Representing the payment obligation for a credit card transaction; or
 - (d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.
6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

CHAPTER IV RIGHTS, OBLIGATIONS AND DEFENCES

Section I Assignor and Assignee

Article 11: Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.
2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.
3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12: Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:
 - (a) The assignor has the right to assign the receivable;
 - (b) The assignor has not previously assigned the receivable to another assignee; and
 - (c) The debtor does not and will not have any defences or rights of set off.
2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13: Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.
2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not ineffective for the purposes

of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14: Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:
 - (a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;
 - (b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and
 - (c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.
2. The assignee may not retain more than the value of its right in the receivable.

Section II Debtor

Article 15: Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.
2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:
 - (a) The currency of payment specified in the original contract; or
 - (b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16: Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.
2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.
3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17: Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.
2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.
3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.
4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.
5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.
6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.
7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.
8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18: Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.
2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.
3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the assignor for breach of an

agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19: Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.
2. The debtor may not waive defences:
 - (a) Arising from fraudulent acts on the part of the assignee; or
 - (b) Based on the debtor's incapacity.
3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20: Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.
2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:
 - (a) The assignee consents to it; or
 - (b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.
3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21: Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III Third Parties

Article 22: Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23: Public policy and mandatory rules

1. The application of a provision of the law of the State in which the provision is manifestly contrary to the public policy of the forum assignor is located may be refused only if the application of that State.
2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.
3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24: Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.
2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:
 - (a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and
 - (b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.
3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25: Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

CHAPTER V AUTONOMOUS CONFLICT-OF-LAWS RULES

Article 26: Application of chapter V

The provisions of this chapter apply to matters that are:

- (a) Within the scope of this Convention as provided in article 1, paragraph 4; and
- (b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27: Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is concluded.
2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28: Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.
2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29: Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30: Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.
2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.
3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31: Mandatory rules

1. Nothing in articles 27 to 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.
2. Nothing in articles 27 to 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32: Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

CHAPTER VI FINAL PROVISIONS

Article 33: Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34: Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35: Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. Such declarations are to state expressly the territorial units to which this Convention extends.
3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to

which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.
5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36: Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37: Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38: Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.
2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39: Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40: Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41: Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.
2. After a declaration under paragraph 1 of this article takes effect:
 - (a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and
 - (b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.
3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42: Application of the annex

1. A State may at any time declare that it will be bound by:
 - (a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;
 - (b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;
 - (c) The priority rules set forth in section III of the annex;
 - (d) The priority rules set forth in section IV of the annex; or
 - (e) The priority rules set forth in articles 7 and 9 of the annex.
2. For the purposes of article 22:

- (a) The law of a State that has made a declaration pursuant to paragraph 1(a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;
 - (b) The law of a State that has made a declaration pursuant to paragraph 1(c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;
 - (c) The law of a State that has made a declaration pursuant to paragraph 1(d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and
 - (d) The law of a State that has made a declaration pursuant to paragraph 1(e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.
3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which contracts of assignment concluded before the declaration takes effect become subject to those rules within a reasonable time.
 4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.
 5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:
 - (a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assign-ment of certain categories of receivables; or
 - (b) It will apply those priority rules with modifications specified in that declaration.
 6. At the request of Contracting or Signatory States to this Conven-tion comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the reg-ulations referred to in section II of the annex.

Article 43: Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon rati-fication, acceptance or approval.
2. Declarations and confirmations of declarations are to be in writ-ing and to be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. How-ever, a declaration of which the depositary receives formal noti-fication after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.
4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal noti-fication in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the

expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:
 - (a) Except as provided in paragraph 5(b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1(a);
 - (b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.
6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:
 - (a) Except as provided in paragraph 6(b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1(a);
 - (b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.
7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44: Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45: Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.
3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1(a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.
4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1(a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46: Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.
3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1(a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.
4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1(a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47: Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

ANNEX TO THE CONVENTION

Section I Priority Rules Based on Registration

Article 1: Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2: Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II Registration

Article 3: Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4: Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.
3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.
4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.
5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.
6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5: Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.
2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III Priority Rules Based on the Time of the Contract of Assignment

Article 6: Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7: Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8: Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV Priority Rules Based on the Time of Notification of Assignment

Article 9: Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10: Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at New York, this 12th day of December two thousand one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

CHAPTER SEVENTY-SEVEN

Agreement on International Railways in the Arab Mashreq

Beirut, 14 April 2003

INTRODUCTION

There is no denying the fact that transport and communication links are pivotal to the communion of states in any region. The Arab Mashreq states (in what is otherwise called the Near and Middle East—the ‘eastern’ Arab states, rather than the ‘western’ or Maghreb states of north Africa) appreciate this and have signed a framework agreement to govern the construction of and harmonization of their respective railway networks. Railway is prioritized because of its environmental benefits, safety, speed and capacity.

The axes specifications are north-south and east-west. However, there is room for further axes and tracks. Existing railways must be adapted to the technical specifications prescribed in the Agreement as soon as possible. New railways constructed after the coming into force of the Agreement must be designed in accordance with the prescribed technical specifications. The specifications must be in accordance with UIC (International Union of Railways) and trans-European railway network specifications. Many of the existing networks, for example, have UIC/B specifications and would require huge investments to upgrade to the more recent UIC/C1 specifications. The prescription and application of uniform specifications is important in view of the differing systems that individual Arab countries operate, based mainly on the models of their colonial European systems, which will not make for efficient operation of the network.

This Agreement is largely aspirational. The ideal is noble and may portend a shift from security and governance issues to economic matters in the region. The difficulty is that there is very limited distance between the Agreement and the recent history of the region. For example, article 10 provides: ‘Nothing in this Agreement shall be construed as preventing a Party hereto from taking any action that it considers necessary to its external or internal security or its interests’. This may provide room for unilateral actions that could derogate from the ideals and goals of the Agreement, particularly as the Agreement ceases to be in force if the number of parties is fewer than four in any one year.

At mid-2005 this Agreement on International Railways had not yet come into force in the Mashreq, although this was expected during 2005 as, at the end of the previous year, nine had signed it, of which three had ratified it.

AGREEMENT ON INTERNATIONAL RAILWAYS IN THE ARAB MASHREQ*

THE PARTIES TO THE AGREEMENT, conscious of the salient characteristics of railways with respect to construction and running costs, speed, safety, regularity, personal comfort and environmental conservation, and affirming the importance and necessity of providing railway links between the countries of the region in accordance with a well-studied plan for the construction and development of an international railway network in order to meet future transport needs, protect the environment and facilitate the movement of goods and passengers and, as a result, increase the exchange of trade and tourism in the Arab Mashreq, which will greatly promote Arab regional integration, have agreed as follows:

Article 1 Adoption of the international railway network

The Parties hereto adopt the international railway network described in Annex I to this Agreement (the “Arab Mashreq International Railway Network”) in consideration of the fact that railways are of international importance in the Arab Mashreq and should therefore be accorded priority in the formulation of national plans for the construction, maintenance and development of the national railway networks of the Parties hereto, while ensuring that the alignment of routes and lines that do not currently exist are in conformity with feasibility studies to be carried out by the countries concerned.

Article 2 Orientation of the axes of the international railway network

The Arab Mashreq International Railway Network described in Annex I to this Agreement consists of the main axes having a north/ south and east/west orientation and may include other axes and tracks to be added in the future, in conformity with the provisions of this Agreement.

Article 3 Technical specifications

Within a period of time as short as possible, all the railways currently in service described in Annex I shall be brought into conformity with the technical specifications for existing railways set forth in Annex II to this Agreement. New railways built after the entry into force of this Agreement shall be designed in accordance with the technical specifications defined in Annex II.

Article 4 Signature, ratification, acceptance, approval and accession

1. This Agreement shall be open for signature to members of the Economic and Social Commission for Western Asia (ESCWA) at United Nations House in Beirut from 14 to 17 April 2003, and thereafter at United Nations Headquarters in New York until 31 December 2004.
2. The members referred to in paragraph 1 of this article may become Parties to this Agreement by:
 - (a) Signature not subject to ratification, acceptance or approval (definitive signature);
 - (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) Accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of the requisite instrument with the depositary.
4. States other than ESCWA members may accede to the Agreement upon approval by all ESCWA members Parties thereto, by depositing an instrument of accession with the depositary. The Secretariat of the ESCWA Committee on Transport (the "Secretariat") shall distribute the applications for accession of nonESCWA member States to the ESCWA members Parties to the Agreement for their approval. Once notifications approving the said application are received from all ESCWA members Parties to the Agreement, the application for accession shall be deemed approved.

Article 5 Entry into force

1. The Agreement shall enter into force ninety (90) days after the date on which four (4) members of ESCWA have either signed it definitively or deposited an instrument of ratification, acceptance, approval or accession.
2. For each member of ESCWA referred to in article 4, paragraph 1, signing the Agreement definitively or depositing an instrument of ratification, acceptance or approval thereof or accession thereto after the date on which four (4) ESCWA members have either signed it definitively or deposited such an instrument, the Agreement shall enter into force ninety (90) days after the date of that member's definitive signature or deposit of the instrument of ratification, acceptance, approval or accession. For each State other than a member of ESCWA depositing an instrument of accession, the Agreement shall enter into force ninety (90) days after the date of that State's deposit of that instrument.

Article 6 Amendments

1. After the entry into force of the Agreement, any party thereto may propose amendments to the Agreement, including its annexes.
2. Proposed amendments to the Agreement shall be submitted to the ESCWA Committee on Transport.
3. Amendments to the Agreement shall be considered adopted if approved by a two-thirds majority of the Parties thereto, present at a meeting convened for that purpose.

Amendments to Annex I of the Agreement shall be considered adopted if approved by a two-thirds majority of the Parties thereto present at the meeting, including those directly concerned by the proposed amendment.

4. The ESCWA Committee on Transport shall, within a period of forty-five (45) days, inform the depositary of any amendment adopted pursuant to paragraph 3 of this article.
5. The depositary shall notify all Parties hereto of amendments thus adopted, which shall enter into force for all Parties three (3) months after the date of such notification unless objections from more than one third of the Parties are received by the depositary within that period of three (3) months.
6. No amendments may be made to the Agreement during the period specified in Article 7 below if, upon the withdrawal of one Party, the number of Parties to the Agreement becomes less than four (4) at the end of that period.

Article 7 Withdrawal

Any Party may withdraw from this Agreement by written notification addressed to the depositary. Such withdrawal shall take effect twelve (12) months after the date of deposit of the notification unless revoked by the Party prior to the expiration of that period.

Article 8 Termination

This Agreement shall cease to be in force if the number of Parties thereto is less than four (4) during any period of twelve (12) consecutive months.

Article 9 Dispute settlement

1. Any dispute arising between two or more Parties to this Agreement which relates to its interpretation or application and which the

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

Parties to the dispute have not been able to resolve by negotiation or other means of settlement shall be referred to arbitration if any Party so requests. In such a case, the dispute shall be submitted to an arbitral tribunal to which each of the Parties shall appoint one member and the members thus appointed shall agree on the appointment of a president of the arbitral tribunal from outside their number. If no agreement is reached concerning the appointment of the president of the arbitral tribunal within three (3) months from the request for arbitration, any Party may request the Secretary-General of the United Nations, or whomever he delegates, to appoint a president of the tribunal, to which the dispute shall be referred for decision.

2. The Parties to the dispute shall be bound by the decision to form the arbitral tribunal pursuant to paragraph 1 of this article and by any and all awards handed down by the tribunal. The parties further undertake to defray the costs of arbitration.

Article 10 Limits of application of the Agreement

Nothing in this Agreement shall be construed as preventing a Party hereto from taking any action that it considers necessary to its external or internal security or its interests, provided that such action is not contrary to the provisions of the Charter of the United Nations.

Article 11 Depositary

The Secretary-General of the United Nations shall be the depositary of the Agreement.

Article 12 Annexes

The annexes to the Agreement and the list of technical terms used therein are integral parts of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE AT BEIRUT, this fourteenth day of April 2003, in the Arabic, French and English languages, all of which are equally authentic.

[The technical terms, in Arabic, French and English, and two annexes, on The Arab Mashreq International Railway Network and on The Schedule for Technical Specifications of Railway Network, are not reproduced here.]

CHAPTER SEVENTY-EIGHT

EC-Japan Agreement concerning Co-operation on Anti-Competitive Activities

Brussels, 10 July 2003

INTRODUCTION

There is hardly any gainsaying that the world economy has globalized. That globalization transmits some of the economic practices thought to be inimical to confidence and growth in a national economy into the global market. One of the key practices that worry domestic regulators is behaviour thought to be anti-competitive. The USA and the European Union (EU—as represented by its legal entity, the European Community—EC) are known to have stringent regulatory postures on this. In some instances, US regulators would like to extend their remit beyond the domestic market. However, the more rational way of preventing anti-competitive conduct off shore is the bilateral or global regulatory route. This is the route that the EU and Japan took in this Agreement.

The Agreement applies to nationals of the two parties and companies incorporated or organized under the laws and regulations of the territory of either party. Mergers or acquisitions in which one or more of the participants in the transaction, or a controlling company, is registered in the territory of any of the parties to the Agreement. What particular conduct would be anti-competitive or monopolistic is not specified. This is not surprising, given that the potential range of anti-competitive practice is elastic and infinite. At the same time, article 5(2) of the Agreement requires that any allegation of anti-competitive conduct must be ‘as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party’.

The main thrust of the Agreement is co-operation between the competition authorities of the two parties. For the EC, the competent authority is the European Commission—specifically its competition portfolio. For Japan, the appropriate authority is the Fair Trade Commission. These authorities are to inform each other of enforcement processes that affect their respective important interests. The competition authorities of the two are also to assist each other when taking enforcement action (if such actions are consistent with territorial laws). Where the two authorities are taking enforcement action on similar matters, they must consider co-ordinating their efforts and harnessing their respective strengths. This must be done so as to ensure that the goals of the enforcement action are secured. For these co-operative provisions to be effective, the two parties must have

similar laws and policies on competition. This will help to avoid conflicts and an inability to attain the goals of competition policies. This is because the Agreement sets as the threshold for co-operation in enforcement action the ‘important interests’ of either side. Where such interests are adversely affected by an enforcement action by one party, they are to try and accommodate that party by reference to: the relative significance of the anti-competitive activities and their impact in the two territories; the location of the relevant assets and parties to the ‘anti-competitive’ transaction; an intention by those involved to affect the business of interests in the country pursuing the enforcement action; and the degree of inconsistency in the laws and policies of the two sides.

To reduce the possibility and frequency of conflict of policies and enforcement processes, the two parties are to meet at least once per year to exchange information, discuss policy changes and, generally, consult on relevant matters.

The Agreement came into effect later in the year of signature, on 10 August 2003. The expansion of the EU in 2004 encompassed a further 10 countries within this Agreement.

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE GOVERNMENT OF JAPAN CONCERNING CO-OPERATION ON ANTI-COMPETITIVE ACTIVITIES*

THE EUROPEAN COMMUNITY, of the one part, and THE GOVERNMENT OF JAPAN, of the other part (hereinafter referred to as “the Parties”):

RECOGNISING that the world’s economies, including those of the European Community and Japan, are becoming increasingly interrelated;

NOTING that the sound and effective enforcement of competition laws of the European Community and Japan respectively is a matter of importance to the efficient functioning of their respective markets and to trade between them;

NOTING that the sound and effective enforcement of competition laws of the European Community and Japan respectively would be enhanced by cooperation and, where appropriate, coordination between the Parties in the application of those laws;

NOTING that from time to time differences may arise between the Parties concerning the application of the competition laws of the European Community and Japan respectively;

NOTING their commitment to give careful consideration to the important interests of each Party in the application of the competition laws of the European Community and Japan respectively (hereinafter referred to as the “competition laws of each Party”); and

HAVING REGARD to the Recommendation of the Council of the Organisation for Economic Co-operation and Development Concerning Co-operation Between Member Countries on Anti-competitive Practices Affecting International Trade, as revised July 27 and 28, 1995, and to the Recommendation of the Council of the Organisation for Economic Co-operation and Development Concerning Effective Action Against Hard Core Cartels adopted on March 25, 1998;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.
2. For the purposes of this Agreement:
 - (a) the term “anti-competitive activities” means any conduct or transaction that may be subject to sanctions or other relief under the competition laws of the European Community or Japan;
 - (b) the term “competent authority of a Member State” means one authority for each Member State mentioned in Article 299(1) of the Treaty establishing the European Community competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of Japan. The Commission will notify to the Government of Japan an updated list each time this becomes necessary. No information pursuant to paragraph 6 of Article 9 of this Agreement shall be sent to a competent authority of a Member State before this authority is included in the list notified by the Commission to the Government of Japan;
 - (c) the terms “competition authority” and “competition authorities” mean:
 - i. for the European Community, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Community; and
 - ii. for Japan, the Fair Trade Commission;
 - (d) the term “competition laws” means:
 - i. for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto; and
 - ii. for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No 54, 1947) (hereinafter referred to as “the Antimonopoly Law”) and its implementing regulations as well as any amendments thereto;
 - (e) the term “enforcement activities” means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party. However, research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition laws;
 - (f) the term “the territory of a Party”, “the territory of the Party” and “the territory of the other Party” means the territory to which the Treaty establishing the European Community applies or the territory of Japan, as the context requires;

- (g) the term “the laws and regulations of a Party”, “the laws and regulations of the Party” and “the laws and regulations of the other Party” means the laws and regulations of the European Community or the laws and regulations of Japan, as the context requires.

ARTICLE 2

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.
2. Enforcement activities that may affect the important interests of the other Party include those that:
 - (a) are relevant to enforcement activities of the other Party;
 - (b) are against a national or nationals of the other Party (in the case of the European Community a national or nationals of the Member States of the European Community), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;
 - (c) involve anti-competitive activities, other than mergers or acquisitions, carried out in any substantial part within the territory of the other Party;
 - (d) involve a merger or acquisition in which:
 - i. one or more of the parties to the transaction; or
 - ii. a company controlling one or more of the parties to the transaction, is a company incorporated or organised under the applicable laws and regulations within the territory of the other Party;
 - (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
 - (f) involve the imposition of, or application for, sanctions or other relief by a competition authority that would require or prohibit conduct within the territory of the other Party.
3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, such notification shall be given not later than:
 - (a) in the case of the European Community,
 - i. the Decision to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No 4064/89; and
 - ii. the issuance of a Statement of Objections;

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(b) in the case of Japan,

- i. the issuance of request to submit documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
- ii. the issuance of a Recommendation or the Decision to initiate a hearing.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than mergers or acquisitions, notification shall be given as far in advance of the following actions as is practically possible:

(a) in the case of the European Community,

- i. the issuance of a Statement of Objections; and
- ii. the adoption of a Decision or settlement;

(b) in the case of Japan,

- i. the filing of a criminal accusation;
- ii. the filing of a complaint seeking an urgent injunction;
- iii. the issuance of a Recommendation or the Decision to initiate a hearing; and
- iv. the issuance of a surcharge payment order when no been issued. prior recommendation with respect to the payer has

5. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activities on its own important interests.

ARTICLE 3

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:

(a) inform the competition authority of the other Party with respect to its enforcement activities involving anti-competitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the other Party;

(b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anti-competitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and

(c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

ARTICLE 4

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.
2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should take into account the following factors, among others:
 - (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
 - (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
 - (c) the extent to which the competition authority of either Party can secure effective relief against the anti-competitive activities involved;
 - (d) the opportunity to make more efficient use of resources;
 - (e) the possible reduction of cost to the persons subject to the enforcement activities; and
 - (f) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.
3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.
4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.
5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

ARTICLE 5

1. If the competition authority of a Party believes that anti-competitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.
2. The request shall be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party of the requesting

competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.
4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from withdrawing its request.

ARTICLE 6

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.
2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.
3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:
 - (a) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
 - (b) the relative impact of the anti-competitive activities on the important interests of the respective Parties;
 - (c) the presence or absence of evidence of an intention on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors within the territory of the Party conducting the enforcement activities;
 - (d) the extent to which the anti-competitive activities substantially lessen competition in the market of the European Community and Japan respectively;
 - (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the other Party, or the policies or important interests of that other Party;
 - (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
 - (g) the location of relevant assets and parties to the transaction;

- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anti-competitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

ARTICLE 7

1. The Parties may hold, as necessary, consultations through the diplomatic channel on any matter which may arise in connection with this Agreement.
2. A request for consultations under this Article shall be communicated through the diplomatic channel.

ARTICLE 8

1. The competition authorities of the Parties shall consult with each other, upon request of either Party's competition authority, on any matter which may arise in the implementation of this Agreement.
2. The competition authorities of the Parties shall meet at least once a year to:
 - (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each Party;
 - (b) exchange information on economic sectors of common interest;
 - (c) discuss policy changes that they are considering; and
 - (d) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

ARTICLE 9

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or such communication would be incompatible with its important interests.
2.
 - (a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall only be used by the receiving Party for the purpose specified in paragraph 1 of Article 1 of this Agreement.
 - (b) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with the laws and regulations, maintain its confidentiality.
3. A Party may require that information communicated pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.
4. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to

confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.

5. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:

(a) the Party providing the information has given its prior consent to such use or disclosure, or

(b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:

i. shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior consent of the Party providing the information;

ii. shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and

iii. shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.

6. The competition authority of the European Community,

(a) after notice to the Japanese competition authority, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Japanese competition authority;

(b) after consultation with the Japanese competition authority, will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and

(c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to subparagraphs (a) and (b) above shall not be used for any purpose other than the one specified in paragraph 1 of Article 1 of this Agreement, as well as that such information shall not be disclosed.

ARTICLE 10

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in the European Community and Japan respectively and within the available resources of their respective competition authorities.

2. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.

3. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

4. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

5. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under other international agreements or under the laws of the European Community or Japan.

ARTICLE 11

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under paragraph 2(b) of Article 1, Article 2 and requests under paragraph 1 of Article 5 of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

ARTICLE 12

1. This Agreement shall enter into force on the thirtieth day after the date of signature.
2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing through the diplomatic channel that it wishes to terminate the Agreement.
3. The Parties shall review the operation of this Agreement not more than five years from the date of its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement [signatures are omitted].

DONE at Brussels in duplicate, on this 10th day of July 2003, in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Japanese languages. In case of divergence the English and Japanese texts shall prevail over the other language texts.

AGREED MINUTES

The undersigned [signatures are not reproduced] wish to record the following understanding which they have reached during the negotiation of the Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities (hereinafter referred to as the “Agreement”) signed today:

Both Parties confirm their understanding that:

- (1) the Government of Japan is not required to communicate to the European Community under the Agreement “trade secrets of entrepreneurs” covered by the provisions of Article 39 of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No 54, 1947), except for those communicated with the consent of the entrepreneurs concerned and in accordance with the provisions of paragraph 4 of Article 4 of the Agreement; and
- (2) the European Community is not required to communicate to the Government of Japan under the Agreement confidential information covered by Article 20 of Regulation 17/1962, except for the information communicated in accordance with the provisions of paragraph 4 of Article 4 of the Agreement.

CHAPTER SEVENTY-NINE

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

New York, NY, 18 December 1990

INTRODUCTION

This is one more international instrument to banish discrimination and to promote global understanding and movement. Similar instruments include the International Labour Organization's Convention concerning Migration for Employment and its Convention on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, as well as the International Convention on the Elimination of All Forms of Racial Discrimination.

The International Convention reproduced below recognizes the contribution made by migrant workers and provides a framework for their protection and orderly administration. Importantly, it also prescribes minimum standards, which must be applied by all countries in their handling of migrant workers. The Convention applies to all migrant workers and their families, without distinction of race, sex, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, property, birth or other status. It covers the migration process in its entirety—that is, preparation, departure, transit, period of stay and return to the country of origin or the state of habitual residence. The definition of who is a migrant worker is also broad. It includes any 'person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'. The other variations relate to specific migrant workers, such as seasonal workers, seafarers, itinerant workers and project-tied workers. By implication, the Convention covers people who are often described as 'economic migrants', but not necessarily immigrants who enter a country as visitors or asylum seekers and then proceed to work. It clearly does not cover people working for international organizations or those sent or employed by a state outside its own territory and whose admission into the other country and whose status is based on general principles of international law and specific international agreements. This would cover not only diplomats, but also military and foreign service personnel, such as the US forces based in Germany or Korea. The Convention also excludes students and trainees.

The Convention devotes a significant part to the general human rights of migrant workers. This includes non-subjection of a migrant worker or a member of his or her

family to torture, slavery, servitude, forced labour, cruel or degrading treatment, arbitrary or unlawful interference with their family life, privacy, home or correspondence. They are entitled to rights such as freedom of movement—including movement to and from their country of origin or habitual residence—and freedom of thought, of association, of speech, of press and of religion and conscience, and to liberty and security of their persons. It is important to note that cultural identity is recognized by the Convention, and migrant workers and their families must not be treated in ways that are humiliating or inconsistent with their culture.

The standard of treatment is the general international standard, but where national laws have better standards, then the better of the two must be followed. For example, the treatment of migrant workers must not be less than that accorded nationals of the country concerned for similar circumstances. At any rate, where the country is not treating its own people well—for example, arbitrary arrests, detentions without trial, etc.—migrant workers must not be treated that way. In most cases where a migrant worker is accused of being in trouble with the law, he must be given prompt access to his her consular officials and due process of law must be followed. One curious point is that article 15 prohibits arbitrary seizure or deprivation of a migrant of his or her property. If this is done, as with all the exceptions provided in the Convention, it must be in accordance with the law in force in the state of employment. However, unlike provisions in bilateral investment treaties (see below) and other economic instruments, where the assets of a migrant family are expropriated, the migrant ‘shall have the right to fair and adequate compensation’. There is no mention of prompt or market-determined compensation. This is important in view of the many reports concerning the rapid deportation processes of some migrants, including their being deprived of their property and outstanding wages. As it is, there is a need for massive education of government officials, employers and the general population in each country on the provisions and tenets of the Convention (duly urged in the Convention).

To make the Convention efficacious, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families is established under the Convention. It is consists of 14 officials elected by the membership of the Convention. The Committee serves as a co-ordinating agency, as well as a reporting and, in some form, an adjudicating agency for the implementation and enforcement of the terms of the Convention.

The Convention came into force on 1 July 2003 and, a little less than two years later, had 29 parties and a further 25 signatures.

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR
FAMILIES (ANNEX TO RESOLUTION 45/158 OF THE GENERAL
ASSEMBLY OF THE UNITED NATIONS)*

PREAMBLE

The States Parties to the present Convention,

TAKING INTO ACCOUNT the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

TAKING INTO ACCOUNT ALSO the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organization, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

REAFFIRMING the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

RECALLING the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

RECALLING that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

RECOGNIZING the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

RECOGNIZING ALSO the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

REALIZING the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

AWARE of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

CONSIDERING the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

CONVINCED that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

TAKING INTO ACCOUNT the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

BEARING IN MIND that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

CONSIDERING that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

CONSIDERING ALSO that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

CONVINCED, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

PART I: SCOPE AND DEFINITIONS

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

Article 2

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

2.

- (a) The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;
- (b) The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
- (c) The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
- (d) The term “worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
- (e) The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
- (f) The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
- (g) The term “specified-employment worker” refers to a migrant worker:
 - i. Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
 - ii. Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
 - iii. Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or

she no longer undertakes that specific assignment or duty or engages in that work;

- (h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

Article 3

The present Convention shall not apply to:

- (a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
- (c) Persons taking up residence in a State different from their State of origin as investors;
- (d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;
- (e) Students and trainees;
- (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

Article 4

For the purposes of the present Convention the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of the present Convention, migrant workers and members of their families:

- (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

- (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

Article 6

For the purposes of the present Convention:

- (a) The term “State of origin” means the State of which the person concerned is a national;
- (b) The term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- (c) The term “State of transit,” means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

PART II: NON-DISCRIMINATION WITH RESPECT TO RIGHTS

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III: HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term “forced or compulsory labour” shall not include:
 - (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
 - (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputation of others;
 - (b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;
 - (c) For the purpose of preventing any propaganda for war;
 - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
 - (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
 - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
 - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.
8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration

shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
 - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
 - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
 - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

- (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.
 7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

Article 19

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.
2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

Article 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.
2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

Article 23

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
 - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
 - (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.
2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Article 26

1. States Parties recognize the right of migrant workers and members of their families:
 - (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
 - (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
 - (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
 - (a) Their rights arising out of the present Convention;
 - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.
3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

**PART IV: OTHER RIGHTS OF MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED
OR IN A REGULAR SITUATION**

Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of the* families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
 - (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
 - (b) Access to vocational guidance and placement services;
 - (c) Access to vocational training and retraining facilities and institutions;
 - (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
 - (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
 - (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
 - (g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.
3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.
2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.
3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:
 - (a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;
 - (b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;
 - (c) Access to social and health services, provided that requirements for participation in the respective schemes are met;
 - (d) Access to and participation in cultural life.
2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.
3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.
4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

Article 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

- (a) Upon departure from the State of origin or State of habitual residence;
- (b) Upon initial admission to the State of employment;
- (c) Upon final departure from the State of employment;
- (d) Upon final return to the State of origin or State of habitual residence.

Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.
2. States concerned shall take appropriate measures to facilitate such transfers.

Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:
 - (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
 - (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.
2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they

lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

Article 50

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.
2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.
3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

Article 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.
2. For any migrant worker a State of employment may:
 - (a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;
 - (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory.

However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:
 - (a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;
 - (b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.
4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.
2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
 - (a) Protection against dismissal;
 - (b) Unemployment benefits;
 - (c) Access to public work schemes intended to combat unemployment;
 - (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.
2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.
3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

PART V: PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND OF THEIR FAMILIES

Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

Article 58

1. Frontier workers, as defined in article 2, paragraph 2(a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.
2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

1. Seasonal workers, as defined in article 2, paragraph 2(b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.
2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 60

Itinerant workers, as defined in article 2, paragraph 2(a), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

Article 61

1. Project-tied workers, as defined in article 2, paragraph 2(f) of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1(b) and (c), article 43, paragraph 1(d), as it pertains to social housing schemes, article 45, paragraph 1(b), and articles 52 to 55.
2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.
3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.
4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

Article 62

1. Specified-employment workers as defined in article 2, paragraph 2(g), of the present Convention, shall be entitled to the rights provided for in part IV, except the

provisions of article 43, paragraphs 1(b) and (c), article 43, paragraph 1(d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1(d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

Article 63

1. Self-employed workers, as defined in article 2, paragraph 2(h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.
2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

PART VI: PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES

Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.
2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:
 - (a) The formulation and implementation of policies regarding such migration;
 - (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

- (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
 - (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.
2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

Article 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:
- (a) Public services or bodies of the State in which such operations take place;
 - (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
 - (c) A body established by virtue of a bilateral or multilateral agreement.
2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

Article 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers

in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.
2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate~ provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

PART VII: APPLICATION OF THE CONVENTION**Article 72**

1.

- (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Committee”);
- (b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2.

- (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals;
- (b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5.

- (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;
- (b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the

end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.
7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.
8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.
9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:
 - (a) Within one year after the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years and whenever the Committee so requests.
2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.
3. The Committee shall decide any further guidelines applicable to the content of the reports.
4. States Parties shall make their reports widely available to the public in their own countries.

Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.
2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide

regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

Article 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;
- (d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;
- (e) The Committee shall hold closed meetings when examining communications under the present article;
- (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
 - i. If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - ii. If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph I of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States

Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.
2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.
3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.
4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
6. The Committee shall hold closed meetings when examining communications under the present article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is

the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

PART VIII: GENERAL PROVISIONS

Article 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

Article 80

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

Article 81

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:
 - (a) The law or practice of a State Party; or
 - (b) Any bilateral or multilateral treaty in force for the State Party concerned.
2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

Article 82

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

Article 83

Each State Party to the present Convention undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 84

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention. PART IX

FINAL PROVISIONS

Article 85

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 86

- 1. The present Convention shall be open for signature by all States. It is subject to ratification.
- 2. The present Convention shall be open to accession by any State.
- 3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 87

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

Article 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

Article 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary-General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

Article 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.
3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries [signatures are not reproduced here], being duly authorized thereto by their respective Governments, have signed the present Convention.

CHAPTER EIGHTY

UN Convention against Corruption

New York, NY, 31 October 2003

INTRODUCTION

There have been a number of international and national legal instruments on corruption. The US Foreign Corrupt Practices Act 1977, the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the Council of Europe's Criminal Law and Civil Law Conventions on Corruption (both of which were opened for signature during 1999), the Organization of American States Convention against Corruption (1996) and the recent African Union Convention on Preventing and Combating Corruption (2003) are some of the better known initiatives on corruption. The UN Convention seeks to harmonize such initiatives and to provide a global but coherent framework for dealing with the problem. The Convention is also part of the continuing efforts to contain transnational crime.

The Convention against Corruption uses a three-sector paradigm: public sector; private sector; and society at large. The main focus is on the public sector. A public official is defined on the basis of someone working in the public sector, irrespective of remunerative conditions, seniority, location or other terms of engagement. States are to have codes of conduct or similar standards to be followed by public servants. Such codes should require the declaration of assets, outside work and benefits that are given to them in the course of their official work. This is to help avoid or, where necessary, to deal with conflict-of-interest situations. One area that is identified as susceptible to corrupt practices is public procurement and the award of contracts. The Convention urges transparency, due process and alertness to conflict of interest. It also mandates transparency and efficiency in budgeting and related matters. Other areas of public life that are covered by provisions of the Convention are the judicial, prosecution and related law-enforcement services. The trading in influence, or influence peddling, of public officials is also covered.

An interesting feature of this corruption instrument is the attention it pays to the private sector. The Convention states that measures must be taken to curb or prevent corruption in the private sector. This is to be done by clear accounting systems and auditing standards and by codes of conduct for correct, honourable and efficient transactions and performance of work in the private sector and in its dealings with the public sector. The keeping of 'off-the-books' accounts or transactions, the non-recording or inadequate recording of transactions, etc., must be prohibited. There should be no

doubt about the identity of legal and natural persons involved in business. National legislation must also provide a mechanism for preventing conflicts of interest, including restraints on former public officials working for private entities.

The role of civil society in combating corruption is acknowledged by the Convention. The systems and structures of civil society are to be used in educating the public about corruption. The effectiveness of the participation of non-governmental players is to be facilitated by access to information, by transparency in decision-making processes and by basic freedoms, such as those of speech and the press. To help realize these goals of the UN Convention, public administrative systems must be transparent and willing to provide assistance and information on their activities. This is to be done with due regard to privacy, national security and respect for the rights and reputations of others. There are not only procedural safeguards, but also possible waivers of procedures, such as statutes of limitations, jurisdictional privileges, investigations, prosecutions, sentencing, freezing or confiscation of assets, extradition and imprisonment. In all of this, countries are to co-operate and, where necessary, assist each other in realizing the objectives of the Convention. Such co-operation and assistance is not to be frustrated on grounds such as bank secrecy. An interesting aspect of the co-operation feature is the call for help in strengthening the capacity of developing countries to prevent and fight corruption.

At mid-2005 the requisite minimum of 30 ratifications to bring the Convention into force had yet to be achieved. In March, of the 118 signatories, 18 had ratified the Convention.

UNITED NATIONS CONVENTION AGAINST CORRUPTION*

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

CONCERNED about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

CONCERNED ALSO about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

CONCERNED FURTHER about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

CONVINCED that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

CONVINCED ALSO that a comprehensive and multi-disciplinary approach is required to prevent and combat corruption effectively,

CONVINCED FURTHER that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

CONVINCED that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

DETERMINED to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

ACKNOWLEDGING the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

BEARING IN MIND that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

BEARING ALSO IN MIND the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

COMMENDING the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

RECALLING the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

TAKING NOTE WITH APPRECIATION of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

WELCOMING the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,

HAVE AGREED AS FOLLOWS:

CHAPTER I: GENERAL PROVISIONS

Article 1: Statement of purpose

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2: Use of terms

For the purposes of this Convention:

- (a) “Public official” shall mean:
 - i. any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
 - ii. any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;
 - iii. any other person defined as a “public official” in the domestic law of a State Party.

However, for the purpose of some specific measures contained in Chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

- (b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
- (c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;
- (d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;
- (e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

- (g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 23 of this Convention;
- (i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3: Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretary-General of the United Nations or, specifically, via the website of the UN Treaty Collection (untreaty.un.org).

the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

Article 4: Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

CHAPTER II: PREVENTIVE MEASURES

Article 5: Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6: Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
 - (a) Implementing the policies referred to in Article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
 - (b) Increasing and disseminating knowledge about the prevention of corruption.
2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7: Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:
 - (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
 - (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
 - (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
 - (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public

functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.
3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.
4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8: Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.
4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.
6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9: Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:
 - (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
 - (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
 - (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
 - (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
 - (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.
2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:
 - (a) Procedures for the adoption of the national budget;
 - (b) Timely reporting on revenue and expenditure;
 - (c) A system of accounting and auditing standards and related oversight;
 - (d) Effective and efficient systems of risk management and internal control; and
 - (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.
3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10: Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11: Measures relating to the judiciary and prosecution services

- 1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.
- 2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12: Private sector

- 1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.
- 2. Measures to achieve these ends may include, inter alia:
 - (a) Promoting cooperation between law enforcement agencies and relevant private entities;
 - (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
 - (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
 - (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
 - (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.
3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:
- (a) The establishment of off-the-books accounts;
 - (b) The making of off-the-books or inadequately identified transactions;
 - (c) The recording of non-existent expenditure;
 - (d) The entry of liabilities with incorrect identification of their objects;
 - (e) The use of false documents; and
 - (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.
4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with Articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13: Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:
- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
 - (b) Ensuring that the public has effective access to information;

- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
 - (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - i. For respect of the rights or reputations of others;
 - ii. For the protection of national security or ordre public or of public health or morals.
2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14: Measures to prevent money-laundering

1. Each State Party shall:
- (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, recordkeeping and the reporting of suspicious transactions;
 - (b) Without prejudice to Article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.
2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
 - (b) To maintain such information throughout the payment chain; and
 - (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.
4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.
5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

CHAPTER III: CRIMINALIZATION AND LAW ENFORCEMENT

Article 15: Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16: Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17: Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18: Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19: Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20: Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21: Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22: Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23: Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a)
 - i. The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - ii. The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - (b) Subject to the basic concepts of its legal system:
 - i. The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - ii. Participation in, association with or conspiracy to com-mit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
 - (a) Each State Party shall seek to apply paragraph 1 of this arti-cle to the widest range of predicate offences;

- (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;
- (c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
- (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
- (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24: Concealment

Without prejudice to the provisions of Article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25: Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26: Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 27: Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.
2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28: Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29: Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30: Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate

balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Con-vention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
4. In the case of offences established in accordance with this Con-vention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.
6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.
7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:
 - (a) Holding public office; and
 - (b) Holding office in an enterprise owned in whole or in part by the State.
8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.
9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.
10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31: Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

- (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
 3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.
 4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
 5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
 6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
 7. For the purpose of this article and Article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
 8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.
 9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.
 10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32: Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
 - (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33: Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34: Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35: Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36: Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the

State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37: Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
4. Protection of such persons shall be, *mutatis mutandis*, as provided for in Article 32 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38: Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with Articles 15, 21 and 23 of this Convention has been committed; or
- (b) Providing, upon request, to the latter authorities all necessary information.

Article 39: Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and

prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40: Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41: Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42: Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:
 - (a) The offence is committed in the territory of that State Party; or
 - (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to Article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State Party; or
 - (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
 - (c) The offence is one of those established in accordance with Article 23, paragraph 1(b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with Article 23, paragraph 1(a)(i) or (ii) or (b)(i), of this Convention within its territory; or
 - (d) The offence is committed against the State Party.
3. For the purposes of Article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established

in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.
5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

CHAPTER IV: INTERNATIONAL COOPERATION

Article 43: International cooperation

1. States Parties shall cooperate in criminal matters in accordance with Articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44: Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.
5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
6. A State Party that makes extradition conditional on the existence of a treaty shall:
 - (a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings

for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.
14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45: Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46: Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
 - (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of Chapter V of this Convention;
 - (k) The recovery of assets, in accordance with the provisions of Chapter V of this Convention.
4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.
5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.
6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
9.
 - (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in Article 1;
 - (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;
 - (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.
10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
11. For the purposes of paragraph 10 of this article:
 - (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
 - (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
 - (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.
12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that

person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.
14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.
15. A request for mutual legal assistance shall contain:
 - (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
 - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned; and
 - (f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
21. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this article;
 - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
 - (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
23. Reasons shall be given for any refusal of mutual legal assistance.
24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.
28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
29. The requested State Party:
 - (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.
30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47: Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48: Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:
 - (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
 - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
 - i. The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - ii. The movement of proceeds of crime or property derived from the commission of such offences;
 - iii. The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;
 - (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
 - (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49: Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50: Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

CHAPTER V: ASSET RECOVERY

Article 51: General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52: Prevention and detection of transfers of proceeds of crime

1. Without prejudice to Article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.
2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:
 - (a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and
 - (b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.
3. In the context of paragraph 2(a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.
4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.
5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary

to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53: Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
- (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
- (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54: Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to Article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:
 - (a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;
 - (b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and
 - (c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of Article 55 of this Convention, shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1(a) of this article;
- (b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1(a) of this article; and
- (c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55: International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with Articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.
3. The provisions of Article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in Article 46, paragraph 15, requests made pursuant to this article shall contain:
 - (a) In the case of a request pertaining to paragraph 1(a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

- (b) In the case of a request pertaining to paragraph 1(b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;
 - (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.
- 4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.
 - 5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
 - 6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
 - 7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.
 - 8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
 - 9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56: Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57: Return and disposal of assets

- 1. Property confiscated by a State Party pursuant to Article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.
3. In accordance with Articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:
 - (a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in Articles 17 and 23 of this Convention, when confiscation was executed in accordance with Article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
 - (b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with Article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;
 - (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.
4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.
5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58: Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59: Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

CHAPTER VI: TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE

Article 60: Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:
 - (a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;
 - (b) Building capacity in the development and planning of strategic anti-corruption policy;
 - (c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;
 - (d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;
 - (e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;
 - (f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;
 - (g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;
 - (h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;
 - (i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and
 - (j) Training in national and international regulations and in languages.
2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.
3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.
4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.
6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.
7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.
8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61: Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.
2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.
3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62: Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
 - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;
 - (b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

- (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
 - (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
- 3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
 - 4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

CHAPTER VII: MECHANISMS FOR IMPLEMENTATION

Article 63: Conference of the States Parties to the Convention

- 1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.
- 2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.
- 3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.
- 4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:
 - (a) Facilitating activities by States Parties under Articles 60 and 62 and Chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;
 - (b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it

and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

- (c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;
- (d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;
- (e) Reviewing periodically the implementation of this Convention by its States Parties;
- (f) Making recommendations to improve this Convention and its implementation;
- (g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

- 5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.
- 6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.
- 7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64: Secretariat

- 1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.
- 2. The secretariat shall:
 - (a) Assist the Conference of the States Parties in carrying out the activities set forth in Article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;
 - (b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in Article 63, paragraphs 5 and 6, of this Convention; and
 - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

CHAPTER VIII: FINAL PROVISIONS

Article 65: Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66: Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67: Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68: Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69: Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound

by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70: Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71: Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

CHAPTER EIGHTY-ONE

Agreement on South Asian Free Trade Area (SAFTA)

Islamabad, 6 April 2004

INTRODUCTION

This treaty is an effort to revamp the South Asian Association for Regional Co-operation (SAARC) and the accompanying Preferential Trading Arrangements and at encouraging intra-regional trade. The Agreement also seeks to bring these intra-regional economic relations into step with similar arrangements elsewhere around the world. A fairly unique feature of this Agreement is the clear statement regarding national sovereignty, sovereign equality, independence and the territorial integrity of the member states. This is a reflection of the historical configurations of the countries of the region. Bangladesh, India, Pakistan and Sri Lanka, for example, were all part of a larger India until 1947. The emphasis on sovereignty and territorial integrity also suggests that there is no aspiration whatsoever towards economic or political union, which is implicit in the founding documents of the European Community, the African Union and the Southern Common Market (Mercosur/Mercosul—see three separate chapters above). It is also a reflection of the conflicts and political difficulties in the region, notably the Kashmir problem and rebel activity in Sri Lanka and Nepal. Although not stated, if the member countries to the Agreement would effectively realize its economic objectives, it would be an important way to reduce, if not eliminate, much of the conflict in the region.

The Agreement on South Asian Free Trade Area (SAFTA) omits the freedom of movement of peoples, but its objectives include the elimination of tariff and non-tariff barriers to trade, the facilitation of the cross-border movement of goods, the promotion of fair competition and the progressive harmonization of legislation by the contracting states. Relevant areas for the last objective include the simplification of procedures for business visas. The Agreement would, therefore, have powerful pulling and pooling effects on the interests of the respective members, hopefully so as to subsume or minimize the political differences.

Special arrangements and instruments are to be formulated to make this Agreement effective. There are provisions for a programme liberalizing trade, principles for goods' rules of origin, safeguard and countervailing measures, balance-of-payments measures, dispute resolution procedures and general institutional arrangements. In the pursuit of

these measures, as well as the overall goals of the Agreement, the needs of the least developed countries party to the accord are to be given special consideration. For example, in the trade liberalisation programme, least developed contracting states are to reduce tariffs to a maximum of 30% of the existing rates two years from the coming into force of the Agreement in 2006. The other countries are to reduce theirs to a maximum of 20% of the old tariffs.

The institutional arrangements further testify that customs or other higher forms of union are not anticipated. The SAFTA Ministerial Council (SMC), made up of the ministers of trade or commerce of the member states, is the highest decision-making body of SAFTA and is responsible for the general administration and implementation of the Agreement. The SMC is assisted by the Committee of Experts (COE), whose membership is senior economic officials from each member state. The COE is to deal with the day-to-day technical matters and to advise the SMC accordingly. It is also charged with the responsibility for resolving disputes under the Agreement.

Notwithstanding the statement of specific figures regarding tariff reductions in article 7 and the statement of days for dispute resolution procedures in article 20, in comparison to Mercosur, the Caribbean Community and Common Market (CARICOM—see above) and the Economic Community of West African States (ECOWAS—see above), the SAFTA Agreement employs very general and imprecise language in many important parts. This may be due to the political context and the caution of not being too ambitious in integrative aspirations.

The Agreement was due to take effect on 1 January 2006, subject to the appropriate ratifications.

AGREEMENT ON SOUTH ASIAN FREE TRADE AREA*

The governments of the South Asian Association for Regional Cooperation (SAARC) member states comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to as "Contracting States".

MOTIVATED by the commitment to strengthen intra-SAARC economic cooperation to maximize the realization of the region's potential for trade and development for the benefit of their people, in a spirit of mutual accommodation, with full respect for the principles of sovereign equality, independence and territorial integrity of all states;

NOTING that the Agreement on SAARC Preferential Trading Arrangement (SAPTA) signed in Dhaka on the 11th of April, 1993 provides for the adoption of various instruments of trade liberalization on a preferential basis;

CONVINCED that preferential trading arrangements among the SAARC member states will act as a stimulus to the strengthening of national and SAARC economic resilience, and the development of the national economies of the Contracting States by expanding investment and production opportunities, trade, and foreign exchange earnings as well as the development of economic and technological cooperation;

AWARE that a number of regions are entering into such arrangements to enhance trade through the free movement of goods;

RECOGNIZING that Least Developed Countries in the region need to be accorded special and differential treatment commensurate with their development needs; and Recognizing that it is necessary to progress beyond a Preferential Trading Arrangement to move towards higher levels of trade and economic cooperation in the region by removing barriers to cross-border flow of goods;

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purposes of this Agreement:

1. Concessions mean tariff, para-tariff and non-tariff concessions agreed under the Trade Liberalization Programme;
2. Direct Trade Measures mean measures conducive to promoting mutual trade of Contracting States such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement;
3. Least Developed Contracting State refers to a Contracting State which is designated as a "Least Developed Country" by the United Nations;
4. Margin of Preference means percentage of tariff by which tariffs are reduced on products imported from one Contracting State to another as a result of preferential treatment.
5. Non-Tariff Measures include any measure, regulation, or practice, other than "tariffs" and "paratariffs".
6. Para-Tariffs mean border charges and fees, other than "tariffs", on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered as para-tariff measures;
7. Products mean all products including manufactures and commodities in their raw, semi-processed and processed forms;
8. SAPTA means Agreement on SAARC Preferential Trading Arrangement signed in Dhaka on the 11th of April, 1993;
9. Serious injury means a significant impairment of the domestic industry of like or directly competitive products due to a surge in preferential imports causing substantial losses in terms of earnings, production or employment unsustainable in the short term;
10. Tariffs mean customs duties included in the national tariff schedules of the Contracting States;
11. Threat of serious injury means a situation in which a substantial increase of preferential imports is of a nature to cause "serious injury" to domestic producers, and that such injury, although not yet existing, is clearly imminent. A determination of threat of serious injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

Article 2 Establishment

The Contracting States hereby establish the South Asian Free Trade Area (SAFTA) to promote and enhance mutual trade and economic cooperation among the Contracting States, through exchanging concessions in accordance with this Agreement.

Article 3 Objectives and Principles

1. The Objectives of this Agreement are to promote and enhance mutual trade and economic cooperation among Contracting States by, inter-alia:
 - (a) Eliminating barriers to trade in, and facilitating the cross-border movement of goods between the territories of the Contracting States;
 - (b) promoting conditions of fair competition in the free trade area, and ensuring equitable benefits to all Contracting States, taking into account their respective levels and pattern of economic development;
 - (c) creating effective mechanism for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
 - (d) establishing a framework for further regional cooperation to expand and enhance the mutual benefits of this Agreement.
2. SAFTA shall be governed in accordance with the following principles:
 - (a) SAFTA will be governed by the provisions of this Agreement and also by the rules, regulations, decisions, understandings and protocols to be agreed upon within its framework by the Contracting States;
 - (b) The Contracting States affirm their existing rights and obligations with respect to each other under Marrakesh Agreement Establishing the World Trade Organization and other Treaties/ Agreements to which such Contracting States are signatories;
 - (c) SAFTA shall be based and applied on the principles of overall reciprocity and mutuality of advantages in such a way as to benefit equitably all Contracting States, taking into account their respective levels of economic and industrial development, the pattern of their external trade and tariff policies and systems;
 - (d) SAFTA shall involve the free movement of goods, between countries through, inter-alia, the elimination of tariffs, para-tariffs and non-tariff restrictions on the movement of goods, and any other equivalent measures;
 - (e) SAFTA shall entail adoption of trade facilitation and other measures, and the progressive harmonization of legislations by the Contracting States in the relevant areas; and
 - (f) The special needs of the Least Developed Contracting States shall be clearly recognized by adopting concrete preferential measures in their favour on a non-reciprocal basis.

Article 4 Instruments

The SAFTA Agreement will be implemented through the following instruments:

1. Trade Liberalisation Programme

2. Rules of Origin
3. Institutional Arrangements
4. Consultations and Dispute Settlement Procedures
5. Safeguard Measures
6. Any other instrument that may be agreed upon.

* We have endeavoured to reproduce a complete and correct text of the above, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the Secretariat of the South Asian Association for Regional Co-operation (<http://www.saarc-sec.org/>).

Article 5 National Treatment

Each Contracting State shall accord national treatment to the products of other Contracting States in accordance with the provisions of Article III of GATT, 1994.

Article 6 Components

SAFTA may, inter-alia, consist of arrangements relating to:

- (a) tariffs;
- (b) para-tariffs;
- (c) non-tariff measures;
- (d) direct trade measures.

Article 7 Trade Liberalisation Programme

1. Contracting States agree to the following schedule of tariff reductions:

- (a) The tariff reduction by the Non-Least Developed Contracting States from existing tariff rates to 20% shall be done within a time frame of 2 years, from the date of coming into force of the Agreement. Contracting States are encouraged to adopt reductions in equal annual instalments. If actual tariff rates after the coming into force of the Agreement are below 20 per cent, there shall be an annual reduction on a Margin of Preference basis of 10 per cent on actual tariff rates for each of the two years.
- (b) The tariff reduction by the Least Developed Contracting States from existing tariff rates will be to 30 per cent within the time frame of 2 years from the date of coming into force of the Agreement. If actual tariff rates on the date of coming into force of the Agreement are below 30 per cent, there will be an annual reduction on a Margin of Preference basis of 5 per cent on actual tariff rates for each of the two years.
- (c) The subsequent tariff reduction by Non-Least Developed Contracting States from 20 per cent or below to 0–5 per cent shall be done within a second time frame of 5 years, beginning from the third year from the date of coming into force of the Agreement. However, the period of subsequent tariff reduction by Sri Lanka shall

be six years. Contracting States are encouraged to adopt reductions in equal annual instalments, but not less than 15 per cent annually.

- (d) The subsequent tariff reduction by the Least Developed Contracting States from 30 per cent or below to 0–5 per cent shall be done within a second time frame of 8 years beginning from the third year from the date of coming into force of the Agreement. The Least Developed Contracting States are encouraged to adopt reductions in equal annual instalments, not less than 10 per cent annually.

2. The above schedules of tariff reductions will not prevent Contracting States from immediately reducing their tariffs to 0–5 per cent or from following an accelerated schedule of tariff reduction.

3.

- (a) Contracting States may not apply the Trade Liberalization Programme as in paragraph I above, to the tariff lines included in the Sensitive Lists which shall be negotiated by the Contracting States (for LDCs and Non-LDCs) and incorporated in this Agreement as an integral part. The number of products in the Sensitive Lists shall be subject to maximum ceiling to be mutually agreed among the Contracting States with flexibility to Least Developed Contracting States to seek derogation in respect of the products of their export interest; and

- (b) The Sensitive List shall be reviewed after every four years or earlier as may be decided by SAFTA Ministerial Council (SMC), established under Article 10, with a view to reducing the number of items in the Sensitive List.

4. The Contracting States shall notify the SAARC secretariat all nontariff and para-tariff measures to their trade on an annual basis. The notified measures shall be reviewed by the committee of experts, established under Article 10, in its regular meetings to examine their compatibility with relevant WTO provisions. The committee of experts shall recommend the elimination or implementation of the measure in the least trade restrictive manner in order to facilitate intra-SAARC trade.

5. Contracting Parties shall eliminate all quantitative restrictions, except otherwise permitted under GATT, 1994, in respect of products included in the Trade Liberalization Programme.

6. Notwithstanding the provisions contained in paragraph 1 of this Article, the Non-Least Developed Contracting States shall reduce their tariff to 0–5 per cent for the products of Least Developed Contracting States within a timeframe of three years beginning from the date of coming into force of the Agreement.

Article 8 Additional Measures

Contracting States agree to consider, in addition to the measures set out in Article 7, the adoption of trade facilitation and other measures to support and complement SAFTA for mutual benefit. These may include, among others:

- (a) harmonization of standards, reciprocal recognition of tests and certification of products; accreditation of testing laboratories of Contracting States and
- (b) simplification and harmonization of customs clearance procedure;
- (c) harmonization of national customs classification based on HS coding system;

- (d) Customs cooperation to resolve dispute at customs entry points;
- (e) simplification and harmonization of import licensing and registration procedures;
- (f) simplification of banking procedures for import financing;
- (g) transit facilities for efficient intra-SAARC trade, especially for the land-locked Contracting States;
- (h) removal of barriers to intra-SAARC investments;
- (i) macroeconomic consultations;
- (j) rules for fair competition and the promotion of venture capital;
- (k) development of communication systems and transport infrastructure;
- (l) making exceptions to their foreign exchange restrictions, if any, relating to payments for products under the SAFTA scheme, as well as repatriation of such payments without prejudice to their rights under Article XVIII of the General Agreement on Tariffs and Trade (GATT) and the relevant provisions of Articles of Treaty of the International Monetary Fund (IMF); and
- (m) simplification of procedures for business visas.

Article 9 Extension of Negotiated Concessions

Concessions agreed to, other than those made exclusively to the Least Developed Contracting States, shall be extended unconditionally to all Contracting States.

The initial notification shall be made within three months from the date of coming into force of the Agreement and the COE shall review the notification in its first meeting and take appropriate decisions.

Article 10 Institutional Arrangements

1. The Contracting States hereby establish the SAFTA Ministerial Council (hereinafter referred to as SMC).
2. The SMC shall be the highest decision-making body of SAFTA and shall be responsible for the administration and implementation of this Agreement and all decisions and arrangements made within its legal framework.
3. The SMC shall consist of the ministers of commerce and trade of the Contracting States.
4. The SMC shall meet at least once every year or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the SMC for a period of one year on rotational basis in alphabetical order.
5. The SMC shall be supported by a committee of experts (hereinafter referred to as COE), with one nominee from each Contracting State at the level of a senior economic official, with expertise in trade matters.
6. The COE shall monitor, review and facilitate implementation of the provisions of this Agreement and undertake any task assigned to it by the SMC. The COE shall submit its report to SMC every six months.
7. The COE will also act as Dispute Settlement Body under this Agreement.
8. The COE shall meet at least once every six months or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the COE for a period of one year on rotational basis in alphabetical order.

9. The SAARC secretariat shall provide secretarial support to the SMC and COE in the discharge of their functions.
10. The SMC and COE will adopt their own rules of procedure.

Article 11 Special and Differential Treatment for the Least Developed Contracting States

In addition to other provisions of this Agreement, all Contracting States shall provide special and more favourable treatment exclusively to the Least Developed Contracting States as set out in the following sub-paragraphs:

- (a) The Contracting States shall give special regard to the situation of the Least Developed Contracting States when considering the application of anti-dumping and/or countervailing measures. In this regard, the Contracting States shall provide an opportunity to Least Developed Contracting States for consultations. The Contracting States shall, to the extent practical, favourably consider accepting price undertakings offered by exporters from Least Developed Contracting States. These constructive remedies shall be available until the trade liberalization programme has been completed by all Contracting States.
- (b) Greater flexibility in continuation of quantitative or other restrictions provisionally and without discrimination in critical circumstances by the Least Developed Contracting States on imports from other Contracting States.
- (c) Contracting States shall also consider, where practical, taking direct trade measures with a view to enhancing sustainable exports from the Least Developed Contracting States, such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement.
- (d) Special consideration shall be given by Contracting States to requests from Least Developed Contracting States for technical assistance and cooperation arrangements designed to assist them in expanding their trade with other Contracting States and in taking advantage of the potential benefits of SAFTA. A list of possible areas for such technical assistance shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.
- (e) The Contracting States recognize that the Least Developed Contracting States may face loss of customs revenue due to the implementation of the Trade Liberalization Programme under this Agreement. Until alternative domestic arrangements are formulated to address this situation, the Contracting States agree to establish an appropriate mechanism to compensate the Least Developed Contracting States for their loss of customs revenue. This mechanism and its rules and regulations shall be established prior to the commencement of the Trade Liberalization Programme (TLP).

Article 12 Special Provision for Maldives

Notwithstanding the potential or actual graduation of Maldives from the status of a Least Developed Country, it shall be accorded in this Agreement and in any subsequent

contractual undertakings thereof treatment no less favourable than that provided for the Least Developed Contracting States.

Article 13 Non-application

Notwithstanding the measures as set out in this Agreement its provisions shall not apply in relation to preferences already granted or to be granted by any Contracting State to other Contracting States outside the framework of this Agreement, and to third countries through bilateral, plurilateral and multilateral trade agreements and similar arrangements.

Article 14 General Exceptions

- (a) Nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of its national security.
- (b) 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 the similar conditions prevail, or a disguised restriction on intra-regional trade, nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of:
 - i. public morals;
 - ii. human, animal or plant life and health; and
 - iii. articles of artistic, historic and archaeological value.

Article 15 Balance of Payments Measures

- 1. Notwithstanding the provisions of this Agreement, any Contracting State facing serious balance of payments difficulties may suspend provisionally the concessions extended under this Agreement.
- 2. Any such measure taken pursuant to paragraph 1 of this Article shall be immediately notified to the committee of experts.
- 3. The committee of experts shall periodically review the measures taken pursuant to paragraph 1 of this Article.
- 4. Any Contracting State which takes action pursuant to paragraph 1 of this Article shall afford, upon request from any other Contracting State, adequate opportunities for consultations with a view to preserving the stability of concessions under SAFTA.
- 5. If no satisfactory adjustment is effected between the Contracting States concerned within 30 days of the beginning of such consultations, to be extended by another 30 days through mutual consent, the matter may be referred to the committee of experts.
- 6. Any such measures taken pursuant to paragraph 1 of this Article shall be phased out soon after the committee of experts comes to the conclusion that the balance of payments situation of the Contracting State concerned has improved.

Article 16 Safeguard Measures

1. If any product, which is the subject of a concession under this Agreement, is imported into the territory of a Contracting State in such a manner or in such quantities as to cause, or threaten to cause, serious injury to producers of like or directly competitive products in the importing Contracting State, the importing Contracting State may, pursuant to an investigation by the competent authorities of that Contracting State conducted in accordance with the provisions set out in this Article, suspend temporarily the concessions granted under the provisions of this Agreement. The examination of the impact on the domestic industry concerned shall include an evaluation of all other relevant economic factors and indices having a bearing on the state of the domestic industry of the product and a causal relationship must be clearly established between "serious injury" and imports from within the SAARC region, to the exclusion of all such other factors.
2. Such suspension shall only be for such time and to the extent as may be necessary to prevent or remedy such injury and in no case, will such suspension be for duration of more than 3 years.
3. No safeguard measure shall be applied again by a Contracting State to the import of a product which has been subject to such a measure during the period of implementation of Trade Liberalization Programme by the Contracting States, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.
4. All investigation procedures for resorting to safeguard measures under this Article shall be consistent with Article XIX of GAIT, 1994, and WTO Agreement on Safeguards.
5. Safeguard action under this Article shall be non-discriminatory and applicable to the product imported from all other Contracting States subject to the provisions of paragraph 8 of this Article.
6. When safeguard provisions are used in accordance with this Article, the Contracting State invoking such measures shall immediately notify the exporting Contracting State(s) and the committee of experts.
7. In critical circumstances where delay would cause damage which it would be difficult to repair, a Contracting State may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during this period the pertinent requirements of this Article shall be met.
8. Notwithstanding any of the provisions of this Article, safeguard measures under this article shall not be applied against a product originating in a Least Developed Contracting State as long as its share of imports of the product concerned in the importing Contracting State does not exceed 5 per cent, provided Least Developed Contracting States with less than 5 per cent import share collectively account for not more than 15 per cent of total imports of the product concerned.

Article 17 Maintenance of the Value of Concessions

Any of the concessions agreed upon under this Agreement shall not be diminished or nullified, by the application of any measures restricting trade by the Contracting States, except under the provisions of other articles of this Agreement.

Article 18 Rules of Origin

Rules of Origin shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.

Article 19 Consultations

1. Each Contracting State shall accord sympathetic consideration to and will afford adequate opportunity for consultations regarding representations made by another Contracting State with respect to any matter affecting the operation of this Agreement.
2. The committee of experts may, at the request of a Contracting State, consult with any Contracting State in respect of any matter for which it has not been possible to find a satisfactory solution through consultations under paragraph 1.

Article 20 Dispute Settlement Mechanism

1. Any dispute that may arise among the Contracting States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework concerning the rights and obligations of the Contracting States will be amicably settled among the parties concerned through a process initiated by a request for bilateral consultations.
2. Any Contracting State may request consultations in accordance with paragraph 1 of this Article with other Contracting State in writing stating the reasons for the request including identification of the measures at issue. All such requests should be notified to the committee of experts, through the SAARC secretariat with an indication of the legal basis for the complaint.
3. If a request for consultations is made pursuant to this Article, the Contracting State to which the request is made shall, unless otherwise mutually agreed, reply to the request within 15 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. If the Contracting State does not respond within 15 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Contracting State that requested the holding of consultations may proceed to request the committee of experts to settle the dispute in accordance with working procedures to be drawn up by the committee.
5. Consultations shall be confidential, and without prejudice to the rights of any Contracting State in any further proceedings.

6. If the consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations, to be extended by a further period of 30 days through mutual consent, the complaining Contracting State may request the committee of experts to settle the dispute. The complaining Contracting State may request the committee of experts to settle the dispute during the 60-day period if the consulting Contracting States jointly consider that consultations have failed to settle the dispute.
7. The committee of experts shall promptly investigate the matter referred to it and make recommendations on the matter within a period of 60 days from the date of referral.
8. The committee of experts may request a specialist from a Contracting State not party to the dispute selected from a panel of specialists to be established by the committee within one year from the date of entry into force of the Agreement for peer review of the matter referred to it. Such review shall be submitted to the committee within a period of 30 days from the date of referral of the matter to the specialist.
9. Any Contracting State, which is a party to the dispute, may appeal the recommendations of the committee of experts to the SMC. The SMC shall review the matter within the period of 60 days from date of submission of request for appeal. The SMC may uphold, modify or reverse the recommendations of the committee of experts.
10. Where the committee of experts or SMC concludes that the measure subject to dispute is inconsistent with any of the provisions of this Agreement, it shall recommend that the Contracting State concerned bring the measure into conformity with this Agreement. In addition to its recommendations, the Committee of experts or the SMC may suggest ways in which the Contracting State concerned could implement the recommendations.
11. The Contracting State to which committee's or SMC's recommendations are addressed shall within 30 days from the date of adoption of the recommendations by the committee or the SMC, inform the committee of experts of its intentions regarding implementation of the recommendations. Should the said Contracting State fail to implement the recommendations within 90 days from the date of adoption of the recommendations by the committee, the committee of experts may authorize other interested Contracting States to withdraw concessions having trade effects equivalent to those of the measure in dispute.

Article 21 Withdrawal

1. Any Contracting State may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective on expiry of six months from the date on which a written notice thereof is received by the secretary-general of the SAARC, the depositary of this Agreement. That Contracting State shall simultaneously inform the committee of experts of the action it has taken.
2. The rights and obligations of a Contracting State which has withdrawn from this Agreement shall cease to apply as of that effective date.
3. Following the withdrawal by any Contracting State, the committee shall meet within 30 days to consider action subsequent to withdrawal.

Article 22 Entry into Force

1. This Agreement shall enter into force on 1st January 2006 upon completion of formalities, including ratification by all Contracting States and issuance of a notification thereof by the SAARC secretariat. This Agreement shall supersede the Agreement on SAARC Preferential Trading Arrangement (SAPTA).
2. Notwithstanding the supercession of SAPTA by this Agreement, the concessions granted under the SAPTA Framework shall remain available to the Contracting States until the completion of the Trade Liberalization Programme.

Article 23 Reservations

This Agreement shall not be signed with reservations, nor will reservations be admitted at the time of notification to the SAARC secretariat of the completion of formalities.

Article 24 Amendments

This Agreement may be amended by consensus in the SAFTA Ministerial Council. Any such amendment will become effective upon the deposit of instruments of acceptance with the Secretary General of SAARC by all Contracting States.

Article 25 Depository

This Agreement will be deposited with the secretary-general of the SAARC, who will promptly furnish a certified copy thereof to each Contracting State.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective governments have signed this Agreement [signatures are not reproduced].

DONE in Islamabad, Pakistan, on this the sixth day of the year two thousand four, in nine originals in the English language all texts being equally authentic.

CHAPTER EIGHTY-TWO

Bilateral Investment Treaties

INTRODUCTION

Here we have a general introduction for bilateral investment treaties (BITs), with nine selected for inclusion in this text, as examples. The first treaty is that between the USA and Japan, from early in the post-Second World War period, and is selected to give insight into the economic dynamics of the two most powerful economies. Treaties involving South Korea, Japan and the People's Republic of China are selected to give insight into the dynamics of economic relations of countries in the same region and are or may be perceived as competitors. Examples of 'South-South' co-operation have not been included in this edition.

All of these treaties have a number of commonalities. They are to serve as a framework for the orderly interchange of investments between the countries concerned. This framework, as in the case of the USA-with Bulgaria, may be a primary or foundational agreement. In the case of other countries, such as for the USA with Japan or Australia with Papua New Guinea, it may be part of the whole legal and politico-economic infrastructure that houses the relations between them. Other important instruments of this infrastructure are the World Trade Organization (WTO) agreements, Asia-Pacific Economic Co-operation (APEC), the Commonwealth, IMF membership and general international law on investment. The USA-Argentina BIT, for example, provides in Article X(b) that: 'This Treaty shall not derogate from... international legal obligations'.

Almost all the BITs begin with a preamble that gives the impression of equality and mutual or reciprocal flow and protection of investment. The USA-Argentina treaty also states, *inter alia*, that it recognizes that 'agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties' and agrees that 'fair and equitable treatment of investment is desirable...and...that the development of economic and business ties can contribute to the well-being of workers in both Parties and promote respect for internationally recognized worker rights'. In the USA-Bolivia treaty, the two countries express their desire to promote investment by their nationals in each other's country and acknowledge that agreement on the treatment of investment will 'stimulate the flow of private capital and the economic development of the Parties'.

In reality, investment is expected to flow from the developed state party to the less developed state party. It is fanciful to say that the USA expects investments from Bolivia

to stimulate development and raise living standards, as well as to promote the rights of workers. Although, in theory, the agreements give the impression of equality and reciprocity, in reality they are agreements to encourage investments by companies and nationals of the richer countries in the poorer parties and to protect the same. This is to be done without taking advantage of the relatively poor environmental and labour standards in the poor countries. In other words, the lax labour and environmental circumstances in the poor countries cannot be the basis of their comparative advantage or competitiveness.

The preambles appear similar in language and elaboration, especially the BITs with the USA. However, there are subtle nuances that must be influenced by the circumstances of the country that is the other party. For example, whereas the agreements with Argentina, Bolivia and Trinidad and Tobago all talk about labour rights, the one with Trinidad and Tobago acknowledges respect for 'the sovereignty and the laws of the Party within whose jurisdiction the investment falls'. The BIT with Argentina accepts that 'fair and equitable treatment is desirable in order to maintain a stable framework for investment and maximum effective use of economic resources'. In general, the preambles of BITs including the United Kingdom are less elaborate than those of the USA and other countries.

The definitions of important terms in the treaties are also broadly similar. However, again, the definitions in agreements where the USA is a party are more elaborate. For example, returns include returns in kind. More interestingly, the US agreements reserve the right (for each party) to deny to any company of the other party the advantages of the treaty if: first, nationals of any third country control the company in question and the company has no substantial business activities in the territory of the other party; or, secondly, the company is controlled by nationals of a third country with which the denying party does not maintain normal economic relations. This is partly to avoid companies that, in form, originate from the state party, but, in reality, are owned and/or controlled by nationals or companies from third countries, who are attempting to exploit the benefits of the treaty. In part it is also the US Government's way of ensuring that countries that are facing economic and other sanctions from it or from the UN may not use the mechanisms afforded by the BIT to evade those sanctions. In the end, the interpretation of the definitions would be helped by the preamble to the particular treaty, as well as by the substantive provisions.

The standard for measuring the treatment of investment in the signatory countries is the most-favoured-nation (MFN) and nationality standards. It means that an investor from a party to the BIT cannot be discriminated against on the basis of nationality. It does not, however, prohibit better treatment of foreign investors or investors from the other party. It must be emphasized that the non-discriminatory standards embodied in MFN and nationality principles relate to the specific elements of the treaty in question and not to a generalized principle applicable to all economic relations between the states concerned. This is one reason why preferential treatment and benefits derived from or extended to investors and nationals of state members of customs unions, common markets or regional economic groupings are exempted from the provisions on standards in the BITs.

There is a range of general exceptions to the treaty provisions. The USA-Argentina treaty does not preclude the taking of necessary measures by either party for the maintenance of order, the protection of essential security interests and to honour international obligations regarding peace and security. In the USA-Bulgaria treaty,

specific sectors such as air transportation, ocean and coastal shipping, energy and power production, customhouse brokerage, insurance, banking, government grants, ownership and operation of broadcast or common radio and television stations, can be exempted by either party. The USA-Trinidad and Tobago treaty is not to derogate from 'laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party', or from their respective international obligations or 'Obligations assumed by either party, including those contained in an investment authorization or investment agreement'. The US A-Argentina treaty goes further, excluding provisions in other instruments 'that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations'. It is difficult to reconcile these exceptions, especially that of article X(c) of the USA-Argentina treaty, with the general tenor and specific provisions of BITs regarding equality, fairness, equity, non-discrimination, etc. At the same time, the reality is that governments have to balance their need to attract and protect investments within a BIT framework against their other interests and obligations, economic or otherwise.

There is no escaping the fact that the thrust of BITs is investment protection and, specifically, issues surrounding expropriation. The BITs involving the USA appear to have more prominent and robust provisions on expropriation. Article 3 of the USA-Bulgaria treaty, for example, provides thus: 'Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount in their consequences to expropriation or nationalization... except for a public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and general principles of treatment provided for'... Furthermore, all transfers of returns, including compensation, must be freely and promptly allowed. The expropriation and compensation provisions in the BITs are enactment of the so-called Hull formula, i.e. Western countries' principles and ideas on the subject. This trounces the Calvo doctrine (popular in the 1970s), which advocates only 'reasonable compensation'.

There are fairly common provisions regarding investment dispute resolution and the interpretation of provisions or the relevant treaty. In the event of any dispute, however minor, the parties are to consult as a matter of urgency at the governmental or diplomatic level. Three forms of dispute can be distilled: first, general disputes in connection with the treaty; secondly, disputes on the interpretation and application of the treaty; and, finally, investment disputes. The first two are mainly in the domain of the governments concerned, while the third is one between a party and a national or company of the other party that arises out of or relates to any investment agreement between the party and such national or company; an investment authorization granted by a party's foreign investment authority to such national or company or an alleged breach of any right conferred or created by the treaty concerned with respect to an investment'. Every effort must be made to resolve investment disputes amicably, through negotiations and consultations. If this fails, the company or the national of the home country, but not the host country, has the option to submit the dispute to the courts of the host country or of the alternative, but not in addition or subsequent to submitting the matter to the World Bank's International Centre for the Settlement of Investment Disputes (ICSID), or another arbitral body, for binding arbitration.

JAPAN AND THE USA: AGREEMENT REGARDING THE
GUARANTY OF INVESTMENTS*

Tokyo, 8 March 1954 (came into force 1 May)

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE
GOVERNMENT OF JAPAN

RECOGNIZING that economic benefits will accrue to the United States of America and Japan from the guaranties by the United States of America of private investments which may be made in Japan by nationals of the United States of America pursuant to the provisions of Section 111(b)(3) of the Economic Cooperation Act of 1948, as amended; and

DESIRING to set forth the understandings concerning such guaranties;
HAVE AGREED AS FOLLOWS:

Article I

The Government of the United States of America and the Government of Japan will, upon the request of either Government, consult respecting projects in Japan proposed by nationals of the United States of America with regard to which guaranties under Section 111(b)(3) of the Economic Cooperation Act of 1948, as amended, may be made or are under consideration.

Article II

With respect to guaranties extended by the Government of the United States of America in accordance with the provisions of the Section referred to in Article I to projects which are approved by the Government of Japan, the Government of Japan agrees:

1. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of Japan will recognize the transfer to the Government of the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the Government of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of Japan shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from the Government of Japan;
2. That yen amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favourable than that accorded, at the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such yen amounts may be used without restriction by the Government of the United States of America for non-military administrative expenditures;
3. That any claim against the Government of Japan to which the Government of the United States of America may be subrogated as the result of any payment under such a

guaranty, shall be the subject of direct negotiations between the two Governments. If, within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

Article III

This Agreement shall enter into force on the date of receipt by the Government of the United States of America of a note from the Government of Japan stating that Japan has approved the Agreement in accordance with its legal procedures.

IN WITNESS WHEREOF the representatives of the two Governments, duly authorized for the purpose, have signed this Agreement [the signatures are omitted from this reproduction].

DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this eighth day of March, one thousand nine hundred fifty-four.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official documents should be made to the two Governments concerned. UNCTAD maintains a database of bilateral investment treaties, which can be reached through its website (<http://www.unctad.org/>).

PEOPLE'S REPUBLIC OF CHINA AND JAPAN: AGREEMENT
CONCERNING THE ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENT (WITH PROTOCOL)*
Beijing, 27 August 1988 (came into force 14 May 1989)

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE
GOVERNMENT OF JAPAN,

DESIRING to strengthen economic cooperation between the two countries,

INTENDING to create favorable conditions for investment by nationals and companies of each country within the territory of the other country, by means of the favorable treatment for and the protection of investment, business activities in connection therewith and investments, and

RECOGNIZING that the encouragement and reciprocal protection of investment will stimulate economic and technological exchanges between the two countries, after the negotiations between the representatives of respective Governments,

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of the present Agreement:

- (1) The term "investments" comprises every kind of asset, used as investment by nationals or companies of one Contracting Party within the territory of the other

Contracting Party in accordance with, or not in violation of the laws and regulations of the latter Contracting Party at the time of investment, including:

- (a) shares and other types of holding of companies;
- (b) claims to money or to any performance under contract having a financial values;
- (c) rights with respect to movable and immovable property;
- (d) patents of invention, rights with respect to trade marks, trade names, service marks and any other industrial property, and rights with respect to know-how; and
- (e) concession rights including those for the exploration and exploitation of natural resources.

(2) The term “returns” means the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends royalties and fees.

(3) The term “nationals” means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party.

(4) The term “companies” means:

- (a) in relation to the People’s Republic of China, enterprises, other economic organizations and associations; and
- (b) in relation to Japan, corporations, partnerships, companies and associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit.

Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2

1. Each Contracting Party shall within its territory promote as far as possible investment by nationals and companies of the other Contracting Party and admit such investment in accordance with the applicable laws and regulations of the former Contracting Party.
2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment to less favorable than that accorded to nationals and companies of any third country in respect of the admission of investment and the matters in connection therewith.

Article 3

1. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favorable than that accorded to nationals and companies of any third country.
2. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favorable than that accorded to nationals and companies of the former Contracting Party.

3. The term “business activities in connection with the investment” referred to in the provisions of the present Article includes:
- (a) the maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;
 - (b) the control and management of companies which they have established or acquired;
 - (c) the employment and discharge of specialists including technical experts, executive personnel and attorneys, and other workers;
 - (d) the making and performance of contracts.

Article 4

The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies both in pursuit and in defense of their rights shall not be less favorable than that accorded to nationals and companies of the former Contracting Party or to nationals and companies of any third country.

Article 5

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting Party.
2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, within the territory of the other Contracting Party unless such measures are taken for a public purpose and in accordance with laws and regulations, are not discriminatory, and, are taken against compensation.
3. The compensation referred to in the provisions of paragraph 2 of the present Article shall be such as to place the nationals and companies in the same financial position as that in which the nationals and companies would have been if expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, referred to in the provisions of paragraph 2 of the present Article, had not been taken. Such compensation shall be paid without delay. It shall be effectively realizable and freely transferable at the exchange rate in effect on the date used for the determination of amount of compensation.
4. Nationals and companies of either Contracting Party whose investments and returns are subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, shall have the right of access to the competent courts of justice and administrative tribunals and agencies of the other Contracting Party taking the measures concerning such measures and the amount of compensation in accordance with the applicable laws and regulations of such other Contracting Party.

5. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to the matters set forth in the provisions of paragraphs

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1 to 4 of the present Article shall not be less favorable than that accorded to nationals and companies of any third country.

Article 6

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns or business activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall, in case any measure is taken by the latter Contracting Party in relation to the outbreak of such hostilities or state of such national emergency, be accorded treatment no less favorable than that accorded to nationals and companies of any third country.

Article 7

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such transfer or right or claim, the provisions of paragraphs 2 to 5 of Article 5 and Article 8 shall apply mutatis mutandis.

Article 8

1. Nationals and companies of either Contracting Party shall be guaranteed by the other Contracting Party freedom of payments, remittances, and transfers of financial instruments or funds including value of liquidation of an investment between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country.
2. The provisions of paragraph 1 of the present Article shall not preclude either Contracting Party from imposing exchange restrictions in accordance with its applicable laws and regulations.

Article 9

The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement and on or after September 29, 1972.

Article 10

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11

1. Any dispute between a national or company of either Contracting Party and the other Contracting Party with respect to investment within the territory of the latter Contracting Party shall, as far as possible, be settled amicably through consultation between the parties to the dispute.
2. If a dispute concerning the amount of compensation referred to in the provisions of paragraph 3 of Article 5 between a national or company of either Contracting Party and the other Contracting Party or other entity, charged with the obligation for making compensation under its laws and regulations, cannot be settled within six months from the date either party requested consultation for the settlement, such dispute shall, at the request of such national or company, be submitted to a conciliation board or an arbitration board, to be established with reference to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965 (hereinafter referred to as "the Washington Convention"). Any dispute concerning other matters between a national or company of either Contracting Party and the other Contracting Party may be submitted by mutual agreement, to a conciliation board or an arbitration board as stated above. In the event that such national or company has resorted to administrative or judicial settlement within the territory of the latter Contracting Party, such dispute shall not be submitted to arbitration.
3. The arbitration board referred to in the provisions of paragraph 2 of the present Article shall be composed of three arbitrators, with each party appointing one arbitrator within a period of sixty days from the date of receipt by either party from the other party of a notice requesting arbitration of the dispute referred to in the provisions of paragraph 2 of the present Article, and the third arbitrator to be agreed upon as the President of the arbitration board by the two arbitrators so chosen within a further period of ninety days, provided that the third arbitrator shall not be a national of either Contracting Party.
4. If the third arbitrator is not agreed upon between the arbitrators appointed by each party within the period referred to in the provisions of paragraph 3 of the present Article, either party shall request the third party agreed upon in advance by both parties to appoint the third arbitrator who shall be a national of a third country which has diplomatic relations with both Contracting Parties.

5. The arbitral procedures shall be determined by the arbitration board with reference to the Washington Convention.
6. The decision of the arbitration board shall be final and binding.

Execution of the decision of the arbitration board shall be governed by the laws and regulations concerning the execution of decision in force in the State in whose territories such execution is sought. The arbitration board shall state the basis of its decision and state the reasons at the request of either party.
7. Each party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his duties and the remaining costs of the arbitration board shall be borne equally by the parties concerned.
8. When and after a case is submitted to the arbitration board referred to in the provisions of paragraph 2 of the present Article, no claim concerning such case shall be made between states.

Article 12

Companies of any third country in which nationals and companies of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded, unless international agreement between such other Contracting Party and such third country concerning investment and protection of investments is in effect;

- (1) treatment no less favorable than that accorded, within the territory of the latter Contracting Party, to companies of any third country in which nationals and companies of any other third country have a substantial interest with respect to the matters set forth in the provisions of paragraph 2 of Article 2, Article 3, paragraphs 1 to 4 of Article 5, Article 6 and Article 9; and
- (2) treatment no less favorable than that accorded, within the territory of the latter Contracting Party, to companies of any third country in which nationals and companies of the latter Contracting Party have a substantial interest with respect to the matters set forth in the provisions of Article 3, paragraphs 1 to 4 of Article 5, Article 6 and Article 9.

Article 13

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting the operation of the present Agreement.
2. Any dispute between the Contracting Parties as to the interpretation or application of the present Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as the president by the two arbitrators so chosen within a

further period of ninety days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the period referred to in the provisions of paragraph 2 of the present Article, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.
4. The arbitration board shall reach its decisions by a majority of votes. Such decisions shall be final and binding.
5. The arbitral procedures shall be determined by the arbitration board.
6. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his duties and the remaining costs of the arbitration board shall be borne equally by both Contracting Parties.

Article 14

Both Contracting Parties shall establish a Joint Committee, consisting of representatives of the Governments of both Contracting Parties, for the purpose of reviewing the implementation of the present Agreement and the matters related to investment between the two countries, holding consultations on the operation and the matters related to the operation of the present Agreement in connection with the development of legal systems or of policies of either or both of the two countries with respect to the receiving of foreign investment, and, as necessary, making appropriate recommendations to the Governments of both Contracting Parties. The Joint Committee shall meet alternately in Beijing and Tokyo at the request of either Contracting Party.

Article 15

1. The present Agreement shall enter into force on the thirtieth day after the date of exchange of notifications confirming that the procedures required under domestic laws for its entry into force have been completed in each country. It shall remain in force for a period of ten years and shall continue in force thereafter until terminated in accordance with the provisions of paragraph 2 of the present Article.
2. Either Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate the present Agreement at the end of the initial ten-year period or at any time thereafter.
3. In respect of investments and returns acquired prior to the date of termination of the present Agreement, the provisions of Articles 1 to 14 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Agreement [signatures are not reproduced here].

DONE at Beijing on the twenty-seventh day of August, 1988, in duplicate, in the Chinese, Japanese and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

PROTOCOL

At the time of signing the Agreement between the People's Republic of China and Japan concerning the Encouragement and Reciprocal protection of Investment (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. Nothing in the Agreement shall be construed so as to grant any right or impose any obligation in respect of copyright.
2. Nothing in the Agreement shall be construed so as to affect the obligations undertaken by either Contracting Party towards the other Contracting Party by virtue of the provisions of the Paris Convention for the Protection of Industrial Property of March 20, 1883, or of any subsequent revision thereof, so long as such provisions are in force between the Contracting Parties.
3. For the purpose of the provisions of paragraph 2 of Article 3 of the Agreement, it shall not be deemed "treatment less favorable" for either Contracting Party to accord discriminatory treatment, in accordance with its applicable laws and regulations, to nationals and companies of the other Contracting Party, in case it is really necessary for the reason of public order, national security or sound development of national economy.
4. The provisions of paragraph 2 of Article 3 of the Agreement shall not prevent either Contracting Party from prescribing special formalities in connection with the activities of foreign nationals and companies within its territory, but such formalities may not impair the substance of the rights set forth in the aforesaid paragraph.
5. Either Contracting Party shall in accordance with its applicable laws and regulations give sympathetic consideration to applications for the entry, sojourn and residence of nationals of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of making investment and carrying on business activities in connection therewith.
6. Notwithstanding the provisions of Article 3 of the Agreement, either contracting Party reserves the right to accord special tax advantages on the basis of reciprocity of by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion.
7. The provisions of paragraph 2 of Article 8 of the Agreement shall not affect the rights and obligations with respect to exchange restrictions, that, either Contracting Party has or may have as a Contracting Party to the Articles of Agreement of the International Monetary Fund.
8. The provisions of paragraph 1 of Article 11 of the Agreement shall not be construed so as to prevent nationals and companies of either Contracting Party from seeking administrative or judicial settlement within the territory of the other Contracting Party.
9. The term "substantial interest" as used in the provisions of Article 12 of the Agreement means such extent of interest as to permit the exercise of control or decisive influence on the company. Whether an interest held by nationals and companies of either Contracting Party amounts to a substantial interest shall be decided in each case through consultations between the Contracting Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Protocol [signatures are not reproduced].

DONE at Beijing on the twenty-seventh day of August, 1988, in duplicate, in the Chinese, Japanese and English languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

AGREED MINUTES

The undersigned wish to record the following understanding which they have reached during the negotiations for the Agreement between the People's Republic of China and Japan concerning the Encouragement and Reciprocal Protection of Investment (hereinafter referred to as "the Agreement") signed today:

1. It is confirmed that, the provisions of the Agreement shall apply to assets related to offices of resident representatives established by nationals or companies of either Contracting Party within the territory of the other Contracting Party in accordance with, or not in violation of the laws and regulations of such other Contracting Party at the time of establishment.
2. Both Contracting Parties confirm that, "treatment less favorable" referred to in the provisions of paragraph 2 of Article 3 of the Agreement includes the measures taken in a discriminatory manner, which would restrict or impede following activities: the purchase of raw or auxiliary materials, of power of fuel, or of means of production or operation of any kind; the marketing of products inside or outside the country; the obtaining loans inside or outside the country; the introduction of technology; and the establishment of branches or offices of resident representatives outside the country. This paragraph shall not affect the provisions of paragraph 3 of Protocol of the Agreement.
3. It is confirmed that with reference to the provisions of Article 5 of the Agreement, the compensation referred to in the provisions of paragraph 3 of the aforesaid Article shall represent the equivalent of the value of the investments and returns affected at the time when expropriation, nationalization, or any other measures the effects of which would be similar to expropriation or nationalization are publicly announced or when such measure are taken, whichever is the earlier, and shall carry an appropriate interest taking into account the length of time until the time of payment.
4. The term "without delay" referred to in the provisions of paragraph 3 of Article 5 of the Agreement shall not exclude a reasonable period of time necessary for deciding amount, way of payment and so on.

PAPUA NEW GUINEA AND AUSTRALIA: AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS*

Port Moresby, 3 September 1990 (came into force 20 October 1991)

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter referred to as the Contracting Parties),

RECOGNISING the importance of measures to strengthen their relationship in accordance with the Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia, including the principle that co-operation and exchange

between the two countries shall be mutually beneficial and based on full participation by both countries, with due regard to the capacity, resources and development needs of both countries, and on mutual respect;

RECOGNISING the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and industrial and technical co-operation between them, particularly with respect to investment by nationals or companies of one Contracting Party in the territory of the other Contracting Party;

CONSIDERING that investment relations should be promoted and protected and economic co-operation strengthened in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence;

ACKNOWLEDGING that investments of nationals or companies of one Contracting Party in the territory of the other Contracting Party would be made within the framework of laws of that other Contracting Party; and

RECOGNISING that pursuit of these objectives would be facilitated by a clear statement of principles relating to the protection of investments and activities associated with investments combined with measures designed to render more effective the application of these principles within the territories of the Contracting Parties,

HAVE AGREED as follows:

Article 1 Definitions

1. For the purposes of this Agreement:

- (a) “Activities associated with investments”, subject to the law of the Contracting Party which has admitted the investment, includes the organisation, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including industrial and intellectual property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase and sale of foreign exchange.
- (b) “Company” of a Contracting Party means any corporation, association, partnership, trust or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised:
 - i. under the law of a Contracting Party; or
 - ii. under the law of a third country and is owned or controlled by an entity described in paragraph (1)(b)(i) of this Article or by a national of a Contracting Party; regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability.
- (c) “Freely convertible currency” means convertible currencies as classified by the International Monetary Fund or any currency that is widely traded in international foreign exchange markets.

- (d) “Investment” means every kind of asset admitted by the Contracting Party subject to its law and investment policies from time to time and in particular, though not exclusively, including:
- i. movable and immovable property and other property rights such as mortgages, liens or pledges;
 - ii. shares, stock and debentures of Companies or interests in the property of such Companies;
 - iii. a loan or other claim to money or a claim to any performance having a financial value;
 - iv. intellectual and industrial property rights and goodwill;
 - v. business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
 - vi. returns which are reinvested.
- (e) “Law” includes regulations.
- (f) “National” of a Contracting Party means a natural person who is a citizen of a Contracting Party or a person whose continued stay in its territory is not subject to any limitations as to time under its law.
- (g) “Returns” means an amount derived from an investment or activities associated with an investment including profits, dividends, interest, capital gains, royalty payments, management or consultancy fees, payments in kind and all other lawful income.
- (h) “Territory” in relation to a Contracting Party includes the territorial sea, maritime zone or continental shelf where, in accordance with international law, that Contracting Party exercises its sovereignty, sovereign rights or jurisdiction.

2. For the purposes of paragraph (1)(d) of this Article, any alteration of the form in which the assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2 Application of Agreement

1. This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its law and investment policies by nationals or companies of the other Contracting Party prior to as well as after the entry into force of this Agreement.
2. A company duly organised under the law of a Contracting Party shall not be treated as a company of the other Contracting Party, but any investments in that company by nationals or companies of that other Contracting Party shall be protected by this Agreement.
3. Each Contracting Party reserves the right to refuse to extend the rights and benefits of this Agreement to any of its own companies if nationals or companies of any third country own or control any such company.
4. This Agreement shall not apply to a company organised under the law of a third country within the meaning of paragraph (1)(b)(ii) of this Article where the provisions

of an investment protection agreement with that country have already been invoked in respect of the same matter.

5. This Agreement shall not apply to a national of a Contracting Party who is not a citizen of that Contracting Party where:
 - (a) the provisions of an investment protection agreement between the other Contracting Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or
 - (b) the person is a citizen of the other Contracting Party.

Article 3 Promotion and protection of investments

1. Consistent with PATCRA, each Contracting Party shall encourage and create favourable conditions for nationals or companies

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of the other Contracting Party to invest capital in its territory, including in joint ventures, and subject to its right to exercise powers conferred by its laws and investment policies applicable from time to time, shall admit such capital.

2. Each Contracting Party reserves the right to refuse to admit the investments of any company of the other Contracting Party if nationals or companies of any third country control any such company.
3. Investments by nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.
4. Each Contracting Party shall ensure subject to its law that the management, maintenance, use, enjoyment, acquisition or disposal of investments, rights related to investments and activities associated with investments in the territory of the other Contracting Party shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.
5. Where a Contracting Party requires its nationals or companies to hold an equity in investments or activities associated with investments in its territory, it shall ensure that nationals or companies of the other Contracting Party are required to provide for that equity on normal commercial terms and in accordance with generally recognised principles of valuation.

Article 4 Most favoured nation provisions

1. Each Contracting Party shall treat investments and activities associated with investments in its own territory by companies and nationals of the other Contracting Party, including compensation under Article 7 and transfers under Article 9, on a basis no less favourable than that accorded to investments and activities associated with investments by nationals or companies of any third country.

2. Special incentives granted by one Contracting Party only to its nationals or companies in order to stimulate the creation of local industries are considered compatible with this Article.

Article 5 Exceptions to MFN provisions

The provisions in this Agreement relating to the grant of treatment no less favourable than that accorded to the nationals or companies of either Contracting Party or of any third country shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of:

- (a) any existing or future customs union or free trade area or a common external tariff area or a monetary union or similar international agreement to which a Contracting Party is or may become a party;
- (b) the adoption of an agreement designed to lead to the formation or extension of such a union or area; or
- (c) any international agreement or arrangement relating wholly or mainly to taxation.

Article 6 Transparency of laws

Each Contracting Party shall, with a view to promoting the understanding of its laws and policies that pertain to or affect investments in its territory by nationals or companies of the other Contracting Party:

- (a) make such laws and policies public and readily accessible;
- (b) if requested, provide copies of specified laws and policies to the other Contracting Party; and
- (c) if requested, consult with the other Contracting Party with a view to explaining specified laws and policies.

Article 7 Expropriation and nationalisation

1. Neither Contracting Party shall take any measures of expropriation, nationalisation or any other dispossession having effect equivalent to nationalisation or expropriation against the investments of nationals or companies of the other Contracting Party, except under the following conditions:
 - (a) the measures are taken for a public purpose and under due process of law;
 - (b) the measures are non-discriminatory; and
 - (c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.
2. The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the market value of the investment as a going concern immediately before the measures become public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised

principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors.

3. The compensation shall be paid without undue delay, shall include interest at a commercially reasonable rate from the date the measures were taken to the date of payment and shall be freely transferable between the territories of the Contracting Parties. The compensation shall be payable either in the currency in which the investment or investments were originally made or, if requested by the national or company, in a freely convertible currency.

Article 8 Compensation for losses

When a Contracting Party adopts any measures relating to losses in respect of investments and activities associated with investments in its territory by nationals or companies of any other country owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events, the treatment accorded to nationals or companies of the other Contracting Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Contracting Party accords to nationals or companies of any third country.

Article 9 Transfers

1. A Contracting Party shall subject to its law and policies applicable from time to time, when requested, permit all funds of a national or company of the other Contracting Party related to an investment or activities associated with an investment in its territory, and earnings and other assets of personnel engaged from abroad in connection with an investment, to be transferred freely and without unreasonable delay. Such funds include the following:
 - (a) the initial capital plus any additional capital used to maintain or expand the investment;
 - (b) returns;
 - (c) fees, including payments in connection with intellectual and industrial property rights;
 - (d) receipts from the whole or partial sale, divestment or liquidation of the investment;
 - (e) payments made pursuant to a loan agreement;
 - (f) capital accretions; and
 - (g) payments in respect of losses referred to in Article 8.
2. The transfers abroad of such funds and the earnings of personnel shall be permitted in freely convertible currencies and shall be made at the exchange rate determined in accordance with the law of the Contracting Party which has admitted the investment on the date of transfer.
3. Either Contracting Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, non-discriminatory and good faith application of its law.

4. The Contracting Parties shall guarantee to nationals and companies the transfers referred to in this Article, subject to the right of a Contracting Party in exceptional financial or economic circumstances to exercise equitably and in good faith powers conferred by its law for the time being in force.

Article 10 Entry and sojourn of personnel

1. A Contracting Party shall, subject to its law and policies applicable from time to time relating to the entry and sojourn of non-citizens, permit nationals of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities associated with investments.
2. A Contracting Party shall, subject to its laws and policies applicable from time to time, permit nationals and companies of the other Contracting Party who have made investments in the territory of the first Contracting Party to employ within its territory key technical and managerial personnel of their choice regardless of citizenship.

Article 11 Undertakings given to investors

A Contracting Party shall, subject to its law, adhere to any written undertakings given to a national or company of the other Contracting Party concerning an investment, provided that the undertaking is given by a person lawfully entitled to give it.

Article 12 Consultations between Contracting Parties

The Contracting Parties shall consult when necessary on matters concerning the application and operation of this Agreement in the spirit of the Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia.

Article 13 Settlement of disputes between Contracting Parties

1. The Contracting Parties shall endeavour to resolve any dispute between them connected with this Agreement by prompt and friendly negotiations and consultations in accordance with Article 12.
2. If a dispute is not resolved by such means within sixty (60) days of one Contracting Party seeking in writing such negotiations or consultations, it shall be submitted at the request of either Contracting Party to an Arbitral Tribunal established in accordance with the provisions of Annex A of this Agreement or, by agreement, to any other international tribunal.

Article 14 Settlement of disputes between a Contracting Party and a national or company of the other Contracting Party

1. In the event of a dispute between a Contracting Party and a national or company of the other Contracting Party relating to an investment or an activity associated with an investment, the parties to the dispute shall initially seek to resolve the dispute by

consultations and negotiations in the spirit of the Joint Declaration of Principles Guiding Relations between Papua New Guinea and Australia.

2. If the dispute in question cannot be resolved through consultations and negotiations in accordance with paragraph (1) of this Article, either party to the dispute may:
 - (a) in accordance with the law of the Contracting Party which has admitted the investment, initiate proceedings before its competent judicial or administrative bodies;
 - (b) if both Papua New Guinea and Australia are at that time party to the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Convention), refer the dispute to the International Centre for the Settlement of Investment Disputes (the Centre) for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention;
 - (c) if both Papua New Guinea and Australia are not at that time party to the Convention, submit the dispute to an Arbitral Tribunal constituted in accordance with Annex B of this Agreement.
3. Where a dispute is referred to the International Centre for the Settlement of Investment Disputes pursuant to sub-paragraph (2)(b) of this Article:
 - (a) each Contracting Party shall consent to the submission of that dispute to the Centre;
 - (b) if the parties to the dispute cannot agree whether conciliation or arbitration is the more appropriate procedure, the opinion of the national or company shall prevail; and
 - (c) if a company which is a party to the dispute is incorporated or constituted under the law in force in the territory of a Contracting Party and, before such a dispute arises the majority of that company's shares are owned by nationals or companies of the other Contracting Party, the first named company shall, in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party.
4. The action referred to in paragraph (2) of this Article should be without prejudice to the right of the parties to seek assistance with regard to the dispute from any competent government agency of the Contracting Party which has admitted the investment.
5. Subject to paragraph (4) of this Article, once an action referred to in paragraph (2) of this Article has been instituted, neither Contracting Party shall pursue the dispute through diplomatic channels unless:
 - (a) the relevant judicial or administrative body, the Secretary-General of the Centre, the arbitral authority or tribunal or the conciliation commission, as the case may be, has decided that it has no jurisdiction in relation to the dispute in question; or
 - (b) the other Contracting Party has failed to abide by or comply with any judgment, award, order or other determination made by the body in question.
6. In any proceeding involving a dispute relating to an investment or an activity associated with an investment, a Contracting Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the national or company concerned

has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss. Nevertheless, a national or company of a Contracting Party involved in such a dispute shall not be entitled to compensation for more than the value, as determined in accordance with Article 7, of the investment which is the subject of the dispute, taking into account all sources of compensation within the territory of a Contracting Party liable to pay compensation.

Article 15 Settlement of disputes between nationals and companies of the Contracting Parties

A Contracting Party shall in accordance with its law:

- (a) provide nationals and companies of the other Contracting Party who have made investments within its territory and personnel employed by them for activities associated with investments full access to its competent judicial or administrative bodies in order to afford means of asserting claims and enforcing rights in respect of disputes with its own nationals and companies;
- (b) permit its nationals and companies to select means of their choice to settle disputes relating to investments and activities associated with investments with the nationals of the other Contracting Party, including arbitration conducted in a third country; and
- (c) provide for the recognition and enforcement of any resulting judgments or awards.

Article 16 Subrogation

If a Contracting Party or an agency of a Contracting Party makes a payment to any of its nationals or companies under a guarantee or other form of indemnity it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the first Contracting Party or its nationals or companies under Article 9 of this Agreement, recognise the transfer of any right or title in respect of such investment. The subrogated right or claim shall not be greater than the original right or claim of the national or company.

Article 17 Limitations on immunity

Any question arising in relation to an investment or activity associated with an investment of a company of either Contracting Party concerning immunity from the jurisdiction of the Courts in any proceeding, the procedure for service of initiating process or immunity from execution shall be resolved in accordance with the law of the Contracting Party which has admitted the investment.

Article 18 Entry into force, duration and termination

1. This Agreement shall enter into force thirty (30) days after the date on which the Contracting parties shall have notified each other that their Constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall

remain in force for a period of fifteen (15) years and thereafter shall remain in force indefinitely, unless terminated in accordance with paragraph (2) of this Article.

2. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial fifteen (15) year period or any time thereafter.
3. In respect of investments made or acquired before the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen (15) years from the date of termination and without prejudice to the Law of Application and thereafter, of the general rules of International Law.

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

DONE in duplicate at Port Moresby on the third day of September, 1990.

[The signatures are omitted.]

ANNEX A

1. The Arbitral Tribunal referred to in Article 13 shall consist of three persons appointed as follows: each Contracting Party shall appoint one arbitrator, and a third arbitrator, who shall be a national of a country with which both Contracting Parties maintain diplomatic relations, shall be appointed by the agreement of the Contracting Parties. This third arbitrator shall also act as "Chairman of the Tribunal".
2. Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the Contracting Party instituting such proceedings to the other Contracting Party. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the Contracting Party instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent Contracting Party shall notify the Contracting Party instituting proceedings of the name of the arbitrator appointed by the respondent Contracting Party.
3. If, within sixty (60) days after the giving of notice instituting the arbitration proceedings the Contracting Parties shall not be agreed upon a Chairman of the Tribunal, either Contracting Party may request the President of the International Court of Justice to make the appointment. If the President is a national of either Contracting Party or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a national of either Contracting Party or is unable to act, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointment.
4. In case any arbitrator appointed as provided in this Annex shall resign, die or otherwise become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and his successor shall have all the powers and duties of the original arbitrator.
5. The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

6. The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between the Contracting Parties, determine its own procedure.
7. Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, the international agreements both Contracting Parties have concluded and the generally recognised principles of international law.
8. Each Contracting Party shall bear the costs of its appointed arbitrator. The cost of the Chairman and other expenses associated with the conduct of the arbitration shall be borne in equal parts by both Contracting Parties.
9. The Arbitral Tribunal shall afford to the Contracting Parties a fair hearing. It may render an award on the default of a Contracting Party. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to each Contracting Party.
10. An award shall be final and binding on the Contracting Parties.

ANNEX B

1. The Arbitral Tribunal referred to in paragraph (2)(c) of Article 14 shall consist of 3 persons appointed as follows: each party to the dispute shall appoint one arbitrator; the arbitrators appointed by the parties to the dispute shall, within thirty (30) days of the appointment of the last of their number, by agreement, select an arbitrator as Chairman who is a national of a third country which has diplomatic relations with both Contracting Parties.
2. If, within sixty (60) days after a party has given notice in writing instituting the arbitration proceedings, agreement has not been reached on a Chairman of the Arbitral Tribunal, either party to the dispute may request the President of the International Bank for Reconstruction and Development to make the appointment.
3. If a party to the dispute, receiving notice in writing from the other party of the institution of arbitration proceedings and the appointment of an arbitrator, shall fail to appoint its arbitrator within thirty (30) days of receiving notice from the other party, such arbitrator shall be appointed by the Chairman of the Arbitral Tribunal after the Chairman is appointed.
4. In case any arbitrator appointed as provided in this Annex shall resign, die or otherwise become unable to perform his functions as an arbitrator, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and his successor shall have all the powers and duties of the original arbitrator.
5. The Arbitral Tribunal shall, subject to the provisions of any agreement between the parties to the dispute, determine its procedure by reference to the rules of procedure contained in the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.
6. The Arbitral Tribunal shall decide all questions relating to its competence.
7. Before the Arbitral Tribunal makes a decision it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The Arbitral Tribunal shall

reach its award by majority vote taking into account the provisions of this Agreement, any agreement between the parties to the dispute and the relevant domestic law of the Contracting Party which has admitted the investment.

8. An award shall be final and binding and shall be enforced in the territory of each Contracting Party in accordance with its law.
9. Each party to the dispute shall bear the costs of its appointed arbitrator. The cost of the Chairman and other expenses associated with the conduct of the arbitration shall be borne equally by the parties.

ARGENTINA AND THE USA: TREATY CONCERNING THE
RECIPROCAL ENCOURAGEMENT AND PROTECTION OF
INVESTMENT (WITH PROTOCOL)*

Washington, DC, 14 November 1991 (came into force 20 October 1994)

THE UNITED STATES OF AMERICA AND THE ARGENTINE REPUBLIC,
hereinafter referred to as the Parties;

DESIRING to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;

RECOGNIZING that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

AGREEING that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective use of economic resources;

RECOGNIZING that the development of economic and business ties can contribute to the well-being of workers in both Parties and promote respect for internationally recognized worker rights; and having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

HAVE AGREED AS FOLLOWS:

Article I

1. For the purposes of this Treaty,

- (a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes without limitation:
 - i. tangible and intangible property, including rights, such as mortgages, liens and pledges;
 - ii. a company or shares of stock or other interests in a company or interests in the assets thereof;
 - iii. a claim to money or a claim to performance having economic value and directly related to an investment;
 - iv. intellectual property which includes, inter alia, rights relating to: literary and artistic works, including sound recordings, inventions in all fields of human

endeavor, industrial designs, semiconductor mask works, trade secrets, know-how, and confidential business information, and trademarks, service marks, and trade names; and

v. any right conferred by law or contract, and any licenses and permits pursuant to law;

(b) “company” of a Party means any kind of corporation, company, association, state enterprise, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, and whether privately or governmentally owned;

(c) “national” of a Party means a natural person who is a national of a Party under its applicable law;

(d) “return” means an amount derived from or associated with an investment, including profit; dividend; interest; capita gain; royalty payment; management, technical assistance or other fee; or returns in kind;

(e) “associated activities” include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase, issuance, and sale of equity shares and other securities, and the purchase of foreign exchange for imports,

(f) “territory” means the territory of the United States or the Argentine Republic, including the territorial sea established in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea. This Treaty also applies in the seas and seabed adjacent to the territorial sea in which the United States or the Argentine Republic has sovereign rights or jurisdiction in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

2. Each Party reserves the right to deny to any company of the other Party the advantages of this Treaty if (a) nationals of any third country, or nationals of such Party, control such company and the company has no substantial business activities in the territory of the other Party, or (b) the company is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.
3. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

Article II

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Protocol to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware

concerning the sectors or matters listed in the Protocol. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Protocol, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall, unless specified otherwise in the Protocol, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

2.

- (a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.
- (b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For the purposes of dispute resolution under Articles VII and VIII, a measure may be arbitrary or discriminatory notwithstanding the opportunity to review such measure in the courts or administrative tribunals of a Party.
- (c) Each Party shall observe any obligation it may have entered into with regard to investments.

- 3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
- 4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.
- 5. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments,

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which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

- 6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations.
- 7. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.
- 8. The treatment accorded by the United States of America to investments and associated activities of nationals and companies of the Argentine Republic under the provisions

of this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.

9. The most favored nation provisions of this Article shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in a regional customs union or free trade area, whether such an arrangement is designated as a customs union, free trade area, common market or otherwise.

Article III

This Treaty shall not preclude either Party from prescribing laws and regulations in connection with the admission of investments made in its territory by nationals or companies of the other Party or with the conduct of associated activities, provided, however, that such laws and regulations shall not impair the substance of any of the rights set forth in this Treaty.

Article IV

1. Investments shall not be expropriated or nationalized 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 11(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; 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.
2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefore, conforms to the provisions of this Treaty and the principles of international law.
3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the more favorable treatment, as regards any measures it adopts in relation to such losses.

Article V

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article IV; (c) payments arising out of an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement directly related to an investment; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.
2. Except as provided in Article IV paragraph 1, transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. The free transfer shall take place in accordance with the procedures established by each Party; such procedures shall not impair the rights set forth in this Treaty.
3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

Article VI

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

Article VII

1. For purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that Party's foreign investment authority (if any such authorization exists) to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.
2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute for resolution:
 - (a) to the courts or administrative tribunals of the Party that is a party to the dispute; 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 paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

- i. to the International Centre for the Settlement of Investment Disputes (“Centre”) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 (“ICSID Convention”), provided that the Party is a party to such convention: or
- ii. to the Additional Facility of the Centre, if the Centre is not available; or
- iii. in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- iv. to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

(b) Once the national or company concerned has so consented, either party to the dispute may initiate arbitration in accordance with the choice so specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

- (a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules; and
- (b) an “agreement in writing” for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (“New York Convention”).

- 5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) of this Article shall be held in a state that is a party to the New York Convention.
- 6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.
- 7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.
- 8. For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of a Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other

Party, shall be treated as a national or company of such other Party in accordance with Article 25(2)(b) of the ICSID Convention.

Article VIII

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrators, shall govern.
2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply *mutatis mutandis* to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Permanent Court of Arbitration.
3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.
4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties.

Article IX

The provisions of Article VII and VIII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

Article X

This Treaty shall not derogate from:

- (a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;
- (b) international legal obligations; or
- (c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

Article XI

This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the Protection of its own essential security interests.

Article XII

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.
2. Nevertheless, the provisions of this Treaty, and in particular Article VII and VIII, shall apply to matters of taxation only with respect to the following:
 - (a) expropriation, pursuant to Article IV;
 - (b) transfers, pursuant to Article V; or
 - (c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VII(1)(a) or (b), to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

Article XIII

This Treaty shall apply to the political subdivisions of the Parties.

Article XIV

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.
2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.
3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.
4. The Protocol shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington on the fourteenth day of November, 1991, in the English and Spanish languages, both texts being equally authentic.

PROTOCOL

1. During dispute settlement proceedings pursuant to Article VII, a party may be required to produce evidence of ownership or control consistent with Article I(1)(a).
2. With reference to Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to national treatment in the following sectors: air transportation; ocean and coastal shipping; banking; insurance; energy and power production; custom house brokers; ownership and operation of broadcast or common carrier radio and television stations; ownership of real property; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources.
3. With reference to Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to national treatment with respect to certain programs involving government grants, loans, and insurance.
4. With reference to Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to national and most favored nation treatment in the following sectors, with respect to which treatment will be based on reciprocity: mining on the public domain; maritime services and maritime-related services; primary dealership in United States government securities.
5. With reference to Article II, paragraph 1, the Argentine Republic reserves the right to make or maintain limited exceptions to national treatment in the following sectors: real estate in the Border Areas; air transportation; shipbuilding; nuclear energy centers; uranium mining; insurance; mining [this word was deleted by amendment through an exchange of notes in 1992]; fishing.
6. The Parties understand that, with respect to rights reserved in Article XI of the Treaty, "obligations with respect to the maintenance or restoration of international peace or security" means obligations under the Charter of the United Nations.
7. The Parties acknowledge and agree that, to the extent of any conflict or inconsistency between the terms of this Treaty, and the terms of the Treaty of Friendship, Commerce, and Navigation between the Parties, entered into force December 20, 1854 (the "FCN Treaty-), the terms of this Treaty shall supersede the terms of the FCN Treaty, and shall control the resolution of such conflict.
8. The Parties confirm their mutual understanding that the provisions of this Treaty do not bind either Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of this Treaty.
9. Notwithstanding Article II(5) and in accordance with the terms of this paragraph, the Government of the Argentine Republic may maintain, but not intensify, existing performance requirements in the automotive industry. The Government of the Argentine Republic shall exert best efforts to eliminate all such requirements within the shortest possible period, and shall ensure their elimination within eight years of the date of the entry into force of this Treaty. The Government of the Argentine Republic shall further ensure that such performance requirements are applied in a manner which does not place existing investments at a competitive disadvantage against new entrants in this industry. The Parties shall consult at the request of either on any matter concerning the implementation of these undertakings. For the purposes of this paragraph, "existing" means extant at the time of signature of this Treaty.

10. The Parties note that the Argentine Republic has had and may have in the future a debt-equity conversion program under which nationals or companies of the United States may choose to invest in the Argentine Republic through the purchase of debt at a discount. The Parties agree that the rights provided in Article V, paragraph 1, with respect to the transfer of returns and of proceeds from the sale or liquidation of all or any part of an investment, remain or may be, as such rights would apply to that part of an investment financed through a debt-equity conversion, modified by the terms of any debt-equity conversion agreement between a national or company of the United States and the Government of the Argentine Republic, or any agency or instrumentality thereof. The transfer of returns and of proceeds from the sale or liquidation of all or any part of an investment shall in no case be on terms less favorable than those accorded, in like circumstances, to nationals or companies of the Argentine Republic or any third country, whichever is more favorable.
11. The Parties note with satisfaction that the Argentine Republic is engaged in a process of privatization of various industries, including public utilities. They agree that they will undertake their best efforts, including through consultations, to avoid any misinterpretation regarding the scope of Article II(5) that would adversely affect this privatization process.

BULGARIA AND THE USA: TREATY CONCERNING THE
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF
INVESTMENT (WITH PROTOCOL)*

Washington, DC, 23 September 1992 (came into force 2 June 1994)

THE UNITED STATES OF AMERICA AND THE REPUBLIC OF BULGARIA
(hereinafter the "Parties");

DESIRING to promote greater economic cooperation between them with respect to investment by nationals and companies of one Party in the territory of the other Party;

RECOGNIZING that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

AGREEING that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

RECOGNIZING that the development of economic and business ties can contribute to the well-being of workers in both Parties and promote respect for internationally recognized worker rights;

CONVINCED that a free and open market for investment offers the best opportunity for raising living standards and the quality of life for the inhabitants of the Parties; and

HAVING RESOLVED to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

HAVE AGREED AS FOLLOWS:

Article I

1. For the purposes of this Treaty,

- (a) “investment” means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:
 - i. tangible and intangible property, including rights such as mortgages, liens and pledges;
 - ii. a company or shares of stock or other interests in a company or interests in the assets thereof;
 - iii. a claim to money or a claim to performance having economic value, and associated with an investment;
 - iv. intellectual property which includes, inter alia, rights relating to: literary and artistic works, including sound recordings; inventions in all fields of human endeavor; industrial designs; semiconductor mask works; trade secrets, know-how, and confidential business information; trademarks, service marks, and trade names; and
 - v. any right conferred by law or contract, and any licenses and permits pursuant to law;
- (b) “company” of a Party means any kind of corporation, company, association, partnership, state enterprise, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned or controlled;
- (c) “national” of a Party means a natural person who is a national of a Party under its applicable law;
- (d) “return” means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or return in kind;
- (e) “associated activities” include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; the borrowing of funds; the purchase, issuance, and sale of equity shares and other securities; and the purchase of foreign exchange for imports.
- (f) “nondiscriminatory” treatment means treatment that is at least as favorable as the better of national treatment or most-favored-nation treatment;
- (g) “national treatment” means treatment that is at least as favorable as the most favorable treatment accorded by a Party to companies or nationals of that Party in like circumstances; and
- (h) “most-favored-nation treatment” means treatment that is at least as favorable as that accorded by a Party to companies or nationals of third Parties in like circumstances.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.
3. Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment.

Article II

1. Each Party shall permit and treat investment, and activities associated therewith, on a nondiscriminatory basis, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall unless specified otherwise in the Annex, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.
2.
 - (a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.
 - (b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purposes of dispute resolution under Article VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.
 - (c) Each Party shall observe any obligation it may have entered into with regard to investments.
3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official documents should be made to the two Governments concerned. UNCTAD maintains a database of bilateral investment treaties, which can be reached through its website (<http://www.unctad.org/>).

5. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.
6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations.
7. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.
8. The treatment accorded by the United States of America to investments and associated activities of nationals and companies of the Republic of Bulgaria under the provisions of this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.
9. The most-favored-nation provisions of this Treaty shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of:
 - (a) that Party's binding obligations that derive from full membership in a free trade area or customs union; or
 - (b) that Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade that enters into force subsequent to the signature of this Treaty.
10. The Parties acknowledge and agree that "associated activities" include without limitation, such activities as:
 - (a) the granting of franchises or rights under licenses;
 - (b) access to registrations, licenses, permits and other approvals (which shall in any event be issued expeditiously);
 - (c) access to financial institutions and credit markets;
 - (d) access to their funds held in financial institutions;
 - (e) the importation and installation of equipment necessary for the normal conduct of business affairs, including, but not limited to, office equipment and automobiles, and the export of any equipment and automobiles so imported;
 - (f) the dissemination of commercial information;
 - (g) the conduct of market studies;
 - (h) the appointment of commercial representatives, including agents, consultants and distributors and their participation in trade fairs and promotion events;
 - (i) the marketing of goods and services, including through internal distribution and marketing systems, as well as by advertising and direct contact with individuals and companies;

- (j) access to public utilities, public services and commercial rental space at nondiscriminatory prices, if the prices are set or controlled by the government; and
- (k) access to raw materials, inputs and services of all types at nondiscriminatory prices, if the prices are set or controlled by the government.

Article III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount in their consequences to expropriation or nationalization ("expropriation") except: for a public purpose; in a nondiscriminatory 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 11(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; 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.
2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law.
3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded nondiscriminatory treatment by such other Party as regards any measures it adopts in relation to such losses.

Article IV

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.
2. Except as provided in Article 11(1), transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.
3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

Article V

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

Article VI

1. For the purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) an alleged breach of any right conferred or created by this Treaty with respect to an investment; or (c) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company, provided that the denial of an investment authorization shall not in itself constitute an investment dispute unless such denial involves an alleged breach of any right conferred or created by the Treaty.
2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of nonbinding, third party procedures. Subject to paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures including those relating to expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.
3.
 - (a) At any time after six months from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by conciliation or binding arbitration to the International Centre for the Settlement of Investment Disputes ("Centre") or to the Additional Facility of the Centre or pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL") or pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute. Once the national or company concerned has so consented, either party to the dispute may institute such proceeding provided:
 - i. the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute-settlement procedures; and
 - ii. the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute. If the parties disagree over whether conciliation or binding arbitration is the more appropriate

procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute for settlement by conciliation or binding arbitration:

- i. to the Centre, in the event that the Republic of Bulgaria becomes a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States done at Washington, March 18, 1965 ("Convention") and the Regulations and Rules of the Centre;
- ii. to the Additional Facility of the Centre; and
- iii. to an arbitral tribunal established under the UNCITRAL Rules, the appointing authority referenced therein to be the Secretary General of the Centre.

(c) Conciliation or arbitration of disputes under (b)(i) or (b)(ii) shall be done applying the provisions of the Convention and the Regulations and Rules of the Centre, or of the Additional Facility as the case may be.

(d) The place of any arbitration conducted under this Article shall be a country which is, at the time of the arbitration, a party to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

(e) Each Party undertakes to carry out without delay the provisions of any award resulting from an arbitration held in accordance with this Article VI. Further, each Party shall provide for the enforcement in its territory of such arbitral awards.

4. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.
5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25(2)(b) of the Convention, be treated as a national or company of such other Party.

Article VII

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties, shall govern.
2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the

appointing authority referenced in those rules shall be the Secretary General of the Permanent Court of Arbitration.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.
4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. Each Party shall bear the costs of its legal representation.

Article VIII

The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or, (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

Article IX

This Treaty shall not derogate from:

- (a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;
- (b) international legal obligations; or
- (c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

Article X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

Article XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.
2. Nevertheless, the provisions of this Treaty, and in particular Article VI and VII, shall apply to matters of taxation only with respect to the following:
 - (a) expropriation, pursuant to Article III;

- (b) transfers, pursuant to Article IV; or
- (c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI(1)(a) or (b), to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

Article XII

This Treaty shall apply to the political subdivisions of the Parties.

Article XIII

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.
2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten-year period or at any time thereafter.
3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.
4. The Annex and Protocol shall form an integral part of the Treaty. IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty [the signatures are omitted in this reproduction of the text].

DONE in duplicate at Washington on the twenty-third day of September, 1992, in the English and Bulgarian languages, both texts being equally authentic.

ANNEX

1. The United States reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below: air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real property; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources; mining on the public domain; maritime services and maritime-related services; and primary dealership in United States government securities.
2. The United States reserves the right to make or maintain limited exceptions to most favored nation treatment, as provided in Article II, paragraph 1, in the sectors or

matters it has indicated below: ownership of real property; mining on the public domain; maritime services; maritime-related services; and primary dealership in United States government securities.

3. Bulgaria reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below: banking; insurance; ownership of real estate; leases of farm land and forest land; air, rail, and maritime transportation; governmental subsidies; government insurance and loan programs; energy and power production; customs house brokers; provision of telephone and telegraph services; use of land, natural resources, and mining; ownership and operation of broadcast or common carrier radio and television stations; and dealership in government securities.

PROTOCOL

With respect to Article I, paragraph 1(a), the Parties confirm their mutual understanding that investments covered by this Treaty will not include loans that were extended prior to January 1, 1992 to the Government of the Republic of Bulgaria, or to banks owned or controlled by the Government of Bulgaria, including, inter alia, the Foreign Trade Bank, for trade finance or balance of payments purposes, and that are subsequently rescheduled in the London Club.

TRINIDAD AND TOBAGO AND THE USA: TREATY CONCERNING
THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF
INVESTMENT (WITH PROTOCOL)*
Washington, DC, 26 September 1994 (came into force 26 December
1996)

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO (hereinafter referred to collectively as “the Parties” and individually as “the Party”;

DESIRING to promote greater economic co-operation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;

RECOGNIZING that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

AGREEING that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

RECOGNIZING that the development of economic and business ties can promote respect for internationally recognized worker rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

RESPECTING the sovereignty and the laws of the Party within whose jurisdiction the investment falls; and

HAVING RESOLVED to conclude a Treaty concerning the Encouragement and Reciprocal Protection of Investment;

HAVE AGREED AS FOLLOWS:

Article I Definitions

For the purposes of this Treaty,

- (a) “Company” of a Party means any entity constituted or organized under the laws of that Party 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;
- (b) “National” of a Party means a natural person who is a national of that Party under its applicable law;
- (c) “Investment” of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes consisting or taking the form of:
 - i. A Company;
 - ii. Shares, stock, and other forms participation, and bonds, debentures, forms of debt interests, in a company;
 - iii. Contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions or other similar contracts;
 - iv. Tangible property and intangible property, including rights, such as mortgages, liens and pledges;
 - v. Intellectual property, including: Copyrights and related rights, Patents, Industrial designs, Rights in semi-conductor layout designs, Trade secrets, including know-how and confidential business information, Trade and Service marks, and Trade names; and
 - vi. Rights conferred pursuant to law, such as licenses and permits;
- (d) “Covered Investment” means an investment of a national or company of a Party in the territory of the other Party;
- (e) “State Enterprise” means a company owned or controlled through ownership interests, by a Party;
- (f) “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;
- (g) “Investment Agreement” means a written agreement between the national authorities of a Party and 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. Is relied upon by the national or company in establishing or acquiring a covered investment.
- (h) “Territory” means the territory of each Contracting Party, as well as the maritime area of each Contracting Party, hereinafter defined as the exclusive economic zone and the continental shelf outwards the territorial sea of each Contracting Party over which they have in accordance with international Law sovereign rights and a jurisdiction with respect to the exploration, exploitation, conservation and management of the resources.

Article II National and Most Favoured 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 favourable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter referred to as “National Treatment”), or to investments in its territory of nationals or companies of a third country (hereinafter referred to as “Most Favoured Nation Treatment”), whichever is more favourable. Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national or more favoured nation treatment to covered investments whichever is more favourable.
2.
 - (a) A Party may adopt or maintain exceptions to the obligations of paragraph I in the sectors or with respect to the matters specified in the Annex to this Treaty. In 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 I 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.
 - (c) Such treatment shall not relate to privileges which either Party accords to nationals or companies of third states on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.
 - (d) The treatment granted under this Article shall not relate to advantages which either Party accords to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating wholly or mainly to taxation.
 - (e) The treatment granted under this Article shall not relate to measures accorded the Government of the Republic of Trinidad and Tobago only to its nationals or companies within the framework of its development policy.

Article III Protection of Investments

1.
 - (a) 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 favourable than that required by international law.
 - (b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.
2. Each Party shall provide effective means of asserting. Claims and enforcing rights with respect to covered investments.
3. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory

We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official documents should be made to the two Governments concerned. UNCTAD maintains a database of bilateral investment treaties, which can be reached through its website (<http://www.unctad.org/>).

decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

Article IV Expropriation

1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as “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 III(i).
2. Compensation shall be paid without delay and be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at the normal commercial rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid shall be no less than:
 - (a) The fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing at that date; plus
 - (b) Interest, at the normal commercial rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

Converted into, the currency of payment at the market rate of exchange prevailing on the date of payment.

Article V Compensation for Losses

1. Each Party shall accord national or most favoured nation treatment whichever is more favorable to covered investments as regards any measure relating to losses that such investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.
2. Each Party shall accord restitution or pay compensation in accordance with paragraphs 2 through 4 of Article IV, in the event that covered investments suffer 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 VI Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
 - (a) Contributions to capital;
 - (b) 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;
 - (c) Interest, royalty payments, management fees, technical assistance and other fees;
 - (d) Payments made under a contract, including a loan agreement; and
 - (e) Compensation pursuant to Articles IV and V and payments arising out of an investment dispute.
2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing, on the date of transfer.
3. 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 national or company of the other Party.
4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
 - (a) Bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) Issuing, trading or dealing in securities;
 - (c) Criminal or penal offenses; or
 - (d) Ensuring compliance with orders or judgements in adjudicatory proceedings.

Article VII Performance Requirements

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 governmental permission or authorization):

- (a) To achieve a particular level content or to purchase, use with the receipt of a or percentage of local content or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;
- (b) To limit imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;
- (c) To export a particular type, level or percentage of products or services, either generally or to a specific market region;
- (d) To limit sales by the investment of products or services in the Party's territory in relation to a particular volume or value of production, exports or foreign exchange

earnings, except for investments admitted under the provisions of any legislation governing a Free Zone regime;

- (e) To transfer technology, a production process or other proprietary knowledge to a national or company in the Party's territory, except 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; or
- (f) To carry out a particular type, level or percentage of research and development in the Party's territory. Nothing in this paragraph shall preclude a Party from providing benefits and incentives to investments in order to encourage the observance of any performance requirements including those listed at sub-paragraphs (a) to (f) herein.

Article VIII Entry, Sojourn and Employment of Aliens

1.
 - (a) Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
 - (b) Neither Party shall, in granting entry under sub-paragraph (a), require a labor certification test or other procedures of similar effect.
2. In respect of covered investments each Party shall permit a national or company of the other party to engage top managerial personnel of its choice, regardless of nationality.

Article IX Settlement of Disputes between a National or Company and a Host State

1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to any investment authorization, investment agreement or alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.
2. Investment disputes should as far as possible be settled amicably, after consultation by the parties to the dispute.
3. A national or company that is a Party to an investment dispute may submit the dispute for resolution under one of the following alternatives:
 - (a) To the courts or administrative tribunals of the Party that is a Party to the dispute; or
 - (b) In accordance with any applicable and previously agreed dispute settlement procedures; or
 - (c) In accordance with the terms of paragraph 3 below.

Where an investor has submitted a dispute for settlement in accordance with sub-paragraph (a), (b) or (c) above, the choice shall be final.

4.

(a) Provided that the national or company concerned has not submitted the dispute for resolution under sub-paragraph 2(a) or (b), and that six months 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 International Centre for the Settlement of Investment Disputes (herein after referred to as “the centre”) having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965; or
- ii. An Arbitral Tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- iii. 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 submitted a dispute to binding arbitration paragraph 3(a) may seek Interim injunctive under sub-paragraph 3(a) may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Party that is a Party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

5. Any arbitration under sub-paragraph 3(a)(i), (ii), or (iii) 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 Article 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.
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 by a national or company of the other Party pursuant to an insurance or guarantee contract.

Article X Settlement of Disputes between the Parties

1. Any dispute between the Parties concerning the interpretation or application of the treaty, should, if possible, be resolved through consultations or other diplomatic channels. If the dispute has not been resolved within a period of six months from the date it was raised, it shall be submitted upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL arbitration rules shall govern, except to the extent these rules are (a) modified by the Parties or (b) modified by the arbitrators unless either Party objects to the proposed modification.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall, within a period of two months, select a third arbitrator as chairman, who shall be a national of a third State. The UNCITRAL arbitration rules applicable to appointing members of three-member panels shall apply mutatis mutandis to the appointment of the arbitral panel, except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.
3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of selection of the third arbitrator, and the arbitral hearings shall be completed within six months of the date of selection of the third arbitrator, and the arbitral panel shall render its decisions within two months of the date of the final submissions or the closing of the hearings, whichever is later.
4. The tribunal shall reach its decisions by a majority of votes. These decisions shall be final and binding upon the Parties.
5. Each Party shall bear the cost of its own member of the tribunal. The cost of the Chairman, the cost of the Chairman, the cost of representation of the Parties in the arbitral proceedings and the remaining costs shall be apportioned by the arbitral panel as it deems reasonable. Awards shall be binding on both Parties.

Article XI Applications of Other Rules and Obligations

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favourable than that accorded by this Treaty:

- (a) Laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;
- (b) International legal obligations; or
- (c) Obligations assumed by a Party, including those contained in an investment authorization or an investment agreement.

Article XII Application of the Agreement

1. This Agreement shall apply to all covered investments, whether made before or after its date of entry into force, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.
2. A Party's obligations under this Treaty shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.
3. Each Party reserves the right to deny to a company of the other Party the benefits of this Treaty if nationals of a third country own or control the company; and
 - (a) The denying party does not maintain normal economic relations with the third country; or
 - (b) The company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

Article XIII Tax Disputes

1. No provision of this Treaty shall impose respect to tax matters, except that:
 - (a) Articles IV, X and XI shall apply expropriation; and obligations with respect to
 - (b) Article X will apply with respect to an investment agreement or an investment authorization.
2. A national or company that asserts in an investment dispute that a tax matter involves an expropriation, may submit that dispute to arbitration pursuant to Article X(3) only if:
 - (a) The national or company concerned has first referred to the competent tax authorities of both parties, the issue of whether the tax matter involves an expropriation; and
 - (b) The competent tax authorities have not both determined, within nine months from the time the national or company referred the issue that the matter does not involve an expropriation.

Article XIV Special Measures and Formalities

1. This Treaty shall not preclude a Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. This Treaty 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 Treaty.

Article XV Territorial Application

1.
 - (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.
 - (b) With respect to the treatment accorded by a state, territory or possession of the United States of America, national treatment means treatment no less favourable than the treatment accorded thereby, in like situations, to investments of nationals of the United States of America resident in, and companies 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 Treaty

Article XVI Amendment

Any provision of this Agreement may be amended by mutual agreements between the Parties. Any such amendment shall be confirmed by an Exchange of Diplomatic Notes.

Article XVII Entry into Force, Duration and Termination

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2.
2. A Party may terminate this Treaty at the end of the initial ten year period or at any ten year period or at any time thereafter by giving one year's written notice to the other Party.
3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.
4. The Annex shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty [the signature and date are omitted here].

ANNEX

1. The Government of the United States of America 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:
Atomic energy, Custom House Brokers; Licenses for Broadcast, Common Carrier, or Aeronautical radio stations; Comsat; Subsidies or Grants, including Government-supported loans, Guarantees and Insurance; State and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; landing of submarine cables.
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.
NOTE: If the Treaty partner undertakes acceptable commitments with respect to all or certain financial services, the Government of the United States of America will consider limiting these exceptions accordingly, so that, for example, particular obligations as to treatment would apply on no less favourable terms than in the North American Free Trade Agreement.
3. The Government of the Republic of Trinidad and Tobago 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: Civil aviation; real estate, real estate agencies; telecommunications; mining and natural resources; subsidies or grants including government-supported loans, guarantees, insurance and other assistance; custom house brokers; car rental; gaming, betting and lotteries.

Most Favoured Nation Treatment shall be accorded in the sectors and matters indicated above.

BOLIVIA AND THE USA: TREATY CONCERNING THE
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF
INVESTMENT (WITH PROTOCOL)*

Santiago, 17 April 1998 (came into force 6 June 2001)

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA (hereinafter the “Parties”);

DESIRING to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;

RECOGNIZING that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

AGREEING that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

RECOGNIZING that the development of economic and business ties can promote respect for internationally recognized worker rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

HAVING RESOLVED to conclude a Treaty concerning the Encouragement and Reciprocal Protection of Investment;

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Treaty,

- (a) “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;
- (b) “company of a Party” means a company constituted or organized under the laws of that Party;
- (c) “national” of a Party means a natural person who is a national of that Party under its applicable law;
- (d) “investment” of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:
 - i. a company;
 - ii. shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;
 - iii. contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

- iv. tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;
- v. intellectual property, including:
 - copyrights and related rights,
 - patents,
 - rights in plant varieties,
 - industrial designs,
 - rights in semiconductor layout designs,
 - trade secrets, including know-how and confidential business information,
 - trade and service marks, and
 - trade names; and
- vi. rights conferred pursuant to law, such as licenses and permits;

(The list of items in (i) through (vi) above is illustrative and not exhaustive.)

- (e) “covered investment” means an investment of a national or company of a Party in the territory of the other Party;
- (f) “state enterprise” means a company owned, or controlled through ownership interests, by a Party;
- (g) “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;
- (h) “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;
- (i) “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;
- (j) “Centre” means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and
- (k) “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law.

Article II

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.

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 the Annex to this Treaty. 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.

3.

- (a) 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 international law.
- (b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.

- 4. Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.
- 5. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

Article III

- 1. Neither Party shall expropriate or nationalize a covered investment 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

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with due process of law and the general principles of treatment provided for in Article II, paragraph 3.

- 2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken (“the date of expropriation”); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.
- 3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus

interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid-converted into the currency of payment at the market rate of exchange prevailing on the date of payment-shall be no less than:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
- (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

Article IV

1. 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.
2. Each Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer 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 V

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
 - (a) contributions to capital;
 - (b) 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;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees;
 - (d) payments made under a contract, including a loan agreement; and
 - (e) compensation pursuant to Articles III and IV, and payments arising out of an investment dispute.
2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.
3. 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.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article VI

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 governmental permission or authorization):

- (a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;
- (b) to restrict imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;
- (c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;
- (d) to restrict sales by the investment of products or services in the Party's territory in relation to a particular volume or value of production, exports or foreign exchange earnings;
- (e) to transfer technology, a production process or other proprietary knowledge to a national or company in the Party's territory, except 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; or
- (f) to carry out a particular type, level or percentage of research and development in the Party's territory.

Such requirements do not include conditions for the receipt or continued receipt of an advantage.

Article VII

1.

- (a) Subject to its laws relating to the entry and sojourn of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.
- (b) Neither Party shall, in granting entry under paragraph 1(a), require a labor certification test or other procedures of similar effect, or apply any numerical restriction.

2. Each Party shall permit covered investments to engage top managerial personnel of their choice, regardless of nationality.

Article VIII

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty or to the realization of the objectives of the Treaty.

Article IX

1. For purposes of this Treaty, 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 Treaty with respect to a covered investment.
2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:
 - (a) to the courts or administrative tribunals of the Party that is a party to the dispute; 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 paragraph 2(a) or (b), and that three months 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 the Centre is available; or
 - ii. to the Additional Facility of the Centre, if the Centre is not 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 paragraph 3(a), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Party that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its 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 paragraph 3(a)(i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3(a)(iv). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute; and
 - (b) 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.”
- 5. Any arbitration under paragraph 3(a)(ii), (iii) or (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 Article 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.
 - 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 purposes of Article 25(2)(b) of the ICSID Convention and this Article, 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 X

- 1. Any dispute between the Parties concerning the interpretation or application of the Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except to the extent these rules are (a) modified by the Parties or (b) modified by the arbitrators unless either Party objects to the proposed modification.
- 2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairman, who shall be a national of a third state. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.
- 3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the arbitral panel shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.
- 4. Expenses incurred by the Chairman and other arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

Article XI

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favorable than that accorded by this Treaty:

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

Article XII

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

- (a) the denying Party does not maintain normal economic relations with the third country; or
- (b) the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

Article XIII

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:
 - (a) Articles III, IX and X will apply with respect to expropriation; and
 - (b) Article IX will apply with respect to an investment agreement or an investment authorization.
2. With respect to the application of Article III, an investor that asserts that a tax measure involves an expropriation may submit that dispute to arbitration pursuant to Article IX, paragraph 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.
3. 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.

Article XIV

1. This Treaty shall not preclude a Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. This Treaty 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 Treaty.

Article XV

1.
 - (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.
 - (b) With respect to the treatment accorded by a State, Territory or possession of the United States of America, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.
2. A Party's obligations under this Treaty shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.

Article XVI

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2. It shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.
2. A Party may terminate this Treaty at the end of the initial ten year period or at any time thereafter by giving one year's written notice to the other Party.
3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.
4. The Annex and Protocol shall form an integral part of the Treaty. IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty [the signatures are not reproduced].

DONE in duplicate at Santiago Chile this 17th day of April, 1998, in the English and Spanish languages, each text being equally authentic.

ANNEX

1. The Government of the United States of America 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:
atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article

1108 thereof; and landing of submarine cables. 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, securities, and other non-insurance financial services; and one-way satellite transmissions of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.
3. 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, provided that the exceptions do not result in treatment under this Treaty less favorable than the treatment that the Government of the United States of America has undertaken to accord in the North American Free Trade Agreement with respect to another party to that Agreement, in the sector or with respect to the matter specified below: insurance.
4. The Government of the Republic of Bolivia 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:
the acquisition and/or possession by foreigners, directly or indirectly, through any type of title, of land or subsoil within 50 kilometers of Bolivia's borders, in so far as required by Article 25 of the Constitution; subsidies or grants, including government-supported loans, guarantees and insurance; and the obligation of foreign construction and consulting companies participating in public sector tenders to associate with one or more Bolivian companies.
Most favored nation treatment shall be accorded in the sectors and matters indicated above.
5. The Government of the Republic of Bolivia 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: air transport; transportation on interior navigable waterways; and limitation on foreign equity ownership of international passenger and freight land transportation companies to a maximum of 49 percent.
6. With respect to the leasing of minerals and pipeline rights of way on government lands:
 - (a) The Government of the Republic of Bolivia agrees to accord national treatment to covered investments, subject to limitations set forth in Article 25 of the Constitution of the Republic of Bolivia;
 - (b) The Government of the United States of America agrees to accord national treatment to covered investments, subject to the Mineral Lands Leasing Act.

PROTOCOL

1. The Parties confirm their mutual understanding that advantages given to national suppliers in government procurement programs are not precluded by Article VI.
2. The Government of the Republic of Bolivia confirms that pursuant to the Treaty, Article 3 of the Bolivian Labor Law shall not apply to top managerial personnel.
3. The Parties confirm their mutual understanding that the provisions of Article IX do not apply to government contract disputes, except where (i) such contracts contain investment authorizations, (ii) such contracts constitute investment agreements, or (iii) such disputes arise out of or relate to an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.
4. With respect to Article XV, paragraph 1(b), the Government of the United States confirms that its federal system of government contains substantial protections against burdens on commerce, including investment by a State of the United States with respect to investors of other States of the United States.
5. The Government of the Republic of Bolivia confirms that joint ventures may be established in Bolivia, including in the areas within 50 kilometers of its borders, without any limitation on the respective capital contributions or proportionate shares of the joint venture partners.

SOUTH KOREA AND JAPAN: AGREEMENT FOR THE
LIBERALISATION, PROMOTION AND PROTECTION OF
INVESTMENT*

Seoul, 22 March 2002 (came into force 1 January 2003)

THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF JAPAN,

DESIRING to further promote investment in order to strengthen the economic relationship between the two countries;

INTENDING to further create favourable conditions for greater investment by investors of one country in the territory of the other country;

RECOGNISING the growing importance of the progressive liberalisation of investment for stimulating private initiative and for promoting prosperity in both countries;

RECOGNISING that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

RECOGNISING the importance of the cooperative relationship between labour and management in promoting investment between both countries;

BEARING IN MIND their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization signed on the 15th day of April, 1994 and other multilateral instruments of cooperation;

WISHING that this Agreement will contribute to the strengthening of international cooperation with respect to the development of international rules on foreign investment; and

BELIEVING that this Agreement marks the beginning of new economic partnership between the two countries in the twenty-first century; HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Agreement,

- (1) The term “investor” means with respect to a Contracting Party:
 - (a) a natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or
 - (b) a legal person or any other entity constituted or organised under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government-owned or -controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association or organisation.
- (2) The term “investment” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
 - (a) an enterprise (being a legal person or any other entity constituted or organised under the applicable laws and regulations of a Contracting Party, whether or not for profit, and whether private or government-owned or—controlled, and includes a company, corporation, trust, partnership, sole proprietorship, branch, joint venture, association or organisation);
 - (b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom; (c) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
 - (d) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (e) claims to money and to any performance under contract having a financial value;
 - (f) intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or appellations of origin, and undisclosed information;
 - (g) concession rights including those for the exploration and exploitation of natural resources; and
 - (h) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges. Investments include the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.
- (3) The term “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.
- (4) The term “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington, on March 18, 1965.
- (5) The term “Centre” means the International Centre for Settlement of Investment Disputes established by the ICSID Convention.
- (6) The term “territory” means with respect to a Contracting Party the territory under its sovereignty.

- (7) The term “Contracting Party” means the Republic of Korea or Japan, as the context requires.

Article 2

1. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and their investments (hereinafter referred to as “national treatment”) with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments (hereinafter referred to as “investment and business activities”).
2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of any third country and to their investments (hereinafter referred to as “most-favoured-nation treatment”) with respect to investment and business activities.

Article 3

Each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors’ rights.

Article 4

1. Notwithstanding the provisions of Article 2, paragraph 3 of Article 8, or Article 9, each Contracting Party may adopt or maintain any measure not conforming with the obligations imposed by Article 2, paragraph 3 of Article 8, or Article 9 (hereinafter referred to as an “exceptional measure”) in the sectors or with respect to the matters specified in Annex I to this Agreement.
2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex I. Such notification shall include information on the following elements of each measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.
3. In cases where a Contracting Party adopts any new exceptional measure in the sectors or with respect to the matters specified in Annex I after the entry into force of this Agreement, such Contracting Party shall, prior to the entry into force of the

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official

documents should be made to the two Governments concerned. UNCTAD maintains a database of bilateral investment treaties, which can be reached through its website (<http://www.unctad.org/>).

measure or, in exceptional circumstances, as soon thereafter as possible:

- (a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article; and
- (b) hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction.

Article 5

1. Notwithstanding the provisions of Article 2, paragraph 3 of Article 8, or Article 9, each Contracting Party may maintain any exceptional measure, which exists on the date on which this Agreement comes into force, in the sectors or with respect to the matters specified in Annex II to this Agreement.
2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex II. Such notification shall include information on the following elements of each measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.
3. Each Contracting Party shall endeavour to progressively reduce or eliminate the measures notified pursuant to paragraph 2 of this Article.
4. Neither Contracting Party shall, after the entry into force of this Agreement, adopt any new exceptional measure in the sectors or with respect to the matters specified in Annex ~.
5. The provisions of paragraph 4 of this Article shall not be construed so as to prevent a Contracting Party from amending or modifying any existing exceptional measure, provided that such amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with the provisions of Article 2, paragraph 3 of Article 8, or Article 9.
6. In cases where a Contracting Party makes such amendment or modification, the Contracting Party shall, prior to the entry into force of the measure or, in exceptional circumstances, as soon thereafter as possible:
 - (a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article; and
 - (b) provide, upon request by that other Contracting Party, particulars of the measure to that other Contracting Party.
7. Notwithstanding the provisions of paragraph 4 of this Article, each Contracting Party may, in exceptional financial, economic or industrial circumstances, adopt any exceptional measure in the sectors or with respect to the matters specified in Annex ~, provided that such Contracting Party shall, prior to the entry into force of the measure:

- (a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article;
- (b) provide, upon request by that other Contracting Party, particulars of the measure to that other Contracting Party;
- (c) allow that other Contracting Party reasonable time to make comments in writing;
- (d) hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction; and
- (e) take appropriate action based upon the written comments made pursuant to sub-paragraph (c) above or the results of the consultations held pursuant to sub-paragraph (d) above.

Article 6

1. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under international agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, and other international agreements concluded under the auspices of the World Intellectual Property Organization.
2. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments treatment accorded to investors of any third country and their investments by virtue of international agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

Article 7

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect investment and business activities.
2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1 of this Article.
3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

Article 8

1. Subject to its laws relating to entry, stay and authorisation to work, each Contracting Party shall grant temporary entry, stay and authorisation to work to investors of the other Contracting Party for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Contracting Party of an

investment to which they, or an enterprise of that other Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.

2. Neither Contracting Party, in granting entry under paragraph 1 of this Article, shall apply a numerical restriction in the form of quotas or the requirement of an economic needs test, unless (a) it notifies the other Contracting Party of its intent to apply the restriction no later than sixty days before the intended date of the implementation of the restriction, and (b) it, upon request by the other Contracting Party, consults with that other Contracting Party before the implementation of the restriction.
3. Neither Contracting Party shall require that an enterprise of that Contracting Party that is an investment of an investor of the other Contracting Party appoint, as executives, managers or members of boards of directors, individuals of any particular nationality.

Article 9

1. Neither Contracting Party shall impose or enforce, as a condition for investment and business activities in its territory of an investor of the other Contracting Party, any of the following requirements:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;
 - (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
 - (e) to restrict sales of goods or services in its territory that an investment of that investor produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;
 - (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its territory, except when the requirement (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or (ii) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization;
 - (g) to locate the headquarters of that investor for a specific region or the world market in its territory;
 - (h) to achieve a given level or value of research and development in its territory;
 - (i) to hire a given level of its nationals; or
 - (j) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the territory of the former Contracting Party.

2. The provisions of paragraph 1 of this Article do not preclude either Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment and business activities in its territory of an investor of the other Contracting Party, on compliance with any of the requirements set forth in paragraph 1(f) through (j) of this Article.
3. Nothing in this Article shall be construed so as to derogate from the rights and obligations of the Contracting Parties under the Agreement on Trade-Related Investment Measures, Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization.

Article 10

1. Each Contracting Party shall accord to investments in its territory of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.
2. Neither Contracting Party shall expropriate or nationalise investments in its territory of investors of the other Contracting Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to as “expropriation”) except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) upon payment of prompt, adequate and effective compensation; and
 - (d) in accordance with due process of law.
3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies as defined in the Articles of Agreement of the International Monetary Fund, at the market exchange rate prevailing on the date of expropriation.
4. Without prejudice to the provisions of Article 15, the investors affected shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation for a prompt review of the investors’ case and the amount of compensation in accordance with the principles set out in this Article.

Article 11

An investor of a Contracting Party, which has suffered loss or damage relating to its investment and business activities in the territory of the other Contracting Party due to hostilities or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the territory of that other Contracting Party, shall be accorded by that other Contracting Party, as regards restitution, indemnification, compensation or

any other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third country, whichever is more favourable to the investor.

Article 12

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfer shall include, in particular, though not exclusively:
 - (a) the initial capital and additional amounts to maintain or increase an investment;
 - (b) profits, interest, dividends, capital gains, royalties or fees;
 - (c) payments made under a contract including a loan agreement;
 - (d) proceeds of the total or partial sale or liquidation of investments;
 - (e) payments made in accordance with Articles 10 and 11;
 - (f) payments arising out of the settlement of a dispute under Article 15; and
 - (g) earnings and remuneration of personnel engaged from the other Contracting Party in connection with an investment.
2. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies at the market rate of exchange existing on the date of the transfer.
3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities;
 - (c) criminal or penal offenses; or
 - (d) ensuring compliance with orders or judgements in adjudicatory proceedings.

Article 13

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or contract of insurance given in respect of an investment of such investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provisions of paragraphs 2 to 4 of Article 10, and Article 12 shall apply *mutatis mutandis*.

Article 14

1. The Contracting Parties shall consult promptly, upon request by either Contracting Party, to resolve any dispute in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement or to the realisation of the objectives of this Agreement.
2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily resolved by such consultation, shall be submitted, upon request in writing by either Contracting Party, to an arbitral tribunal for a binding decision rendered on the basis of the applicable rules of international law. Except where otherwise provided in this Article, or in the absence of an agreement by the Contracting Parties to the contrary, the UNCITRAL Arbitration Rules shall apply *mutatis mutandis*, except to the extent these rules are (a) modified by the Contracting Parties or (b) modified by the arbitrators appointed pursuant to paragraph 3 of this Article unless either Contracting Party objects to the proposed modification.
3. Within two months from the date of receipt of such request as provided in paragraph 2 above, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairperson, who shall be a national of a third country. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply *mutatis mutandis* to other matters relating to the appointment of the arbitral tribunal provided that the appointing authority referenced in those rules shall be the Secretary-General of the Centre.
4. Unless otherwise agreed by the Contracting Parties, all submissions of documents shall be made and all hearings shall be completed within a period of six months from the date of selection of the third arbitrator, and the arbitral tribunal shall render its decisions within two months from the date of the final submissions of documents or the date of the closing of the hearings, whichever is later. Such decisions shall be final and binding.
5. Expenses incurred by the chairperson and other arbitrators, and other costs of the proceedings, shall be borne equally by the Contracting Parties. However, the arbitral tribunal may, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting Parties.

Article 15

1. For the purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to an investment of an investor of that other Contracting Party.
2. In the event of an investment dispute, the investment dispute shall, if possible, be settled by consultation or negotiation. If it is not so settled, the investor may submit the investment dispute for resolution under one of the following alternatives:
 - (a) in accordance with any applicable, previously agreed dispute-settlement procedures; or
 - (b) in accordance with the terms of paragraph 3 of this Article.

3. If the investment dispute cannot be settled within three months from the date on which the investor requested the consultation or negotiation in writing and if the investor concerned has not submitted the investment dispute for resolution under paragraph 2(a) of this Article or judicial or administrative settlement, the investor concerned may submit the investment dispute for settlement by binding arbitration:
 - (a) to the Centre, if both Contracting Parties are parties to the ICSID Convention;
 - (b) in accordance with the UNCITRAL Arbitration Rules; or
 - (c) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules. Unless otherwise agreed by both parties to the investment dispute, once the investor concerned submits the investment dispute for resolution under paragraphs 2 and 3 of this Article, the investor concerned may not submit the investment dispute for settlement by any of the other alternatives set out in paragraphs 2 and 3 of this Article. Each Contracting Party hereby gives its consent to the submission of an investment dispute to international arbitration as set out in sub-paragraphs (a) and (b) of this paragraph.
4. An investor submitting an investment dispute pursuant to paragraph 3 of this Article shall give to the Contracting Party in dispute a written notice of intent to do so at least ninety days before the claim is submitted. The notice of intent shall specify:
 - (a) the name and address of the investors concerned;
 - (b) the specific measures at issue of such Contracting Party in dispute and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached;
 - (c) the relief sought including, as necessary, the approximate amount of damages claimed; and
 - (d) the dispute-settlement procedures set forth in paragraph 3(a) to (c) of this Article which the investor concerned will seek.
5. Notwithstanding the provisions of paragraph 3 of this Article, an investor may not make a claim pursuant to paragraph 3 of this Article if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge that the investor had incurred loss or damage.
6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award in accordance with its relevant laws and regulations.
7. The provisions of the second sentence of paragraph 2, and paragraph 3 of this Article shall not apply to a measure of a Contracting Party that falls within the scope of Article 17 or 18. Upon request by the other Contracting Party, the competent authorities of the Contracting Parties shall consult as to the application of the provisions of this paragraph.
8. Nothing in this Article shall be construed so as to prevent an investor from seeking judicial or administrative settlement in the territory of the Contracting Party in dispute.

Article 16

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 11, each Contracting Party may:
 - (a) take any measure which it considers necessary for the protection of its essential security interests;
 - i. taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or
 - ii. relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;
 - (b) take any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;
 - (c) take any measure necessary to protect human, animal or plant life or health; or
 - (d) take any measure necessary for the maintenance of public order. The public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 11, that Contracting Party shall not use such measure as a means of avoiding its obligations.
3. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 11, that Contracting Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Contracting Party of the following elements of the measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.
4. Notwithstanding the provisions of paragraph 1 of Article 2 of this Agreement, each Contracting Party may prescribe formalities in connection with investment and business activities of investors of the other Contracting Party in its territory, provided that such formalities do not impair the substance of the rights under this Agreement.

Article 17

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under paragraph 1 of Article 2 relating to cross-border capital transactions and Article 12 of this Agreement:
 - (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
 - (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 of this Article:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Contracting Party taking the measures is a party to the said Articles of Agreement;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;
- (c) shall be temporary and shall be eliminated as soon as conditions permit; and
- (d) shall be promptly notified to the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 18

- 1. Notwithstanding any other provisions of this Agreement, a Contracting Party may adopt or maintain prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, to ensure the integrity and stability of its financial system.
- 2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

Article 19

- 1. Nothing in this Agreement shall apply to taxation measures except as expressly provided in paragraphs 2, 3 and 4 of this Article.
- 2. Articles 1, 3, 7, 10, 22 and 23 shall apply to taxation measures.
- 3. Articles 14 and 15 shall apply to disputes under paragraph 2 of this Article.
- 4. Article 20 shall apply to taxation measures regarding the matters set out in paragraph 2 of this Article.

Article 20

- 1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as the “Committee”) with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be:
 - (a) to discuss and review the implementation and operation of this Agreement;
 - (b) to review the measures maintained, amended, modified or adopted pursuant to Article 5 of this Agreement for the purpose of contributing to the reduction or elimination of such measures;
 - (c) to discuss the measures adopted or maintained pursuant to Article 4 of this Agreement for the purpose of encouraging favourable conditions for investors of both Contracting Parties; and

(d) to discuss other investment-related matters concerning this Agreement.

2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning, or the attainment of the objectives, of this Agreement.
3. The Committee shall be composed of representatives of the Contracting Parties. The Committee shall determine its own rules of procedure to carry out its functions.
4. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. The Committee, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors.
5. Unless otherwise decided by the Contracting Parties, the Committee shall meet once a year, and otherwise at the request of either Contracting Party.

Article 21

Both Contracting Parties recognise that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion in its territory of investments by investors of the other Contracting Party.

Article 22

1. In fulfilling the obligations under this Agreement, each Contracting Party shall take such reasonable measures as may be available to it to ensure the observance of this Agreement by local governments in its territory.
2. Each Contracting Party reserves the right to deny to an investor of the other Contracting Party that is a legal person or any other entity referred to in sub-paragraph (b) of paragraph (1) of Article 1 and its investments the benefits of this Agreement, if investors of any third country own or control that investor of that other Contracting Party, and
 - (a) the denying Contracting Party does not maintain normal economic relations with the third country; or
 - (b) that investor of that other Contracting Party has no substantial business operations in the territory of that other Contracting Party under whose laws it is constituted or organised.
3. The provisions of paragraph 2 of Article 2 of this Agreement shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party and their investments any preferential treatment resulting from its membership of a free trade area, a customs union, an international agreement for economic integration or a similar international agreement.

Article 23

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2 of this Article. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the territory of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.
2. A Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.
3. In respect of investments acquired prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.
4. This Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.
5. The Annexes to this Agreement shall form an integral part of this Agreement.

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

DONE in duplicate at Seoul, on this twenty-second day of March, 2002, in the Korean, Japanese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

[The signatures and two annexes, on Exceptional Sectors or Matters, are not reproduced here.]

THE GAMBIA AND THE NETHERLANDS: AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS*

Banjul, 25 September 2002 (not yet in force)

THE REPUBLIC OF THE GAMBIA AND THE KINGDOM OF THE NETHERLANDS, hereinafter referred to as the Contracting Parties,

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

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

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Agreement:

- (a) the term “investments” means every kind of asset and more particularly, though not exclusively:
 - i. movable and immovable property as well as any other rights in rem in respect of every kind of asset;
 - ii. rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
 - iii. claims to money, to other assets or to any performance having an economic value;
 - iv. rights in the field of intellectual property, technical processes, goodwill and know-how;
 - v. rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.
- (b) the term “nationals” shall comprise with regard to either Contracting Party:
 - i. natural persons having the nationality of that Contracting Party;
 - ii. legal persons constituted under the law of that Contracting Party;
 - iii. legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii).
- (c) The term “territory” means: the territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign rights.

Article 2

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

Article 3

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investments full physical security and protection.
2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.

3. If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.
4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.
5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4

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

- (a) under an agreement for the avoidance of double taxation; or
- (b) by virtue of its participation in a customs union, economic union or similar institution;
or
- (c) on the basis of reciprocity with a third State.

Article 5

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- (a) profits, interests, dividends and other current income;
- (b) funds necessary
 - i. for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - ii. to replace capital assets in order to safeguard the continuity of an investment;
- (c) additional funds necessary for the development of an investment;
- (d) funds in repayment of loans;
- (e) royalties or fees;
- (f) earnings of natural persons;
- (g) the proceeds of sale or liquidation of the investment;
- (h) payments arising under the Articles 6 and 7.

Article 6

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- (a) the measures are taken in the public interest and under due process of law;
- (b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;
- (c) the measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

* We have endeavoured to reproduce a complete and correct text of the above document, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official documents should be made to the two Governments concerned. UNCTAD maintains a database of bilateral investment treaties, which can be reached through its website (<http://www.unctad.org/>).

Article 7

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

Article 8

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

Article 9

Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of

other States, opened for signature at Washington on 18 March 1965. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting Party.

Article 10

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

Article 11

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

Article 12

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.
2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.
3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.
4. If, in the cases provided for in the paragraphs (2) and (3) of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.
5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.
6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 13

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

Article 14

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.
2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
3. In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.
4. Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement [signatures are omitted].

CHAPTER EIGHTY-THREE

General Agreement on Tariffs and Trade and the World Trade Organization

INTRODUCTION

At the end of the Second World War three economic pillars were erected for the reconstruction of Europe and the world economy and, hopefully, to remove what had been a key cause of the War in the first place. These pillars were: the International Monetary Fund (IMF—see above), to deal with macro-economic issues, and to monitor and arbitrate monetary policy and exchange; the International Bank for Reconstruction and Development (IBRD—the World Bank), to focus on micro-economic matters and to provide financial support for development projects; and the General Agreement on Tariffs and Trade (GATT), to help reduce tariffs and related obstacles to international trade. There was originally meant to be an International Trade Organization, but agreement for some countries (notably the USA) proved unachievable, so the GATT entered into force, officially on a provisional basis, in 1948. Thus, the trade element was the only one without a well defined institution. This was corrected with the conclusion of the Uruguay Round of negotiations in 1994 (begun in 1986) and the establishment of the World Trade Organization (WTO). It is for this reason that GATT 1994 and the WTO system is legally distinguished from GATT 1947 (and its amendments prior to the successor Agreement).

From the original membership of 25 countries and dominions in the original GATT 1947, the WTO (which encompasses GATT 1994) has grown to include the great majority of the countries in the world. The objectives remain the same as in 1947. That is, to raise living standards, to promote full employment, an increase in real income and the expansion of the production and exchange of goods and services. The two critical tools for achieving these goals have been identified as the reduction and eventual elimination of tariffs and other barriers to trade and the elimination of discriminatory treatment in international economic relations. To this end, two principles remain prominent throughout the Agreement. These are the mostfavoured-nation (MFN) treatment and the nationality principle. Perhaps much more fundamental are the tariff negotiation rounds. Hitherto, there have been five rounds. The ongoing round—the so-called Development or Doha Round—will replace the current regime, that of the Uruguay Round that was completed in 1994. These rounds are devoted to negotiations of tariff regimes and the exchange of concessions on specific products between and among countries. Trading

partners are then required to abide by the concessions or agreements reached on tariffs and other charges until the next round. They are, of course, free to reduce the tariffs, but must not increase them beyond that originally agreed. At the same time, contracting parties are not to alter their method of calculating dutiable value or exchange rates in ways that would adversely affect the agreed concessions.

The MFN principle in the GATT/WTO has its origins in the treaties of friendship, navigation and commerce that emerged in the 18th century and thereafter. This principle enunciates that the treatment that is accorded to the product of a party must not be less than that accorded to a similar product of a party that has the best terms with the importing or exporting country. In other words, the standard is the highest available. This relates to customs duties and all charges, the transfer of payments and the methods of such payments, and all rules and formalities that are applied to international trade. The essence of the principle is non-discrimination between trading parties. The same essence is seen in the nationality principle, except that here the standard is not the highest accorded other trading parties, but the highest accorded the trading activities of national traders and businesses. The gist of the nationality principle is stated in article 111(4) thus: 'The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use'. The provision is particularly keen on restraining the use of regulations and policies on the mixture or processing of products in ways that afford protection to domestic production.

There are broad exceptions to the two cardinal principles of GATT/WTO trade. The nationality principle, for example, does not apply to rules on government procurement of products meant for governmental consumption, and not for commercial re-sale, or as intermediary to commercial production. The support of national industries by subsidies is also broadly exempted, although that must fall within the purview of the subsidiary Agreement on Subsidies and Countervailing Measures (see under GATT 1994 below). Customs unions and preferential trade areas are also allowed to derogate from the MFN and nationality principles. Importantly, Part IV of the Agreement makes elaborate provisions on developing countries and which also allows for derogation from the fundamental principles of the GATT/WTO regime. Developed countries are encouraged not to expect reciprocal concessions, etc., from developing countries and to provide various forms of assistance to those countries. It is in this vein that some developed countries have the generalized system of preferences for the goods of developing countries. The same justifies the US Trade and Development Act of 2000 (see above), which is mainly known after one of its parts, the Africa Growth and Opportunity Act. The criticism of Part IV of the GATT/WTO regime and, indeed, of most of the provisions on developing countries is that, unlike the rest of the Agreement, it is written in exhortatory and permissive language, rather than in mandatory and obligatory terms.

Apart from the foregoing exceptions to the core GATT/WTO principles, there are two general exceptions available to all parties. These are retained in articles XIX and XX. Article XIX is about emergency restrictions on specific imports. This is elaborated in the subsidiary Agreement on Safeguards. Article XX is much more prominent and controversial. Countries can derogate from the terms of the Agreement if they have to

take measures necessary to protect public morals, health or human, animal or plant life. Furthermore, measures relating to the import of gold or silver, the enforcement of intellectual property rights, the products of prison labour and measures 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. Steps taken in pursuance of commitments under intergovernmental commodity agreements that are in compliance with the relevant provisions of the Agreement are also permissible under the GATT/WTO. Article XX has been at the centre of many trade controversies under the WTO regime. Cases such the tuna, marine mammals and shrimps-turtle disputes (all involving US environmental or animal protection legislation in the 1990s) have been fought on the basis of article XX. In sum, the decisions on the cases point to the need to satisfy the three standards stated in the chapeau at the outset of the article, that the measures purported to be taken under the article must not be arbitrary, unjustified discrimination or disguised restrictions on trade. It appears that in most cases the dispute resolution body is willing to uphold freer trade over environmental protection. There is hope that, in the light of the shrimp-turtle case, however, that movement towards a more balance approach is underway.

GENERAL AGREEMENT ON TARIFFS AND TRADE 1947 (AS
AMENDED)*

Geneva, 30 October 1947 (provisionally came into force on 1 January
1948)

THE GOVERNMENTS OF THE COMMONWEALTH OF AUSTRALIA, THE KINGDOM OF BELGIUM, THE UNITED STATES OF BRAZIL, BURMA, CANADA, CEYLON, THE REPUBLIC OF CHILE, THE REPUBLIC OF CHINA, THE REPUBLIC OF CUBA, THE CZECHOSLOVAK REPUBLIC, THE FRENCH REPUBLIC, INDIA, LEBANON, THE GRAND-DUCHY OF LUXEMBURG, THE KINGDOM OF THE NETHERLANDS, NEW ZEALAND, THE KINGDOM OF NORWAY, PAKISTAN, SOUTHERN RHODESIA, SYRIA, THE UNION OF SOUTH AFRICA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNITED STATES OF AMERICA:

RECOGNIZING that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

BEING DESIROUS of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce,

Have through their Representatives AGREED AS FOLLOWS:

PART I

ARTICLE I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.
2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:
 - (a) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;
 - (b) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;
 - (c) Preferences in force exclusively between the United States of America and the Republic of Cuba;
 - (d) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.
3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5, of Article XXV which shall be applied in this respect in the light of paragraph 1 of Article XXIX.
4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:
 - (a) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

- (b) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in subparagraph (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

ARTICLE II

Schedules of Concessions

1.

- (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.
- (b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.
- (c) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

- (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

- (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;
- (c) fees or other charges commensurate with the cost of services rendered.

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3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.
4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.
5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.
6.
 - (a) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; PROVIDED that the CONTRACTING PARTIES (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(b) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

PART II

ARTICLE III

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.
2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.
3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.
4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.
5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from

- domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.
6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; PROVIDED that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.
 7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.
 8.
 - (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.
 - (b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.
 9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.
 10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

ARTICLE IV

Special Provisions relating to Cinematograph Films

If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

- (a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;

- (b) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;
- (c) Notwithstanding the provisions of subparagraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of subparagraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; PROVIDED that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;
- (d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.

ARTICLE V

Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".
2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.
3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place

of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

ARTICLE VI

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another
 - (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
 - (b) in the absence of such domestic price, is less than either
 - i. the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - ii. the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.
3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.
4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by

reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.
6.
 - (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.
 - (b) The CONTRACTING PARTIES may waive the requirement of subparagraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of subparagraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.
 - (c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in subparagraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES; PROVIDED that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.
7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:
 - (a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and
 - (b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

ARTICLE VII

Valuation for Customs Purposes

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.
2.
 - (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.
 - (b) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.
 - (c) When the actual value is not ascertainable in accordance with subparagraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.
3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.
4.
 - (a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

- (b) Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.
 - (c) The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of paragraph 2 of this Article as an alternative to the use of par values. Until such rules are adopted by the Contracting Parties, any contracting party may employ, in respect of any such foreign currency, rules of conversion for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.
 - (d) Nothing in this paragraph shall be construed to require any contracting party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.
5. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

ARTICLE VIII

Fees and Formalities connected with Importation and Exportation

- 1.
- (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.
 - (b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in subparagraph (a).
 - (c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.
2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.
3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and

obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:
 - (a) consular transactions, such as consular invoices and certificates;
 - (b) quantitative restrictions;
 - (c) licensing;
 - (d) exchange control;
 - (e) statistical services;
 - (f) documents, documentation and certification;
 - (g) analysis and inspection; and
 - (h) quarantine, sanitation and fumigation.

ARTICLE IX

Marks of Origin

1. Each contracting party shall accord to the products of the territories of other contracting parties treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.
2. The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.
3. Whenever it is administratively practicable to do so, contracting parties should permit required marks of origin to be affixed at the time of importation.
4. The laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. As a general rule, no special duty or penalty should be imposed by any contracting party for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.
6. The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

ARTICLE X

Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose 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.
2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.
3.
 - (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.
 - (b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; PROVIDED that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.
 - (c) The provisions of subparagraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may

determine whether such procedures conform to the requirements of this subparagraph.

ARTICLE XI

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.
2. The provisions of paragraph 1 of this Article shall not extend to the following:
 - (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
 - (b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
 - (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:
 - i. to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
 - ii. to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or
 - iii. to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

ARTICLE XII

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.
 2.
 - (a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:
 - i. to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves; or
 - ii. in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.
- Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources,
- (b) Contracting parties applying restrictions under sub-paragraph (a) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that subparagraph.
 3.
 - (a) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources. They recognize that, in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.
 - (b) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.
 - (c) Contracting parties applying restrictions under this Article undertake:
 - i. to avoid unnecessary damage to the commercial or economic interests of any other contracting party;
 - ii. not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and

iii. not to apply restrictions which would prevent the importations of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(d) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2(a) of this Article. Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4.

(a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(b) On a date to be determined by them, the CONTRACTING PARTIES shall review all restrictions still applied under this Article on that date. Beginning one year after that date, contracting parties applying import restrictions under this Article shall enter into consultations of the type provided for in subparagraph (a) of this paragraph with the CONTRACTING PARTIES annually.

(c) i. If, in the course of consultations with a contracting party under subparagraph (a) or (b) above, the CONTRACTING PARTIES find that the restrictions are not consistent with provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

ii. If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within the specified period of time. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

- (d) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Article to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES, no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.
- (e) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to any special external factors adversely affecting the export trade of the contracting party applying the restrictions.
- (f) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

5. If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the CONTRACTING PARTIES shall initiate discussions to consider whether other measures might be taken, either by those contracting parties the balance of payments of which are under pressure or by those the balance of payments of which are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the CONTRACTING PARTIES, contracting parties shall participate in such discus

ARTICLE XIII

Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.
2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:

- (a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3(b) of this Article;
- (b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
- (c) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with subparagraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
- (d) In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3.

- (a) In cases in which import licences are issued in connection with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; PROVIDED that there shall be no obligation to supply information as to the names of importing or supplying enterprises.
- (b) In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry; PROVIDED that they may be counted so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods; and PROVIDED FURTHER that if any contracting party customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this subparagraph.
- (c) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having

an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2(d) of this Article or under paragraph 2(c) of Article XI, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the contracting party applying the restriction; PROVIDED that such contracting party shall, upon the request of any other contracting party having a substantial interest in supplying that product or upon the request of the CONTRACTING PARTIES, consult promptly with the other contracting party or the CONTRACTING PARTIES regarding the need for an adjustment of the proportion determined or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilization.
5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party, and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

ARTICLE XIV

Exceptions to the Rule of Non-discrimination

1. A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.
2. A contracting party which is applying import restrictions under Article XII or under Section B of Article XVIII may, with the consent of the CONTRACTING PARTIES, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.
3. The provisions of Article XIII shall not preclude a group of territories having a common quota in the International Monetary Fund from applying against imports from other countries, but not among themselves, restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.
4. A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a

manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.

5. A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:
 - (a) having equivalent effect to exchange restrictions authorized under Section 3(b) of Article VII of the Articles of Agreement of the International Monetary Fund, or
 - (b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

ARTICLE XV

Exchange Arrangements

1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.
2. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES. The CONTRACTING PARTIES in reaching their final decision in cases involving the criteria set forth in paragraph 2(a) of Article XII or in paragraph 9 of Article XVIII, shall accept the determination of the Fund as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.
3. The CONTRACTING PARTIES shall seek agreement with the Fund regarding procedures for consultation under paragraph 2 of this Article.
4. Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.
5. If the CONTRACTING PARTIES consider, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a contracting party in a manner inconsistent with the exceptions provided for in this Agreement for quantitative restrictions, they shall report thereon to the Fund.
6. Any contracting party which is not a member of the Fund shall, within a time to be determined by the CONTRACTING PARTIES after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange

agreement with the CONTRACTING PARTIES. A contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the CONTRACTING PARTIES. Any special exchange agreement entered into by a contracting party under this paragraph shall thereupon become part of its obligations under this Agreement.

7.

- (a) A special exchange agreement between a contracting party and the CONTRACTING PARTIES under paragraph 6 of this Article shall provide to the satisfaction of the CONTRACTING PARTIES that the objectives of this Agreement will not be frustrated as a result of action in exchange matters by the contracting party in question.
- (b) The terms of any such agreement shall not impose obligations on the contracting party in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

8. A contracting party which is not a member of the Fund shall furnish such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the CONTRACTING PARTIES may require in order to carry out their functions under this Agreement.

9. Nothing in this Agreement shall preclude:

- (a) the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the CONTRACTING PARTIES, or
- (b) the use by a contracting party of restrictions or controls in imports or exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions.

ARTICLE XVI

Subsidies

Section A: Subsidies in General

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request,

discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

Section B:

Additional Provisions on Export Subsidies

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.
3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.
4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.
5. The CONTRACTING PARTIES shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

ARTICLE XVII

State Trading Enterprises

1.
 - (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

- (b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.
 - (c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.
2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.
3. The contracting parties recognize that enterprises of the kind described in paragraph 1(a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.
- 4.
- (a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1(a) of this Article.
 - (b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.
 - (c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1(a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.
 - (d) The provisions of this paragraph shall not require any contracting party to disclose 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.

ARTICLE XVIII

Governmental Assistance to Economic Development

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living and are in the early stages of development.
2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry and (b) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.
3. The contracting parties recognize finally that, with those additional facilities which are provided for in Sections A and B of this Article, the provisions of this Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. They agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries with a view to raising the general standard of living of its people. Special procedures are laid down in Sections C and D of this Article to deal with those cases.
4.
 - (a) Consequently, a contracting party, the economy of which can only support low standards of living and is in the early stages of development, shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article,
 - (b) A contracting party, the economy of which is in the process of development, but which does not come within the scope of subparagraph (a) above, may submit applications to the CONTRACTING PARTIES under Section D of this Article.
5. The contracting parties recognize that the export earnings of contracting parties, the economies of which are of the type described in paragraph 4(a) and (b) above and which depend on exports of a small number of primary commodities, may be seriously reduced by a decline in the sale of such commodities. Accordingly, when the exports of primary commodities by such a contracting party are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII of this Agreement.
6. The CONTRACTING PARTIES shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

Section A

7.

- (a) If a contracting party coming within the scope of paragraph 4(a) of this Article considers it desirable, in order to promote the establishment of a particular industry with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties concerned, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.
- (b) If agreement is not reached within sixty days after the notification provided for in subparagraph (a) above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the contracting party which proposes to modify or withdraw the concession has made every effort to reach an agreement and that the compensatory adjustment offered by it is adequate, that contracting party shall be free to modify or withdraw the concession if, at the same time, it gives effect to the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw the concession is adequate, but find that it has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party referred to in subparagraph (a) above shall be free to modify or withdraw substantially equivalent concessions initially negotiated with the contracting party which has taken the action.

Section B

- 8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4(a) of this Article tend, when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade.
- 9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4(a) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; PROVIDED that the import restrictions instituted, maintained or intensified shall not exceed those necessary:
 - (a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or

- (b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of the contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

10. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; PROVIDED that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and PROVIDED FURTHER that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.
11. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; PROVIDED that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.
12.
 - (a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section, shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.
 - (b) On a date to be determined by them the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in subparagraph (a) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; PROVIDED that no consultation under this subparagraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.
 - (c)

- i. If, in the course of consultations with a contracting party under subparagraph (a) or (b) of this paragraph, the CONTRACTING PARTIES find that the restrictions are not consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified,
 - ii. If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.
- (d) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.
- (e) If a contracting party against which action has been taken in accordance with the last sentence of subparagraph (c)(ii) or (d) of this paragraph, finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it shall be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the Contracting Parties of its intention to withdraw from this Agreement and such withdrawal shall take effect on the sixtieth day following the day on which the notice is received by him.
- (f) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 2 of this Article. Determinations under

this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

Section C

13. If a contracting party coming within the scope of paragraph 4(a) of this Article finds that governmental assistance is required to promote the establishment of a particular industry with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.
14. The contracting party concerned shall notify the CONTRACTING PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with provisions of paragraph 18; PROVIDED that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTING PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.
15. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them, that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.
16. If it is requested by the CONTRACTING PARTIES to do so, the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 13 of this Article, and concur in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.
17. If, within ninety days after the date of the notification of the proposed measure under paragraph 14 of this Article, the CONTRACTING PARTIES have not concurred in such measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.
18. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party concerned shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party

determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:

- (a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
- (b) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.

The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.

- 19. If a proposed measure of the type described in paragraph 13 of this Article concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by the contracting party concerned for balance of payments purposes under the relevant provisions of this Agreement, that contracting party may resort to the provisions and procedures of this Section; PROVIDED that it shall not apply the proposed measure without the concurrence of the CONTRACTING PARTIES.
- 20. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. The provisos to paragraph 10 of this Article shall also be applicable to any restriction under this Section.
- 21. At any time while a measure is being applied under paragraph 17 of this Article any contracting party substantially affected by it may suspend the application to the trade of the contracting party having recourse to this Section of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove; PROVIDED that sixty days' notice of such suspension is given to the CONTRACTING PARTIES not later than six months after the measure has been introduced or changed substantially to the detriment of the contracting party affected. Any such contracting party shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.

Section D

- 22. A contracting party coming within the scope of subparagraph 4(b) of this Article desiring, in the interest of the development of its economy, to introduce a measure of the type described in paragraph 13 of this Article in respect of the establishment of a particular industry may apply to the CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with such

contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 16. If the CONTRACTING PARTIES concur in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 18 shall apply.

23. Any measure applied under this Section shall comply with the provisions of paragraph 20 of this Article.

ARTICLE XIX

Emergency Action on Imports of Particular Products

1.
 - (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.
 - (b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in subparagraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.
2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.
- 3.

- (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1(b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.
- (b) Notwithstanding the provisions of subparagraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

ARTICLE XX

General Exceptions

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 the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; PROVIDED that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; PROVIDED that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

ARTICLE XXI

Security Exceptions

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
 - i. relating to fissionable materials or the materials from which they are derived;
 - ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - iii. taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE XXII

Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.
2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

ARTICLE XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of
 - (a) the failure of another contracting party to carry out its obligations under this Agreement, or
 - (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
 - (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.
2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the Contracting Parties of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

PART III

ARTICLE XXIV

Territorial Application—Frontier Traffic—Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; PROVIDED that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.
2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.
3. The provisions of this Agreement shall not be construed to prevent:
 - (a) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;
 - (b) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.
4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.
5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; PROVIDED that:
 - (a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
 - (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(c) any interim agreement referred to in subparagraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of subparagraph 5(a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7.

(a) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(b) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of subparagraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 5(c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

- i. duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
- ii. subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV

and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected. This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8(a)(i) and paragraph 8(b).
10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.
11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.
12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

ARTICLE XXV

Joint Action by the Contracting Parties

1. Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.
2. The Secretary-General of the United Nations is requested to convene the first meeting of the CONTRACTING PARTIES, which shall take place not later than March 1, 1948.
3. Each contracting party shall be entitled to have one vote at all meetings of the CONTRACTING PARTIES.
4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast.
5. In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; PROVIDED that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

- i. define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and
- ii. prescribe such criteria as may be necessary for the application of this paragraph.

ARTICLE XXVI

Acceptance, Entry into Force and Registration

1. The date of this Agreement shall be 30 October 1947.
2. This Agreement shall be open for acceptance by any contracting party which, on 1 March 1955, was a contracting party or was negotiating with a view to accession to this Agreement.
3. This Agreement, done in a single English original and a single French original, both texts authentic, shall be deposited with the Secretary-General of the United Nations, who shall furnish certified copies thereof to all interested governments.
4. Each government accepting this Agreement shall deposit an instrument of acceptance with the Executive Secretary to the Contracting Parties, who will inform all interested governments of the date of deposit of each instrument of acceptance and of the day on which this Agreement enters into force under paragraph 6 of this Article.
5.
 - (a) Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary to the CONTRACTING PARTIES at the time of its own acceptance.
 - (b) Any government, which has so notified the Executive Secretary⁵ under the exceptions in subparagraph (a) of this paragraph, may at any time give notice to the Executive Secretary that its acceptance shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Executive Secretary.
 - (c) If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.
6. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with Executive Secretary to the Contracting Parties on behalf of governments named in Annex H, the territories of which account for 85 per centum of the total external trade of the territories of such governments, computed in accordance with the applicable column of percentages set forth therein. The instrument of acceptance of each other government shall take effect on the thirtieth day following the day on which such instrument has been deposited.

7. The United Nations is authorized to effect registration of this Agreement as soon as it enters into force.

ARTICLE XXVII

Withholding or Withdrawal of Concessions

Any contracting party shall at any time be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule annexed to this Agreement, in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned.

ARTICLE XXVIII

Modification of Schedules

1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the “applicant contracting party”) may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the “contracting parties primarily concerned”), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest in such concession, modify or withdraw a concession included in the appropriate schedule annexed to this Agreement.
2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.
3.
 - (a) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a

substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party,

- (b) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize a contracting party to enter into negotiations for modification or withdrawal of a concession included in the appropriate Schedule annexed to this Agreement subject to the following procedures and conditions:

- (a) Such negotiations and any related consultations shall be conducted in accordance with the provisions of paragraph 1 and 2 of this Article.
- (b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3(b) of this Article shall apply.
- (c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.
- (d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3(b) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation. If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under paragraph 4(a) to have a principal supplying interest and any contracting party determined under paragraph 4(a) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with applicant contracting party.

5. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the next period, to modify the appropriate Schedule in accordance with the procedures of paragraph 1 to 3. If a contracting party so elects, other contracting parties shall have the right, during the same period, to modify or

withdraw, in accordance with the same procedures, concessions initially negotiated with that contracting party.

ARTICLE XXVIII BIS

Tariff Negotiations

1. The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time.
2.
 - (a) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties.
 - (b) The contracting parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another.
3. Negotiations shall be conducted on a basis which affords adequate opportunity to take into account:
 - (a) the needs of individual contracting parties and individual industries;
 - (b) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and
 - (c) all other relevant circumstances, including the fiscal, developmental, strategic and other needs of the contracting parties concerned.

ARTICLE XXIX

The Relation of this Agreement to the Havana Charter

1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive and of Chapter IX of the

Havana Charter pending their acceptance of it in accordance with their constitutional procedures.

2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.
3. If by September 30, 1949, the Havana Charter has not entered into force, the contracting parties shall meet before December 31, 1949, to agree whether this Agreement shall be amended, supplemented or maintained.
4. If at any time the Havana Charter should cease to be in force, the CONTRACTING PARTIES shall meet as soon as practicable thereafter to agree whether this Agreement shall be supplemented, amended or maintained. Pending such agreement, Part II of this Agreement shall again enter into force; PROVIDED that the provisions of Part II other than Article XXIII shall be replaced, mutatis mutandis, in the form in which they then appeared in the Havana Charter; and PROVIDED FURTHER that no contracting party shall be bound by any provisions which did not bind it at the time when the Havana Charter ceased to be in force.
5. If any contracting party has not accepted the Havana Charter by the date upon which it enters into force, the CONTRACTING PARTIES shall confer to agree whether, and if so in what way, this Agreement in so far as it affects relations between such contracting party and other contracting parties, shall be supplemented or amended. Pending such agreement the provisions of Part II of this Agreement shall, notwithstanding the provisions of paragraph 2 of this Article, continue to apply as between such contracting party and other contracting parties.
6. Contracting parties which are Members of the International Trade Organization shall not invoke the provisions of this Agreement so as to prevent the operation of any provision of the Havana Charter. The application of the principle underlying this paragraph to any contracting party which is not a Member of the International Trade Organization shall be the subject of an agreement pursuant to paragraph 5 of this Article.

ARTICLE XXX

Amendments

1. Except where provision for modification is made elsewhere in this Agreement, amendments to the provisions of Part I of this Agreement or the provisions of Article XXIX or of this Article shall become effective upon acceptance by all the contracting parties, and other amendments to this Agreement shall become effective, in respect of those contracting parties which accept them, upon acceptance by two-thirds of the contracting parties and thereafter for each other contracting party upon acceptance by it.
2. Any contracting party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations within such period as the CONTRACTING PARTIES may specify. The CONTRACTING PARTIES may decide that any amendment made effective under this Article is of such a nature that any contracting party which has not accepted it within a period specified

by the CONTRACTING PARTIES shall be free to withdraw from this Agreement, or to remain a contracting party with the consent of the CONTRACTING PARTIES.

ARTICLE XXXI

Withdrawal

Without prejudice to the provisions of paragraph 12 of Article XVIII, of Article XXIII or of paragraph 2 of Article XXX, any contracting party may withdraw from this Agreement, or may separately withdraw on behalf of any of the separate customs territories for which it has international responsibility and which at the time possesses full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement. The withdrawal shall take effect upon the expiration of six months from the day on which written notice of withdrawal is received by the Secretary-General of the United Nations.

ARTICLE XXXII

Contracting Parties

1. The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application.
2. At any time after the entry into force of this Agreement pursuant to paragraph 6 of Article XXVI, those contracting parties which have accepted this Agreement pursuant to paragraph 4 of Article XXVI may decide that any contracting party which has not so accepted it shall cease to be a contracting party.

ARTICLE XXXIII

Accession

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.

ARTICLE XXXIV

Annexes

The annexes to this Agreement are hereby made an integral part of this Agreement.

ARTICLE XXXV

Non-application of the Agreement between Particular Contracting Parties

1. This Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:
 - (a) the two contracting parties have not entered into tariff negotiations with each other, and
 - (b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.
2. The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations.

PART IV:

TRADE AND DEVELOPMENT

ARTICLE XXXVI

Principles and Objectives

1. THE CONTRACTING PARTIES,
 - (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
 - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
 - (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;
 - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;

- (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures—and measures in conformity with such rules and procedures—as are consistent with the objectives set forth in this Article;
- (f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

AGREE AS FOLLOWS.

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.
3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.
4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.
5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.
6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.
7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.
8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.
9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

ARTICLE XXXVII

Commitments

1. The developed contracting parties shall to the fullest extent possible—that is, except when compelling reasons, which may include legal reasons, make it impossible—give effect to the following provisions:
 - (a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;
 - (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and
 - (c) i. refrain from imposing new fiscal measures, and ii. in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures, which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.
2.
 - (a) Whenever it is considered that effect is not being given to any of the provisions of subparagraph (a), (b) or (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.
 - (b)
 - i. The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of subparagraph (a), (b) or (c) of paragraph 1 shall be examined.
 - ii. As the implementation of the provisions of subparagraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.
 - iii. The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall:

- (a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;
- (b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;
- (c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.

5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may

ARTICLE XXXVIII

Joint Action

- 1. The contracting parties shall collaborate jointly, with the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.
- 2. In particular, the CONTRACTING PARTIES shall:

- (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;
- (b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;
- (c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus

developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;

- (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
- (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and
- (f) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.

[Note: In 1965 the title of the head of the GATT secretariat was changed from Executive Secretary to Director-General. The text reproduced above, by permission of the WTO, corrects two minor errors in the original document, but does not include signatures or Annexes A to I: the List of Territories [of Commonwealth countries]; the List of Territories of the French Union; the List of Territories... as respects the Customs Union of Belgium, Luxemburg and the Netherlands; the List of Territories...as respects the United States of America; the List of Territories covered by Preferential Arrangements between Chile and Neighbouring Countries; the List of Territories covered by Preferential Arrangements between Lebanon and Syria and Neighbouring Countries; the Dates Establishing Maximum Margins of Preference; the Percentage Shares of Total External Trade; and, finally, the more substantive Annex I, on Notes and Supplementary Provisions.]

FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

Introduction

The Final Act had the Agreement Establishing the WTO (see below) attached, as well as a number of annexes that amended the General Agreement and added subsidiary texts, to produce GATT 1994 (summarized below). Together they form a document of 550 pages in length, which also includes formal ministerial decisions and declarations that further clarify the series of agreements. Finally, national schedules of specific commitments in the liberalization of trade in goods and services are attached. The Final Act, in its entirety, is the result of the negotiations begun at Punta del Este (Uruguay) in September 1986.

Final Act*

Marrakesh, 15 April 1994

1. Having met in order to conclude the Uruguay Round of Multilateral Trade Negotiations, representatives of the governments and of the European Communities, members of the Trade Negotiations Committee, agree that the Agreement Establishing the World Trade Organization (referred to in this Final Act as the “WTO Agreement”), the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as annexed hereto, embody the results of their negotiations and form an integral part of this Final Act.
2. By signing the present Final Act, the representatives agree
 - (a) to submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and
 - (b) to adopt the Ministerial Declarations and Decisions.
3. The representatives agree on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as “participants”) with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declaration, to decide on the international implementation of the results, including the timing of their entry into force.
4. The representatives agree that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants pursuant to Article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in Annex 4 of the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.
5. Before accepting the WTO Agreement, participants which are not contracting parties to the General Agreement on Tariffs and Trade must first have concluded negotiations for their accession to the General Agreement and become contracting parties thereto. For participants which are not contracting parties to the General Agreement as of the date of the Final Act, the Schedules are not definitive and shall be subsequently completed for the purpose of their accession to the General Agreement and acceptance of the WTO Agreement.
6. This Final Act and the texts annexed hereto shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant a certified copy thereof.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

[The list of signatures is omitted. The Agreement Establishing the WTO and a summary of GATT 1994 and other annexes follow.]

* The document above is printed with kind permission of the World Trade Organization. We have endeavoured to reproduce a complete and correct text, unless otherwise indicated, but it should not be relied upon for legal purposes. Enquiries about the official document should be made to the WTO (<http://www.wto.org/>).

AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

Introduction

After almost half a century of the existence of the GATT system, it was thought necessary to institutionalize the regime. This was the conclusion of the Uruguay Round and, as a result, the WTO was born. Membership of the WTO, which encompasses GATT, involves accepting all the results of the Uruguay Round, without exception. The clearly noticeable significant expansion in objectives for the WTO over the GATT was in the direction of sustainable development and the taking into account of the needs of developing and least developed countries. This reflects the changes in development patterns and consciousness over the previous half century. The WTO is to provide the institutional anchor for the organization of international trade relations. Its functions include the administration and implementation of the relevant trade agreements, the provision of a forum for negotiations among members, the administration of the Dispute Settlement Understanding and its procedures and also, of the Trade Policy Review Mechanism and, finally, cooperating with the two international financial institutions—the IMF and the IBRD. The General Council of the WTO was also to make arrangements for effective co-operation with other inter-governmental and non-governmental organizations with briefs touching on the activities of the WTO.

The legal status of the WTO is the same as that of any specialized agency of the UN. Each member of the WTO must accord the organization, its staff and the representatives of members the legal capacity, immunity and privileges that are necessary for the effective performance of its functions. The WTO currently has a headquarters agreement with Switzerland, where it is based. The Ministerial Conference, made up of representatives of all the members, is at the apex of the structure of the WTO. It meets at least one every two years and executes the functions of the WTO. It has the power to take decisions in all matters under the multilateral trade agreements. Next to the Ministerial Conference is the General Council, composed of representatives of all the members. The General Council performs the day-to-day activities of the WTO, especially during the breaks between the meetings of the Ministerial Council. It specifically enunciates rules for the various councils and committees established under the Agreement and also discharges the responsibilities of the Dispute Settlement Body, as well as that of the Trade Policy Review Body. Councils established under the Agreement and for which the General Council exercises oversight are the Councils for Trade in Goods, for Services and for Trade-Related Intellectual Property Rights. These Councils can, in turn, establish sub-units. The Ministerial Conference itself established Committees on Trade and Development, on Balance of Payments and on Budget, Finance and Administration. The Secretariat established under Article VI services the functions and activities of the WTO. It is headed by the Director-General, appointed by the Ministerial Conference, who, in turn, appoints the staff of the Secretariat and sets out their terms of service. The functions

of the Director-General and staff are exclusively and strictly international in character. They are to be totally independent and not subject to the direction of any member.

Decision-making in the WTO is by consensus, unless specified otherwise in a particular case. This follows the practice established by the GATT since 1947. If it is not possible to arrive as a consensus decision, then resort is had to voting. A simple majority would decide most issues, except in matters of interpretation or where a vote has to be taken on an application for waiver of any obligation of a member under the Agreement, where 75% or a three-fourths vote is required. When it comes to voting, each member has one vote, irrespective of contribution or size of economy or trade.

Marrakesh, 15 April 1994 (the WTO formally came into existence on 1 January 1995)

The Agreement*

The PARTIES to this Agreement,

RECOGNIZING that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

RECOGNIZING further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

BEING DESIROUS of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

RESOLVED, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General

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Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

DETERMINED to preserve the basic principles and to further the objectives underlying this multilateral trading system,

AGREE as follows:

Article I Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as “Multilateral Trade Agreements”) are integral parts of this Agreement, binding on all Members.
3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as “Plurilateral Trade Agreements”) are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.
4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as “GATT 1994”) is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as “GATT 1947”).

Article III Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the “Dispute Settlement Understanding” or “DSU”) in Annex 2 to this Agreement.
4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the “TPRM”) provided for in Annex 3 to this Agreement.
5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV Structure of the WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The

Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.
3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.
4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.
5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the “Council for TRIPS”), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as “GATS”). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the “Agreement on TRIPS”). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.
6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.
7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.
2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Article VI The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as “the Secretariat”) headed by a Director-General.
2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.
3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.
4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.
2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:
 - (a) the scale of contributions apportioning the expenses of the WTO among its Members; and

- (b) the measures to be taken in respect of Members in arrears. The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.
- 3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.
- 4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

Article VIII Status of the WTO

- 1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.
- 2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.
- 3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.
- 4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.
- 5. The WTO may conclude a headquarters agreement.

Article IX Decision-Making

- 1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947¹. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States² which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.³
- 2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a threefourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.
- 3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade

Agreements, provided that any such decision shall be taken by three fourths⁴ of the Members unless otherwise provided for in this paragraph.

- (a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths⁴ of the Members.
- (b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

- 4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.
- 5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X Amendments

- 1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference

decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:
 - Article IX of this Agreement;
 - Articles I and II of GATT 1994;
 - Article 11:1 of GATS;
 - Article 4 of the Agreement on TRIPS.
3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.
4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.
5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.
6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.
7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.
8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.
10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.
2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Article XII Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.
3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII Non-Application of Multilateral Trade Agreements between Particular Members

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.
2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only where Article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.
3. Paragraph 1 shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.

4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.
5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV Acceptance, Entry into Force and Deposit

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.
2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.
3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.
4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV Withdrawal

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.
2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI Miscellaneous Provisions

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.
2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.
3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.
4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.
5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.
6. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic. EXPLANATORY NOTES:

The terms “country” or “countries” as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term “national”, such expression shall be read as pertaining to that customs territory, unless otherwise specified.

FOOTNOTES:

LIST OF ANNEXES

ANNEX 1

ANNEX 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
Agreement on Preshipment Inspection
Agreement on Rules of Origin
Agreement on Import Licensing Procedures
Agreement on Subsidies and Countervailing Measures
Agreement on Safeguards

ANNEX 1B

General Agreement on Trade in Services and Annexes

ANNEX 1C

Agreement on Trade-Related Aspects of Intellectual Property Rights

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism

ANNEX 4

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

1. The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.
2. The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.
3. Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article 2 of the Dispute Settlement Understanding.

4. A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.

General Agreement on Tariffs and Trade 1994 (WTO summary)

Marrakesh, 15 April 1994 (came into force 1 January 1995, except for the new Agreement on Government Procurement, which came into force on 1 January 1996)

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994*

Texts on the interpretation of the following GATT articles are included in the Final Act:

Article II—Schedules of Concessions. Agreement to record in national schedules “other duties or charges” levied in addition to the recorded tariff and to bind them at the levels prevailing at the date established in the Uruguay Round Protocol.

Understanding on the Interpretation of Article XVII—State-trading Enterprises. Agreement increasing surveillance of their activities through stronger notification and review procedures.

Understanding on the Interpretation of Articles XII and XVIII:B.

Balance-of-payments provisions. Agreement that contracting parties imposing restrictions for balance-of-payments purposes should do so in the least trade-disruptive manner and should favour price-based measures, like import surcharges and import deposits, rather than quantitative restrictions. Agreement also on procedures for consultations by the GATT Balance-of-Payments Committee as well as for notification of BOP measures.

Understanding on the Interpretation of Article XXIV—Customs Unions and Free-Trade Areas. Agreement clarifying and reinforcing the criteria and procedures for the review of new or enlarged customs unions or free-trade areas and for the evaluation of their effects on third parties. The agreement also clarifies the procedure to be followed for achieving any necessary compensatory adjustment in the event of contracting parties forming a customs union seeking to increase a bound tariff. The obligations of contracting parties in regard to measures taken by regional or local governments or authorities within their territories are also clarified.

Understanding on the Interpretation of Article XXV—Waivers. Agreement of new procedures for the granting of waivers from GATT disciplines, to specify termination dates for any waivers to be granted in the future, and to fix expiry dates for existing waivers. The main provisions concerning the granting of waivers are, however, contained in the Agreement on the WTO.

Understanding on the Interpretation of Article XXVIII—Modification of GATT Schedules. Agreement on new procedures for the negotiation of compensation when tariff bindings are modified or withdrawn, including the creation of a new negotiating right for the country for which the product in question accounts for the highest proportion of its exports. This is intended to increase the ability of smaller and developing countries to participate in negotiations.

Understanding on the Interpretation of Article XXXV—Non-application of the General Agreement. Agreement to allow a contracting party or a newly acceding country to invoke GATT's non-application provisions vis-à-vis the other party after having entered into tariff negotiations with each other. The WTO Agreement foresees that any invocation of the non-application provisions under that Agreement must extend to all the multilateral agreements.

Uruguay Round Protocol GATT 1994

The results of the market access negotiations in which participants have made commitments to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods are recorded in national schedules of concessions annexed to the Uruguay Round Protocol that forms an integral part of the Final Act.

The Protocol has five appendices: Appendix I Section A: Agricultural Products—Tariff concessions on a Most-Favoured Nation basis; Appendix I Section B: Agricultural Products—Tariff Quotas; Appendix II: Tariff Concessions on a Most-Favoured Nation Basis on Other Products; Appendix III: Preferential Tariff—Part II of Schedules (if applicable); Appendix IV: Concessions on Non-Tariff Measures—Part III of Schedules; Appendix V: Agriculture Products: Commitments Limiting Subsidization—Part IV of Schedules, Section I: Domestic Support: Total AMS Commitments, Section II: Export Subsidies: Budgetary Outlay and Quantity, Reduction Commitments Section III: Commitments Limiting the Scope of Export Subsidies.

The schedule annexed to the Protocol relating to a Member shall become a Schedule to the GATT 1994 relating to that Member on the day on which the Agreement Establishing the WTO enters into force for that Member.

For non-agricultural products the tariff reduction agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the Agreement Establishing the WTO. Each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the Agreement Establishing the WTO. However, participants may implement reduction in fewer stages or at earlier dates than those indicated in the Protocol, if they so wish.

For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules. Details are given in the section of this paper concerning the Agricultural Agreement.

A related Decision on Measures in Favour of Least-Developed Countries establishes, among other things, that these countries will not be required to undertake any commitments and concessions which are inconsistent with their individual development, financial and trade needs. Alongside other more specific provisions for flexible and favourable treatment, it also allows for the completion of their schedules of concessions and commitments in Market Access and in Services by April 1995 rather than 15 December 1993.

Agreement on Agriculture

The negotiations have resulted in four main portions of the Agreement: the Agreement on Agriculture itself; the concessions and commitments Members are to undertake on market access, domestic support and export subsidies; the Agreement on Sanitary and Phytosanitary Measures; and the Ministerial Decision concerning Least-Developed and Net Food-Importing Developing countries.

Overall, the results of the negotiations provide a framework for the long-term reform of agricultural trade and domestic policies over the years to come. It makes a decisive move towards the objective of increased market orientation in agricultural trade. The rules governing agricultural trade are strengthened which will lead to improved predictability and stability for importing and exporting countries alike.

The agricultural package also addresses many other issues of vital economic and political importance to many Members. These include provisions that encourage the use of less trade-distorting domestic support policies to maintain the rural economy, that allow actions to be taken to ease any adjustment burden, and also the introduction of tightly prescribed provisions that allow some flexibility in the implementation of commitments. Specific concerns of developing countries have been addressed including the concerns of net-food importing countries and least-developed countries.

The agricultural package provides for commitments in the area of market access, domestic support and export competition. The text of

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the Agricultural Agreement is mirrored in the GATT Schedules of legal commitments relating to individual countries (see above).

In the area of market access, non-tariff border measures are replaced by tariffs that provide substantially the same level of protection. Tariffs resulting from this "tariffication" process, as well as other tariffs on agricultural products, are to be reduced by an average 36 per cent in the case of developed countries and 24 per cent in the case of developing countries, with minimum reductions for each tariff line being required. Reductions are to be undertaken over six years in the case of developed countries and over ten years in the case of developing countries. Least-developed countries are not required to reduce their tariffs.

The tariffication package also provides for the maintenance of current access opportunities and the establishment of minimum access tariff quotas (at reduced-tariff rates) where current access is less than 3 per cent of domestic consumption. These minimum access tariff quotas are to be expanded to 5 per cent over the implementation period. In the case of "tariffied" products "special safeguard" provisions will allow additional duties to be applied in case shipments at prices denominated in domestic currencies below a certain reference level or in case of a surge of imports. The trigger in the safeguard for import surges depends on the "import penetration" currently existing in the market, i.e. where imports currently make up a large proportion of consumption, the import surge required to trigger the special safeguard action is lower.

Domestic support measures that have, at most, a minimal impact on trade (“green box” policies) are excluded from reduction commitments. Such policies include general government services, for example in the areas of research, disease control, infrastructure and food security. It also includes direct payments to producers, for example certain forms of “decoupled” (from production) income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes.

In addition to the green box policies, other policies need not be included in the Total Aggregate Measurement of Support (Total AMS) reduction commitments. These policies are direct payments under production-limiting programmes, certain government assistance measures to encourage agricultural and rural development in developing countries and other support which makes up only a low proportion (5 per cent in the case of developed countries and 10 per cent in the case of developing countries) of the value of production of individual products or, in the case of non-product-specific support, the value of total agricultural production.

The Total AMS covers all support provided on either a product-specific or non-product-specific basis that does not qualify for exemption and is to be reduced by 20 per cent (13.3 per cent for developing countries with no reduction for least-developed countries) during the implementation period.

Members are required to reduce the value of mainly direct export subsidies to a level 36 per cent below the 1986–90 base period level over the six-year implementation period, and the quantity of subsidised exports by 21 per cent over the same period. In the case of developing countries, the reductions are two-thirds those of developed countries over a ten-year period (with no reductions applying to the least-developed countries) and subject to certain conditions, there are no commitments on subsidies to reduce the costs of marketing exports of agricultural products or internal transport and freight charges on export shipments. Where subsidised exports have increased since the 1986–90 base period, 1991–92 may be used, in certain circumstances, as the beginning point of reductions although the end-point remains that based on the 1986–90 base period level. The Agreement on Agriculture provides for some limited flexibility between years in terms of export subsidy reduction commitments and contains provisions aimed at preventing the circumvention of the export subsidy commitments and sets out criteria for food aid donations and the use of export credits.

“Peace” provisions within the agreement include: an understanding that certain actions available under the Subsidies Agreement will not be applied with respect to green box policies and domestic support and export subsidies maintained in conformity with commitments; an understanding that “due restraint” will be used in the application of countervailing duty rights under the General Agreement; and setting out limits in terms of the applicability of nullification or impairment actions. These peace provisions will apply for a period of 9 years.

The agreement sets up a committee that will monitor the implementation of commitments, and also monitor the follow-up to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

The package is conceived as part of a continuing process with the long-term objective of securing substantial progressive reductions in support and protection. In this light, it

calls for further negotiations in the fifth year of implementation which, along with an assessment of the first five years, would take into account non-trade concerns, special and differential treatment for developing countries, the objective to establish a fair and market-oriented agricultural trading system and other concerns and objectives noted in the preamble to the agreement.

Agreement on Sanitary and Phytosanitary Measures

This agreement concerns the application of sanitary and phytosanitary measures—in other words food safety and animal and plant health regulations. The agreement recognises that governments have the right to take sanitary and phytosanitary measures but that they should be applied only to the extent necessary to protect human, animal or plant life or health and should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.

In order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members are encouraged to base their measures on international standards, guidelines and recommendations where they exist. However, Members may maintain or introduce measures which result in higher standards if there is scientific justification or as a consequence of consistent risk decisions based on an appropriate risk assessment. The Agreement spells out procedures and criteria for the assessment of risk and the determination of appropriate levels of sanitary or phytosanitary protection.

It is expected that Members would accept the sanitary and phyto-sanitary measures of others as equivalent if the exporting country demonstrates to the importing country that its measures achieve the importing country's appropriate level of health protection. The agreement includes provisions on control, inspection and approval procedures.

Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries

It is recognized that during the reform programme least-developed and net food-importing developing countries may experience negative effects with respect to supplies of food imports on reasonable terms and conditions. Therefore, a special Decision sets out objectives with regard to the provision of food aid, the provision of basic foodstuffs in full grant form and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank with respect to the short-term financing of commercial food imports. The Committee of Agriculture, set up under the Agreement on Agriculture, monitors the follow-up to the Decision.

Agreement on Textiles and Clothing

[terminated on 1 January 2005]

The object of this negotiation has been to secure the eventual integration of the textiles and clothing sector—where much of the trade is currently subject to bilateral quotas negotiated under the Multifibre Arrangement (MFA)—into the GATT on the basis of strengthened GATT rules and disciplines.

Integration of the sector into the GATT would take place as follows: first, on 1 January 1995; each party would integrate into the GATT products from the specific list in the Agreement which accounted for not less than 16 per cent of its total volume of imports in 1990. Integration means that trade in these products will be governed by the general rules of GATT.

At the beginning of Phase 2, on 1 January 1998, products which accounted for not less than 17 per cent of 1990 imports would be integrated. On 1 January 2002, products which accounted for not less than 18 per cent of 1990 imports would be integrated. All remaining products would be integrated at the end of the transition period on 1 January 2005. At each of the first three stages, products should be chosen from each of the following categories: tops and yarns, fabrics, made-up textile products, and clothing.

All MFA restrictions in place on 31 December 1994 would be carried over into the new agreement and maintained until such time as the restrictions are removed or the products integrated into GATT. For products remaining under restraint, at whatever stage, the agreement lays down a formula for increasing the existing growth rates. Thus, during Stage 1, and for each restriction previously under MFA bilateral agreements in force for 1994, annual growth should be not less than 16 per cent higher than the growth rate established for the previous MFA restriction. For Stage 2 (1998 to 2001 inclusive), annual growth rates should be 25 per cent higher than the Stage 1 rates. For Stage 3 (2002 to 2004 inclusive), annual growth rates should be 27 per cent higher than the Stage 2 rates.

While the agreement focuses largely on the phasing-out of MFA restrictions, it also recognizes that some members maintain non-MFA restrictions not justified under a GATT provision. These would also be brought into conformity with GATT within one year of the entry into force of the Agreement or phased out progressively during a period not exceeding the duration of the Agreement (that is, by 2005).

It also contains a specific transitional safeguard mechanism which could be applied to products not yet integrated into the GATT at any stage. Action under the safeguard mechanism could be taken against individual exporting countries if it were demonstrated by the importing country that overall imports of a product were entering the country in such increased quantities as to cause serious damage—or to threaten it—to the relevant domestic industry, and that there was a sharp and substantial increase of imports from the individual country concerned. Action under the safeguard mechanism could be taken either by mutual agreement, following consultations, or unilaterally but subject to review by the Textiles Monitoring Body. If taken, the level of restraints should be fixed at a level not lower than the actual level of exports or imports from the country concerned during the twelve-month period ending two months before the month in which a request for consultation was made. Safeguard restraints could remain in place for up to three years without extension or until the product is removed from the scope of the agreement (that is, integrated into the GATT), whichever comes first.

The agreement includes provisions to cope with possible circumvention of commitments through transshipment, re-routing, false declaration concerning country or place of origin and falsification of official documents.

The agreement also stipulates that, as part of the integration process, all members shall take such actions in the area of textiles and clothing as may be necessary to abide by GATT rules and disciplines so as to improve market access, ensure the application of

policies relating to fair and equitable trading conditions, and avoid discrimination against imports when taking measures for general trade policy reasons.

In the context of a major review of the operation of the agreement to be conducted by the Council for Trade in Goods before the end of each stage of the integration process, the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations in this agreement is not upset. Moreover, the Dispute Settlement Body may authorise adjustments to the annual growth of quotas for the stage subsequent to the review with respect to Members it has found not to be complying with their obligations under this agreement.

A Textiles Monitoring Body (TMB) oversees the implementation of commitments and to prepare reports for the major reviews mentioned above. The agreement also has provisions for special treatment to certain categories of countries—for example, those which have not been MFA members since 1986, new entrants, small suppliers, and least-developed countries.

Agreement on Technical Barriers to Trade

This agreement will extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.

Innovative features of the revised agreement are that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. Notification provisions applying to local government and non-governmental bodies are elaborated in more detail than in the Tokyo Round agreement. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private sector bodies as well as the public sector, is included as an annex to the agreement.

Agreement on Trade Related Aspects of Investment Measures

The agreement recognizes that certain investment measures restrict and distort trade. It provides that no contracting party shall apply any TRIM inconsistent with Articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise (“local content requirements”) or which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports (“trade balancing requirements”).

The agreement requires mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries and within seven years for least-developed countries. It establishes a Committee on TRIMs which will, among other things, monitor the implementation of these commitments. The agreement also provides for consideration, at a later date, of whether it should be complemented with provisions on investment and competition policy more broadly.

Agreement on Implementation of Article VI (Anti-dumping)

Article VI of the GATT provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its “normal value” (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. More detailed rules governing the application of such measures are currently provided in an Anti-dumping Agreement concluded at the end of the Tokyo Round. Negotiations in the Uruguay Round have resulted in a revision of this Agreement which addresses many areas in which the current Agreement lacks precision and detail.

In particular, the revised Agreement provides for greater clarity and more detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the new agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

On the methodology for determining that a product is exported at a dumped price, the new Agreement adds relatively specific provisions on such issues as criteria for allocating costs when the export price is compared with a “constructed” normal value and rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement strengthens the requirement for the importing country to establish a clear causal relationship between dumped imports and injury to the domestic industry. The examination of the dumped imports on the industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned. The agreement confirms the existing interpretation of the term “domestic industry”. Subject to a few exceptions, “domestic industry” refers to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Clear-cut procedures have been established on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened. Thus, a significant improvement over the existing Agreement consists of the addition of a new provision under which anti-dumping measures shall expire five years after the date of

imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than 2 per cent, expressed as a percentage of the export price of the product) or that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3 per cent of the imports of the product in question into the importing country).

The agreement calls for prompt and detailed notification of all preliminary or final anti-dumping actions to a Committee on Anti-dumping Practices. The agreement will afford parties the opportunity of consulting on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes.

Agreement on Implementation of Article VII (Customs Valuation)

The Decision on Customs Valuation would give customs administrations the right to request further information of importers where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and customs would need to establish the value taking into account the provisions of the Agreement. In addition, two accompanying texts further clarify certain of the Agreement's provisions relevant to developing countries and relating to minimum values and importations by sole agents, sole distributors and sole concessionaires.

Agreement on Preshipment Inspection

Preshipment inspection (PSI) is the practice of employing specialized private companies to check shipment details—essentially price, quantity, quality—of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of preshipment inspection agencies mandated by governments. The obligations placed on PSI-user governments include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI agencies.

The obligations of exporting contracting parties towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure—administered jointly by an organization representing PSI agencies and an organization representing exporters—to resolve disputes between an exporter and a PSI agency.

Agreement on Rules of Origin

The agreement aims at long-term harmonization of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade.

The agreement sets up a harmonization programme, to be initiated as soon as possible after the completion of the Uruguay Round and to be completed within three years of initiation. It would be based upon a set of principles, including making rules of origin objective, understandable and predictable. The work would be conducted by a Committee on Rules of Origin (CRO) in the WTO and a technical committee (TCRO) under the auspices of the Customs Cooperation Council in Brussels.

Much work was done in the CRO and the TCRO and substantial progress has been achieved in the three years foreseen in the Agreement for the completion of the work. However, due to the complexity of the issues the HWP could not be finalized within the foreseen deadline. The CRO continued its work in 2000. In December 2000, the General Council Special Session agreed to set, as the new deadline for completion of the remainder of the work, the Fourth Session of the Ministerial Conference, or at the latest the end of 2001. The negotiating texts are contained in documents G/RO/41 and G/RO/45.

Until the completion of the harmonization programme, contracting parties would be expected to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner, and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not).

An annex to the agreement sets out a “common declaration” with respect to the operation of rules of origin on goods which qualify for preferential treatment.

Agreement on Import Licensing Procedures

The revised agreement strengthens the disciplines on the users of import licensing systems—which, in any event, are much less widely used now than in the past—and increases transparency and predictability. For example, the agreement requires parties to publish sufficient information for traders to know the basis on which licences are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications.

With respect to automatic licensing procedures, the revised agreement sets out criteria under which they are assumed not to have trade restrictive effects. With respect to non-automatic licensing procedures, their administrative burden for importers and exporters should be limited to what is absolutely necessary to administer the measures to which they apply. The revised agreement also sets a maximum of 60 days for applications to be considered.

Agreement on Subsidies and Countervailing Measures

The Agreement on Subsidies and Countervailing Measures is intended to build on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII which was negotiated in the Tokyo Round.

Unlike its predecessor, the agreement contains a definition of subsidy and introduces the concept of a "specific" subsidy—for the most part, a subsidy available only to an enterprise or industry or group of enterprises or industries within the jurisdiction of the authority granting the subsidy. Only specific subsidies would be subject to the disciplines set out in the agreement.

The agreement establishes three categories of subsidies. First, it deems the following subsidies to be "prohibited": those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Prohibited subsidies are subject to new dispute settlement procedures. The main features include an expedited timetable for action by the Dispute Settlement body, and if it is found that the subsidy is indeed prohibited, it must be immediately withdrawn. If this is not done within the specified time period, the complaining member is authorized to take countermeasures. (See the section on "Dispute Settlement" for details on the procedures).

The second category is "actionable" subsidies. The agreement stipulates that no member should cause, through the use of subsidies, adverse effects to the interests of other signatories, i.e. injury to domestic industry of another signatory, nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement (in particular the benefits of bound tariff concessions), and serious prejudice to the interests of another member. "Serious prejudice" shall be presumed to exist for certain subsidies including when the total ad valorem subsidization of a product exceeds 5 per cent. In such a situation, the burden of proof is on the subsidizing member to show that the subsidies in question do not cause serious prejudice to the complaining member. Members affected by actionable subsidies may refer the matter to the Dispute Settlement body. In the event that it is determined that such adverse effects exist, the subsidizing member must withdraw the subsidy or remove the adverse effects.

The third category involves non-actionable subsidies, which could either be non-specific subsidies, or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations. Where another member believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may seek a determination and recommendation on the matter.

One part of the agreement concerns the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and argument. Certain disciplines on the calculation of the amount of a subsidy are outlined as is the basis for the determination of injury to the domestic industry. The agreement would require that all relevant economic factors be taken into account in assessing the state of the industry and that a causal link be established between the subsidized imports and the alleged injury. Countervailing

investigations shall be terminated immediately in cases where the amount of a subsidy is *de minimis* (the subsidy is less than 1 per cent *ad valorem*) or where the volume of subsidized imports, actual or potential, or the injury is negligible. Except under exceptional circumstances, investigations shall be concluded within one year after their initiation and in no case more than 18 months. All countervailing duties have to be terminated within 5 years of their imposition unless the authorities determine on the basis of a review that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

The agreement recognizes that subsidies may play an important role in economic development programmes of developing countries, and in the transformation of centrally-planned economies to market economies. Least-developed countries and developing countries that have less than \$1,000 per capita GNP are thus exempted from disciplines on prohibited export subsidies, and have a time-bound exemption from other prohibited subsidies. For other developing countries, the export subsidy prohibition would take effect 8 years after the entry into force of the agreement establishing the WTO, and they have a time-bound (though fewer years than for poorer developing countries) exemption from the other prohibited subsidies. Countervailing investigation of a product originating from a developing-country member would be terminated if the overall level of subsidies does not exceed 2 per cent (and from certain developing countries 3 per cent) of the value of the product, or if the volume of the subsidized imports represents less than 4 per cent of the total imports for the like product in the importing signatory. For countries in the process of transformation from a centrally-planned into a market economy, prohibited subsidies shall be phased out within a period of seven years from the date of entry into force of the agreement.

In anticipation of the negotiation of special rules in the civil aircraft sector, under the subsidies agreement, civil aircraft products are not subject to the presumption that *ad valorem* subsidization in excess of 5 per cent causes serious prejudice to the interests of other Members. In addition, the Agreement provides that where repayment of financing in the civil aircraft sector is dependent on the level of sales of a product and sales fall below expectations, this does not in itself give rise to such presumption of serious prejudice.

Agreement on Safeguards

Article XIX of the General Agreement allows a GATT member to take a “safeguard” action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry.

The agreement breaks major ground in establishing a prohibition against so-called “grey area” measures, and in setting a “sunset clause” on all safeguard actions. The agreement stipulates that a member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. Any such measure in effect at the time of entry into force of the agreement would be brought into conformity with this agreement, or would have to be phased out within four years after the entry into force of the agreement establishing the WTO. An exception could be made for one specific measure for each importing member,

subject to mutual agreement with the directly concerned member, where the phase-out date would be 31 December 1999.

All existing safeguard measures taken under Article XIX of the General Agreement 1947 shall be terminated not later than eight years after the date on which they were first applied or five years after the date of entry into force of the agreement establishing the WTO, whichever comes later.

The agreement sets out requirements for safeguard investigation which include public notice for hearings and other appropriate means for interested parties to present evidence, including on whether a measure would be in the public interest. In the event of critical circumstances, a provisional safeguard measure may be imposed based upon a preliminary determination of serious injury. The duration of such a provisional measure would not exceed 200 days.

The agreement sets out the criteria for "serious injury" and the factors which must be considered in determining the impact of imports. The safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Where quantitative restrictions are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In principle, safeguard measures have to be applied irrespective of source. In cases in which a quota is allocated among supplying countries, the member applying restrictions may seek agreement with others. Members having a substantial interest in supplying the product concerned. Normally, allocation of shares would be on the basis of proportion of total quantity or value of the imported product over a previous representative period. However, it would be possible for the importing country to depart from this approach if it could demonstrate, in consultations under the auspices of the Safeguards Committee, that imports from certain contracting parties had increased disproportionately in relation to the total increase and that such a departure would be justified and equitable to all suppliers. The duration of the safeguard measure in this case cannot exceed four years.

The agreement lays down time limits for all safeguard measures. Generally, the duration of a measure should not exceed four years though this could be extended up to a maximum of eight years, subject to confirmation of continued necessity by the competent national authorities and if there is evidence that the industry is adjusting. Any measure imposed for a period greater than one year should be progressively liberalized during its lifetime. No safeguard measure could be applied again to a product that had been subject to such action for a period equal to the duration of the previous measure, subject to a non-application period of at least two years. A safeguard measure with a duration of 180 days or less may be applied again to the import of a product if at least one year had elapsed since the date of introduction of the measure on that product, and if such a measure had not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

The agreement envisages consultations on compensation for safeguard measures. Where consultations are not successful, the affected members may withdraw equivalent concessions or other obligations under GATT 1994. However, such action is not allowed for the first three years of the safeguard measure if it conforms to the provisions of the agreement, and is taken as a result of an absolute increase in imports.

Safeguard measures would not be applicable to a product from a developing country member, if the share of the developing country member in the imports of the product concerned does not exceed 3 per cent, and that developing country members with less than 3 per cent import share collectively account for no more than 9 per cent of total imports of the product concerned. A developing country member has the right to extend the period of application of a safeguard measure for a period of up to two years beyond the normal maximum. It can also apply a safeguard measure again to a product that had been subject to such an action after a period equal to half of the duration of the previous measure, subject to a non-application period of at least two years.

The agreement would establish a Safeguards Committee which would oversee the operation of its provisions and, in particular, be responsible for surveillance of its commitments.

General Agreement on Trade in Services

The Services Agreement which forms part of the Final Act rests on three pillars. The first is a Framework Agreement containing basic obligations which apply to all member countries. The second concerns national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization. The third is a number of annexes addressing the special situations of individual services sectors.

Part I of the basic agreement defines its scope—specifically, services supplied from the territory of one party to the territory of another; services supplied in the territory of one party to the consumers of any other (for example, tourism); services provided through the presence of service providing entities of one party in the territory of any other (for example, banking); and services provided by nationals of one party in the territory of any other (for example, construction projects or consultancies).

Part II sets out general obligations and disciplines. A basic most-favoured-nation (MFN) obligation states that each party “shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and service providers of any other country”. However, it is recognized that MFN treatment may not be possible for every service activity and, therefore, it is envisaged that parties may indicate specific MFN exemptions. Conditions for such exemptions are included as an annex and provide for reviews after five years and a normal limitation of 10 years on their duration.

Transparency requirements include publication of all relevant laws and regulations. Provisions to facilitate the increased participation of developing countries in world services trade envisage negotiated commitments on access to technology, improvements in access to distribution channels and information networks and the liberalization of market access in sectors and modes of supply of export interest. The provisions covering economic integration are analogous to those in Article XXIV of GATT, requiring arrangements to have “substantial sectoral coverage” and to “provide for the absence or elimination of substantially all discrimination” between the parties.

Since domestic regulations, not border measures, provide the most significant influence on services trade, provisions spell out that all such measures of general application should be administered in a reasonable, objective and impartial manner.

There would be a requirement that parties establish the means for prompt reviews of administrative decisions relating to the supply of services.

The agreement contains obligations with respect to recognition requirements (educational background, for instance) for the purpose of securing authorizations, licenses or certification in the services area. It encourages recognition requirements achieved through harmonization and internationally-agreed criteria. Further provisions state that parties are required to ensure that monopolies and exclusive service providers do not abuse their positions. Restrictive business practices should be subject to consultations between parties with a view to their elimination.

While parties are normally obliged not to restrict international transfers and payments for current transactions relating to commitments under the agreement, there are provisions allowing limited restrictions in the event of balance-of-payments difficulties. However, where such restrictions are imposed they would be subject to conditions; including that they are non-discriminatory, that they avoid unnecessary commercial damage to other parties and that they are of a temporary nature.

The agreement contains both general exceptions and security exceptions provisions which are similar to Articles XX and XXI of the GATT. It also envisages negotiations with a view to the development of disciplines on trade-distorting subsidies in the services area.

Part III contains provisions on market access and national treatment which would not be general obligations but would be commitments made in national schedules. Thus, in the case of market access, each party "shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule". The intention of the market-access provision is to progressively eliminate the following types of measures: limitations on numbers of service providers, on the total value of service transactions or on the total number of service operations or people employed. Equally, restrictions on the kind of legal entity or joint venture through which a service is provided or any foreign capital limitations relating to maximum levels of foreign participation are to be progressively eliminated.

The national-treatment provision contains the obligation to treat foreign service suppliers and domestic service suppliers in the same manner. However, it does provide the possibility of different treatment being accorded the service providers of other parties to that accorded to domestic service providers. However, in such cases the conditions of competition should not, as a result, be modified in favour of the domestic service providers.

Part IV of the agreement establishes the basis for progressive liberalization in the services area through successive rounds of negotiations and the development of national schedules. It also permits, after a period of three years, parties to withdraw or modify commitments made in their schedules. Where commitments are modified or withdrawn, negotiations should be undertaken with interested parties to agree on compensatory adjustments. Where agreement cannot be reached, compensation would be decided by arbitration.

Part V of the agreement contains institutional provisions, including consultation and dispute settlement and the establishment of a Council on Services. The responsibilities of the Council are set out in a Ministerial Decision.

The first of the annexes to the agreement concerns the movement of labour. It permits parties to negotiate specific commitments applying to the movement of people providing services under the agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the agreement would not apply to measures affecting employment, citizenship, residence or employment on a permanent basis. The annex on financial services (largely banking and insurance) lays down the right of parties, notwithstanding other provisions, to take prudential measures, including for the protection of investors, deposit holders and policy holders, and to ensure the integrity and stability of the financial system. However, a further understanding on financial services would allow those participants who choose to do so to undertake commitments on financial services through a different method. With respect to market access, the understanding contains more detailed obligations on, among other things, monopoly rights, cross-border trade (certain insurance and reinsurance policy writing as well as financial data processing and transfer), the right to establish or expand a commercial presence, and the temporary entry of personnel. The provisions on national treatment refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership of, or participation in, self-regulatory bodies, securities or futures exchanges and clearing agencies.

The annex on telecommunications relates to measures which affect access to and use of public telecommunications services and networks. In particular, it requires that such access be accorded to another party, on reasonable and non-discriminatory terms, to permit the supply of a service included in its schedule. Conditions attached to the use of public networks should be no more than is necessary to safeguard the public service responsibilities of their operators, to protect the technical integrity of the network and to ensure that foreign service suppliers do not supply services unless permitted to do so through a specific commitment. The annex also encourages technical cooperation to assist developing countries in the strengthening of their own domestic telecommunications sectors. The annex on air-transport services excludes from the agreement's coverage traffic rights (largely bilateral air-service agreements conferring landing rights) and directly related activities which might affect the negotiation of traffic rights. Nevertheless, the annex, in its current form, also states that the agreement should apply to aircraft repair and maintenance services, the marketing of air-transport services and computer-reservation services. The operation of the annex would be reviewed at least every five years.

In the final days of the services negotiations, three Decisions were taken—on Financial Services, Professional Services and the Movement of Natural Persons. The Decision on Financial Services confirmed that commitments in this sector would be implemented on an MFN basis, and permits Members to revise and finalize their schedules of commitments and their MFN exemptions six months after the entry into force of the Agreement. Contrary to some media reports, the audio-visual and maritime sectors have not been removed from the scope of the GATS.

Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods

The agreement recognises that widely varying standards in the protection and enforcement of intellectual property rights and the lack of a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods have been a growing source of tension in international economic relations. Rules and disciplines were needed to cope with these tensions. To that end, the agreement addresses the applicability of basic GATT principles and those of relevant international intellectual property agreements; the provision of adequate intellectual property rights; the provision of effective enforcement measures for those rights; multilateral dispute settlement; and transitional arrangements.

Part I of the agreement sets out general provisions and basic principles, notably a national-treatment commitment under which the nationals of other parties must be given treatment no less favourable than that accorded to a party's own nationals with regard to the protection of intellectual property. It also contains a most-favoured-nation clause, a novelty in an international intellectual property agreement, under which any advantage a party gives to the nationals of another country must be extended immediately and unconditionally to the nationals of all other parties, even if such treatment is more favourable than that which it gives to its own nationals.

Part II addresses each intellectual property right in succession. With respect to copyright, parties are required to comply with the substantive provisions of the Berne Convention for the protection of literary and artistic works, in its latest version (Paris 1971), though they will not be obliged to protect moral rights as stipulated in Article 6bis of that Convention. It ensures that computer programs will be protected as literary works under the Berne Convention and lays down on what basis data bases should be protected by copyright. Important additions to existing international rules in the area of copyright and related rights are the provisions on rental rights. The draft requires authors of computer programmes and producers of sound recordings to be given the right to authorize or prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying which is materially impairing the right of reproduction. The draft also requires performers to be given protection from unauthorized recording and broadcast of live performances (bootlegging). The protection for performers and producers of sound recordings would be for no less than 50 years. Broadcasting organizations would have control over the use that can be made of broadcast signals without their authorization. This right would last for at least 20 years.

With respect to trademarks and service marks, the agreement defines what types of signs must be eligible for protection as a trademark or service mark and what the minimum rights conferred on their owners must be. Marks that have become well-known in a particular country shall enjoy additional protection. In addition, the agreement lays down a number of obligations with regard to the use of trademarks and service marks, their term of protection, and their licensing or assignment. For example, requirements that foreign marks be used in conjunction with local marks would, as a general rule, be prohibited.

In respect of geographical indications, the agreement lays down that all parties must provide means to prevent the use of any indication which misleads the consumer as to the

origin of goods, and any use which would constitute an act of unfair competition. A higher level of protection is provided for geographical indications for wines and spirits, which are protected even where there is no danger of the public's being misled as to the true origin. Exceptions are allowed for names that have already become generic terms, but any country using such an exception must be willing to negotiate with a view to protecting the geographical indications in question. Furthermore, provision is made for further negotiations to establish a multilateral system of notification and registration of geographical indications for wines.

Industrial designs are also protected under the agreement for a period of 10 years. Owners of protected designs would be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

As regards patents, there is a general obligation to comply with the substantive provisions of the Paris Convention (1967). In addition, the agreement requires that 20-year patent protection be available for all inventions, whether of products or processes, in almost all fields of technology. Inventions may be excluded from patentability if their commercial exploitation is prohibited for reasons of public order or morality; otherwise, the permitted exclusions are for diagnostic, therapeutic and surgical methods, and for plants and (other than microorganisms) animals and essentially biological processes for the production of plants or animals (other than microbiological processes). Plant varieties, however, must be protectable either by patents or by a *sui generis* system (such as the breeder's rights provided in a UPOV Convention). Detailed conditions are laid down for compulsory licensing or governmental use of patents without the authorization of the patent owner. Rights conferred in respect of patents for processes must extend to the products directly obtained by the process; under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

With respect to the protection of layout designs of integrated circuits, the agreement requires parties to provide protection on the basis of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits which was opened for signature in May 1989, but with a number of additions: protection must be available for a minimum period of 10 years; the rights must extend to articles incorporating infringing layout designs; innocent infringers must be allowed to use or sell stock in hand or ordered before learning of the infringement against a suitable royalty; and compulsory licensing and government use is only allowed under a number of strict conditions.

Trade secrets and know-how which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. Test data submitted to governments in order to obtain marketing approval for pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

The final section in this part of the agreement concerns anti-competitive practices in contractual licences. It provides for consultations between governments where there is reason to believe that licensing practices or conditions pertaining to intellectual property rights constitute an abuse of these rights and have an adverse effect on competition. Remedies against such abuses must be consistent with the other provisions of the agreement.

Part III of the agreement sets out the obligations of member governments to provide procedures and remedies under their domestic law to ensure that intellectual property

rights can be effectively enforced, by foreign right holders as well as by their own nationals. Procedures should permit effective action against infringement of intellectual property rights but should be fair and equitable, not unnecessarily complicated or costly, and should not entail unreasonable time-limits or unwarranted delays. They should allow for judicial review of final administrative decisions. There is no obligation to put in place a judicial system distinct from that for the enforcement of laws in general, nor to give priority to the enforcement of intellectual property rights in the allocation of resources or staff.

The civil and administrative procedures and remedies spelled out in the text include provisions on evidence of proof, injunctions, damages and other remedies which would include the right of judicial authorities to order the disposal or destruction of infringing goods. Judicial authorities must also have the authority to order prompt and effective provisional measures, in particular where any delay is likely to cause irreparable harm to the right holder, or where evidence is likely to be destroyed. Further provisions relate to measures to be taken at the border for the suspension by customs authorities of release, into domestic circulation, of counterfeit and pirated goods. Finally, parties should provide for criminal procedures and penalties at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies should include imprisonment and fines sufficient to act as a deterrent.

The agreement would establish a Council for Trade-Related Aspects of Intellectual Property Rights to monitor the operation of the agreement and governments' compliance with it. Dispute settlement would take place under the integrated GATT dispute-settlement procedures as revised in the Uruguay Round.

With respect to the implementation of the agreement, it envisages a one-year transition period for developed countries to bring their legislation and practices into conformity. Developing countries and countries in the process of transformation from a centrally-planned into a market economy would have a five-year transition period, and least-developed countries 11 years. Developing countries which do not at present provide product patent protection in an area of technology would have up to 10 years to introduce such protection. However, in the case of pharmaceutical and agricultural chemical products, they must accept the filing of patent applications from the beginning of the transitional period. Though the patent need not be granted until the end of this period, the novelty of the invention is preserved as of the date of filing the application. If authorization for the marketing of the relevant pharmaceutical or agricultural chemical is obtained during the transitional period, the developing country concerned must offer an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

Subject to certain exceptions, the general rule is that the obligations in the agreement would apply to existing intellectual property rights as well as to new ones.

Understanding on Rules and Procedures Governing the Settlement of Disputes

The dispute settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The system has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial

Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules, which include greater automaticity in decisions on the establishment, terms of reference and composition of panels, such that these decisions are no longer dependent upon the consent of the parties to a dispute. The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will further strengthen the existing system significantly, extending the greater automaticity agreed in the Mid-Term Review to the adoption of the panels' and a new Appellate Body's findings. Moreover, the DSU will establish an integrated system permitting WTO Members to base their claims on any of the multilateral trade agreements included in the Annexes to the Agreement establishing the WTO. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council and the Councils and committees of the covered agreements.

The DSU emphasizes the importance of consultations in securing dispute resolution, requiring a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference will apply unless the parties agree to special terms within 20 days of the panel's establishment. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General. Panels normally consist of three persons of appropriate background and experience from countries not party to the dispute. The Secretariat will maintain a list of experts satisfying the criteria.

Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within six months or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

The concept of appellate review is an important new feature of the DSU. An Appellate Body will be established, composed of seven members, three of whom will serve on any one case. An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings shall not exceed 60 days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus against its adoption.

Once the panel report or the Appellate Body report is adopted, the party concerned will have to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned shall be given a reasonable period of time, the latter to be decided either by agreement of the

parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved.

Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization within 30 days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

One of the central provisions of the DSU reaffirms that Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU.

The DSU contains a number of provisions taking into account the specific interests of the developing and the least-developed countries. It also provides some special rules for the resolution of disputes which do not involve a violation of obligations under a covered agreement but where a Member believes nevertheless that benefits are being nullified or impaired. Special decisions to be adopted by Ministers in 1994 foresee that the Montreal Dispute Settlement Rules which would otherwise have expired at the time of the April 1994 meeting are extended until the entry into force of the WTO. Another decision foresees that the new rules and procedures will be reviewed within four years after the entry into force of the WTO.

Trade Policy Review Mechanism

An agreement confirms the Trade Policy Review Mechanism, introduced at the time of the Mid-term Review, and encourages greater transparency in national trade policy-making. A further Ministerial decision reforms the notification requirements and procedures generally.

Decision on achieving greater coherence in global economic policy-making

This will set out concepts and proposals with respect to achieving greater coherence in global economic policy-making. Among other things, the text notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to “the expansion of trade, sustainable growth and development, and the timely correction of external imbalances”. It recognizes that while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. Therefore, WTO is called upon to develop its cooperation with the international

organizations responsible for monetary and financial matters. In particular, the Director-General of WTO is called upon to review, with his opposite numbers in the World Bank and the International Monetary Fund, the implications of WTO's future responsibilities for its cooperation with the Bretton Woods institutions.

Government Procurement

The Final Act contains an agreement related to accession procedures to the Government Procurement Agreement which is designed to facilitate the membership of developing countries. It envisages consultations between the existing members and applicant governments. These would be followed by the establishment of accession working parties to examine the offers made by applicant countries (in other words, the public entities whose procurement will be opened up to international competition) as well as the export opportunities for the applicant country in the markets of existing signatories.

This agreement should be distinguished from the new Agreement on Government Procurement [in Annex 4].

WTO Agreements: Concluding Commentary

Agreement on Safeguards

One of the important side agreements to come out of the Uruguay Round was the Agreement on Safeguards. Its function is to clarify and prescribe the steps towards the invocation and application of article XIX of the GATT (on Emergency Actions on Imports of Particular Products). The Agreement on Safeguards is intended to remove or reduce the differences in the unilateral application of article XIX. At one level, it might appear that any thought of safeguards against imports might be contradictory to the objectives and ethos of the WTO—i.e. free trade. However, it is also a realistic appreciation that structural changes in production processes can take varying courses and time, possibly generating wide-ranging consequences for the members concerned. It is also a way of assuring member states of the fair mindedness, or non-predatory orientation, of the entire GATT process. Thus, in fact, Article XIX of the GATT and the corresponding Agreement on Safeguards strengthen rather than weaken the GATT/WTO process.

The essence of the Agreement is summed up in article 2: 'A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products'. Serious injury is defined in article 4 as meaning 'a significant overall impairment in the position of a domestic industry'. In order for countries not to take advantage of the 'threat' part, the Agreement also states that a claim of serious injury being clearly imminent must be based on facts.

The procedure for invoking safeguard measures begins with well established and competent agencies in the country concerned initiating investigations into the need for the proposed safeguard measure against particular imports. The agency must be a public

agency and its procedures open, transparent and publicly known, in accordance with article X of the GATT. All interested parties are to be invited and given hearing. There must be an evaluation of all the objective facts—quantities, rates of increase in imports, shares of the domestic market taken, capacity utilization, profits, losses, employment levels, etc. A report on the findings is then to be published by the appropriate authority. If it is established that there is a causal link between increased imports of the product and a serious injury to domestic production, then the importing country is permitted to institute safeguard measures. The measures may include quantitative restrictions and higher tariffs. The general preference is for tariffs, as that is deemed fairer, transparent and pro-competition. The guiding principle is that the measures taken must be just enough to address the imbalance, and it must be in the public interest. The duration of the measure must also be necessary to correct the injury and to facilitate adjustment. All the same, the total period of the measure being in place must not exceed eight years, including any emergency measures that were taken for a period of less than one year. This is to prevent the safeguard regime from becoming a permanent feature of a member state's external trade.

Developing countries are exempted from safeguard measures against their exports if the particular poor country's product retains less than 3% of the market of the importing country. In addition, the total market share of developing countries for the product in question must not exceed 9% of the total imports. On their part, developing countries are also allowed to have safeguard measures in place for a period up to 10 years. The Committee on Safeguards, established under the Agreement, is to be informed of all safeguard measures. The Committee must also monitor the situation closely. The Agreement on Safeguards is one of the more controversial aspects of the WTO regime. The USA invoked it to protect its steel industry, but that move was not widely welcomed by its trading partners. Developing countries, particularly, are vulnerable when it comes to safeguards, as the rich countries often exercise their leverage in other respects to restrain any safeguard steps contemplated by poor countries. This explains the destruction of the sugar industry in Mozambique, for example.

Agreement on Textiles and Clothing

Apart from agriculture, textiles and clothing is the other of the two most controversial subjects to divide the developed from the developing countries. If the theory of comparative cost advantage is to be applied without distinction, developing countries would see agriculture and multi-fibre products as areas where they have a comparative advantage over developed countries, but these sectors are also critical to developed countries for political and other reasons. The easiest thing to do, therefore, was to have separate agreements on these subjects, but also to make them largely exhortatory and non-binding or, at least, not subject to the rigours of the general GATT/WTO rules. The hope, however, was that these sectors would eventually be brought within the WTO/GATT discipline. Indeed, the Agreement on Textiles and Clothing discussed here was stated to be a transition agreement pending full integration into the GATT regime, and it expired at the beginning of 2005. In aiming for integration, member states were encouraged to support continuous industrial adjustment and increased competition in their markets.

Members were to notify the Textiles Monitoring Body, established under article 8 of the Agreement, of all restrictions or controls on textiles and clothing trade that they had in place prior to the coming into force of the 1994 Uruguay Round. All such restrictions were subsequently to be governed by the Agreement on Textiles and Clothing. Any restriction that was not notified within 60 days of the coming into force of the WTO Agreement should lapse. At any rate, products that constituted less than 16% of the imports of a country—at 1990 levels—were to be integrated and governed by the Agreement. The remaining existing restrictions were to be managed in stages. The first stage covered the first 36 months of the coming into force of the WTO Agreement (1 January 1995), the second stage ran from 37 to 84 months, while the final stage was from the 85th month to the 120th month. After that, the textiles and clothing sector must be fully integrated into the WTO/GATT system.

Article 5 makes elaborate provisions to discourage circumvention of the provisions of the Agreement by transshipment, re-routing, false declaration regarding origin of the goods, falsification of documents, etc. Members were to co-operate in addressing any issues of circumvention of the Agreement. The Textiles Monitoring Body was to be involved in dealing with complaints of circumvention if the parties involved could not reach amicable settlement by themselves. If it was established after thorough investigation that there had been circumvention, the member(s) concerned were to take appropriate remedial action, including denial of entry of goods and adjustment of charges to appropriate levels. Transitional safeguard measures were, however, allowed, where it was shown that a particular product was being imported into a member state in such increased quantities as to cause serious damage or actual threat of serious damage to the domestic industry. In taking the safeguard measures, the exports of least developed countries should be treated more favourably. The same went for re-imports that had been previously sent for processing. Any transitional safeguard measures were not to exceed three years or not to go beyond the date of full integration of textiles and clothing into the WTO, whichever date was earlier. Additionally, members whose total volume of exports is 'small' in comparison with others and whose export of the product accounted for only a small percentage of the total imports of the country wanting to take safeguard measures must be accorded differential and favourable treatment. The difficulty was with the definition of 'small'. It was a reflection of the general tenor of the Agreement—vague, discretionary or ambivalent in many respects, and lacking teeth in general. It was best for the sector, as envisaged, to be fully integrated into the WTO system as soon as possible. Only thus might developing countries be able to reap some of the scientific benefits of the world trading system.

Agreement on Government Procurement

One of the subjects of international trade that is close to governmental hearts, but has still been whittled away in the Uruguay Round, is government procurement. Greater liberalization is the motivation for new Agreement on such procurement. Laws, regulations and practices regarding government procurement are to be fashioned in ways that would not discriminate against foreign goods or services nor discriminate between the product from one country against that from another. Unlike the GATT provisions on MFN and nationality principles, the Agreement on Government Procurement stipulates

that foreign companies located in the country whose government is doing the procurement ought not to be discriminated against on the basis of being foreign owned. At the same time, the regulations must be transparent and the entire regime monitored. The Agreement covers all laws and practices regarding procurement by governmental agencies, irrespective of the contractual method used—for example, lease, rental or hire purchase, or a combination of contractual products and terms.

Technical specifications on the features of the products or services to be procured must not be formulated to create (or intend to create) obstacles to trade or to disguise discrimination. The specification must be based on international standards or on known national standards, where no international standard exists. They must generally relate to performance and not design or descriptive features. Three forms of tender are noted in the Agreement. These are open tender (open to all potential suppliers), selective tender (based on invitation) and limited tender (individual suppliers are contacted directly by the entity putting forward the tender and must comply with article 15, dealing with the circumstances where limited tender may be permitted). Examples of the last instance include tenders for continuing projects, changes in supplies, replacement products or commodities purchased on a commodities exchange. There are further provisions on qualification of suppliers, procedures for the selection of tenderers, tender documentation and its handling, submission of tender, the receipt and opening of the tenders and the award of the contracts. There are also provisions on the obligations of the entities inviting the tender and the entities putting forward the tender. It is also important to note the provisions on procedures for challenging the outcome of the tender. Dispute settlement procedures under the WTO are available for the settlement of disagreements surrounding government procurement.

Article V provides for the special needs of developing countries, particularly the least developed countries, with reference to the need to safeguard their balance-of-payment accounts, the establishment or development of domestic industries and support for industrial units that depend substantially or entirely on government procurement. Countries are to have in mind the need to facilitate imports from developing countries when making and applying laws and regulations relating to government procurement. Furthermore, in negotiations on government procurement, developing countries are permitted to negotiate with trading partners for mutually acceptable exemptions from the rules on national treatment relating to specific entities, products and services. Considering the capacity limitations of the developing countries, the wealthy nations are to provide, on non-discriminatory terms, technical assistance deemed appropriate to developing countries in dealing with problems of government procurement. An example of the assistance envisaged is translation of supply tenders from developing countries. Above all, developed countries must establish information centres to respond to reasonable requests from developing countries on laws, regulations, practices and procedures on government procurement and on notices about proposed procurements. The Committee on Government Procurement, established under this Agreement, is to monitor the working of the provisions on developing countries and to provide annual reports of its review. As with most provisions on the specific participation of developing countries, article V is very general, exhortatory and discretionary. For example, although the first sentence of paragraph 13 starts with 'Each developed country Party *shall* [our italics], upon request, provide assistance', it continues with 'which it *may deem*

appropriate to potential tenderers in least-developed countries'. This is the nature of the language in which special and favourable provisions on the participation of developing countries are framed.

Agreement on Subsidies and Countervailing Measures

Subsidy is defined as a direct financial contribution by a government (or any public body), the employment of a private agency by a government in order to effect a direct transfer of funds, the forgoing of revenue due a government, the provision of specific goods or services by a government (other than general infrastructure) or any form of price support to a business entity thereby conferring a benefit on that business entity. For such subsidy to be covered by the provisions of the Agreement, it must be specific. That is, the funds transfer or support must be exclusive to the particular business or industry.

There are three types of subsidies under the Agreement: first, subsidies that are based on export performance or on the use of domestic materials; secondly, subsidies that cause injury to the domestic industry of another member state or that nullify or impair benefits that would otherwise accrue to that country (in more general terms, subsidies that would seriously prejudice the interests of another member); and, thirdly, subsidies that are directed at research and development generally, but are not specific. Another variety of the third category of subsidies is that which is directed at helping disadvantaged regions in the territory of a member country, as provided for within a broad development agenda. The first type of subsidy is prohibited without equivocation. This is because it may benefit the country giving the subsidy, but hurt its trading partners. The second type of subsidy is warned against with what some writers may describe as an 'amber light'. It is not encouraged, but is also not prohibited outright. It shifts the burden of establishing the perniciousness of the subsidy on to the country complaining. The third category of subsidies is generally allowed or permissible—the 'green light' subsidy. Its objective is to address inequity in a country, but within clearly discernible limits, and is closely monitored.

The first step in any issue over a subsidy is for the parties involved to consult each other. This is the case even where the matter is urgent or in regard to non-actionable subsidies. If consultations fail to settle the matter amicably within 60 days, the aggrieved party may refer it to the Committee on Subsidies and Countervailing Measures. If the Committee finds that illegal or improper subsidies exist, it may recommend that the subsidizing member modify its programme to address the complaints. If the recommendation is not followed within six months, the Committee is obliged to authorize the complainant to take measures that it considers appropriate to counter the ascertained effects of the subsidy. In general, countervailing measures must be taken in accordance with article VI of the GATT, which also deals with dumping. A counter-vailing duty, for example, must not be in excess of the amount of subsidy determined to have been granted. A countervailing duty is to remain in place only as long as and to the extent necessary to counteract the subsidization that is causing the injury. At any rate, measures to counter the effects of subsidies must not last longer than five years, unless there are compelling reasons to keep them longer. A distinction must be made between dumping and subsidy, and the measures taken to address them must be separate or different for each complaint. A single product must not be subject to both anti-dumping and

countervailing duties to address the same set of circumstances. Countervailing measures must be preceded by thorough and scientific investigation by the industry or business concerned and the report presented, first, to the government authorities and then, possibly, to the Committee on Subsidies and Countervailing Measures. Countervailing measures must not be retroactive, unless clearly determined to be necessary in cases where provisional measures should have been imposed but were not.

Understanding on Rules and Procedures Governing the Settlement of Disputes

According to the Understanding, the first step in the dispute resolution process is consultation. Consultations must be confidential, but all requests for consultations must be made known to the Dispute Resolution Body (DSB), as well as to the relevant councils or committees. Each party is to be responsive and co-operative when a representation or a request for consultation is made. Replies must be made within 10 days of receipt of the request, and actual consultations entered into, in good faith, within 30 days. If consultations fail or not responded to within the prescribed periods, then the aggrieved party may request the establishment of a panel. The application for a panel must indicate, in writing, whether consultations were held and give a summary of the legal basis and facts of the complaint. The DSB must establish the requested panel at its meeting following the request, at the latest. The panel may be composed of well qualified persons, who can come from government or non-governmental agencies, or be former officials of any of the bodies within the WTO or academics with a speciality in international trade law or policy. They must be of diverse background, and when a developing country is a party to a dispute, one of the panellists must be from a developing country. However, citizens of a country that is a party to a dispute before the DSB cannot be members of a panel, unless the other party clearly agrees. All panellists must be completely independent and impartial. The terms of reference of the panel are limited to what has been agreed to by the parties, in consultation with the chair of the panel, but subject to and at all times controlled by the standard terms—that is, to examine the complaint in the light of the provisions of the relevant Agreement and to make findings that will assist the DSB in its recommendations.

Where the subject matter of a complaint is similar or related to the complaints of another or other member states, a single panel may be established to hear and deal with all the complaints on the same point. This must, however, take into account the timing of the complaints and the rights of the parties. Apart from the procedure for dealing with multiple complainants, provision is made for the participation of third parties with a substantial interest in a matter before a panel. Such a third party must first notify the DSB of its interest. It would then be heard orally and in writing, and will receive the submissions of the original parties. The submissions of the third party must be reflected in the panel report.

The general procedures that the panel must follow include: consultations with the parties; the determination of definitive dates for submissions, responses, etc.; and putting its report in writing, stating the fact findings, the applicability of the legal provisions and the rationale for its recommendations. The deliberations of the panel must be confidential and the opinions expressed by individual panellists anonymous. If one of the parties is a

developing country, the report must indicate how its circumstances were taken into consideration. Everything must be done within six months or, in emergency cases, three months. There is a standing Appellate Body, made up of seven eminent persons in trade law and practice, which may hear appeals from panels. Three persons sit on any one appeal. The Appellate Body may reverse, modify or uphold the legal findings of the panel. The DSB must adopt the appellate report, unless it decides not to by consensus, within 30 days of receiving the same. Parties to the dispute must implement the recommendations of the Panels or risk the suspension of concessions in its favour, pay compensation or do both.

In conclusion, the WTO dispute resolution ethos is one of the most outstanding features of the outcome of the Uruguay Round. It is the point of reference of choice for discourse on the rule of law or the jurisprudence of the international trading system. For one thing, it has removed the veto power that countries had over the adoption of panel reports. There is also now a sanctions regime and a power to enforce the outcome of proceedings. The dispute resolution system, therefore, provides 'security and predictability to the multilateral trading system'.

SECTION TWO
Table of Membership,
Ratification and Accession

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1648-1939**

	Peace of West phalia	Paris Conv ention	Berlin Act	Berne Conv ention for the Protection of Literary and Artistic Works	Conve ntion respe cting the Free Navi gation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Intern ational Conve ntion relating to Econ omic Stat istics	Warsaw Conv ention (Intern ational Carri age by Air)	Hague Protocol (to the Warsaw Conve ntion)
<i>Date</i>	1648	1883 (Stock holm Amend ment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratification and accession</i>		in force		in force		Acce ssion or ratific ation	Ratific ation (no terri tories incl.)	(ratific ation/ acce ssion)	sign*, then ratify or accede and, in different, in force
Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Afghanistan								1969 [§]	1969 [§]
Albania		1995		1994					
Algeria		1966		1998		1964		1964 [§]	1964 [§]
Andorra		2004		2004					
Angola						1952		1998 [§]	1998 [§]
Antigua and Barbuda		2000		2000		1930 ⁶			
Argentina		1967		1967		1961		1952 [§]	1969 [§]
Armenia		1991		2000				1998 [§]	
Australia		1925		1928		1955 (1993 [‡])	1932 [§]	1935	1959
Norfolk						1955			

<i>Island</i>									
Austria	Y ¹	1909	Y ¹	1920	Y ¹		1931	1961	1971 [§]
Azerbaijan		1995		1999				2000 [§]	2000 [§]
Bahamas, The		1973		1973		1930 ⁶		1975 (1973 [†])	1975 (1973 [†])
Bahrain		1997		1997				1998 [§]	1998 [§]
Bangladesh		1991		1999				1979 (1971 [†])	1979 (1971 [†])
Barbados		1985		1983		1930 ⁶		1970 (1966 [†])	
Belarus		1991		1997				1959 [§]	1961
Belgium		1884	Y	1887		1930	1950	1936	1963
Belize (British Honduras)		2000		2000		1930 ⁶			
Benin		1967		1961				1962 (1960 [†])	1962 (1960 [†])

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1648–1939

	Peace of West phalia	Paris Conv ention	Berlin Act	Berne Conv ention for the Protection of Literary and Artistic Works	Conve ntion respec ting the Free Navi gation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Intern ational Conve ntion relating to Econ omic Stat istics	Warsaw Conv ention (Intern ational Carri age by Air)	Hague Protocol (to the Warsaw Conve ntion)
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<i>Notes on ratification and accession</i>		in force		in force		Acce ssion or ratific ation	Ratific ation (no terri tories incl.)	(ratific ation/ acce ssion)	sign*, then ratify or accede and, in different, in force

Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Afghanistan								1969 [§]	1969 [§]
Albania		1995		1994					
Algeria		1966		1998		1964		1964 [§]	1964 [§]
Andorra		2004		2004					
Angola						1952		1998 [§]	1998 [§]
Antigua and Barbuda		2000		2000		1930 ⁶			
Argentina		1967		1967		1961		1952 [§]	1969 [§]
Armenia		1991		2000				1998 [§]	
Australia		1925		1928		1955 (1993 [†])	1932 [§]	1935	1959
<i>Norfolk Island</i>						1955			
Austria	Y ¹	1909	Y ¹	1920	Y ¹		1931	1961	1971 [§]
Azerbaijan		1995		1999				2000 [§]	2000 [§]
Bahamas, The		1973		1973		1930 ⁶		1975 (1973 [†])	1975 (1973 [†])
Bahrain		1997		1997				1998 [§]	1998 [§]
Bangladesh		1991		1999				1979 (1971 [†])	1979 (1971 [†])
Barbados		1985		1983		1930 ⁶		1970 (1966 [†])	
Belarus		1991		1997				1959 [§]	1961
Belgium		1884	Y	1887		1930	1950	1936	1963
Belize (British Honduras)		2000		2000		1930 ⁶			
Benin		1967		1961				1962 (1960 [†])	1962 (1960 [†])

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1648–1939**

	Peace of West phalia	Paris Conv ention	Berlin Act	Berne Conv ention for the Protection of Literary and Artistic Works	Conve ntion respe cting the Free Navi gation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Intern ational Conve ntion relating to Econ omic Stat istics	Warsaw Conv ention (Intern ational Carri age by Air)	Hague Protocol (to the Warsaw Conve ntion)
<i>Date</i>	1648	1883 (Stock holm Amend ment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratification and accession</i>		in force		in force		Acce ssion or ratific ation	Ratific ation (no terri tories incl.)	(ratific ation/ acce ssion)	sign*, then ratify or accede and, in different, in force
Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Afghanistan								1969 [§]	1969 [§]
Albania		1995		1994					
Algeria		1966		1998		1964		1964 [§]	1964 [§]
Andorra		2004		2004					
Angola						1952		1998 [§]	1998 [§]
Antigua and Barbuda		2000		2000		1930 ⁶			
Argentina		1967		1967		1961		1952 [§]	1969 [§]
Armenia		1991		2000				1998 [§]	
Australia		1925		1928		1955 (1993 [‡])	1932 [§]	1935	1959
<i>Norfolk Island</i>						1955			
Austria	Y ¹	1909	Y ¹	1920	Y ¹		1931	1961	1971 [§]

Azerbaijan		1995		1999				2000 [§]	2000 [§]
Bahamas, The		1973		1973		1930 ⁶		1975 (1973 [†])	1975 (1973 [†])
Bahrain		1997		1997				1998 [§]	1998 [§]
Bangladesh		1991		1999				1979 (1971 [†])	1979 (1971 [†])
Barbados		1985		1983		1930 ⁶		1970 (1966 [†])	
Belarus		1991		1997				1959 [§]	1961
Belgium		1884	Y	1887		1930	1950	1936	1963
Belize (British Honduras)		2000		2000		1930 ⁶			
Benin		1967		1961				1962 (1960 [†])	1962 (1960 [†])

<i>Caledonia</i>									
Gabon		1964		1962				1969 ^s	1969 ^s
Gambia, The		1992		1993		1930 ⁶			
Georgia		1991		1995					
Germany		1903	Y	1887	Y	1939	1928 [*]	1933	1960
Ghana (Gold Coast)		1976		1991		1930 ⁶		1997 ^s	1997 ^s
Greece		1924		1920		1993	1930	1938	1965
Grenada		1998		1998		1930 ⁶			1985 ^s
Guatemala		1998		1997				1997 ^s	1971 ^s
Guinea		1982		1980				1961 ^s	1990 ^s
Guinea-Bissau		1988		1991		1952			
Guyana		1994		1994		1930 ⁶			
<i>Habsburg Empire</i>	Y		Y		Y				
Haiti		1958		1996					

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1648–1939

	Peace of Westphalia	Paris Convention	Berlin Act	Berne Convention for the Protection of Literary and Artistic Works	Convention respecting the Free Navigation of the Suez Canal	Hague Rules (International Convention)	International Convention relating to Economic Statistics	Warsaw Convention (International Carriage by Air)	Hague Protocol (to the Warsaw Convention)
<i>Date</i>	1648	1883 (Stockholm Amendment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratification and accession</i>		in force		in force		accession or ratification	Ratification (no territory)	(ratification/accession)	sign*, then ratify or accede

Chapter No.	1	2	3	4	5	6	ories incl.)	8	and, if different, in force 8a
Countries and Territories									
Holy See (or Vatican City)	Y	1960		1935					
Honduras		1994		1990				1994§	
Hungary		1909	Y ¹	1922	Y ¹	1930	1928*	1936 [§]	1957
Iceland		1962		1947				1948 [§]	1963
India		1998		1928			1931 [§]	1970 (1947 [†])	1973§
Goa						1952 ⁷			
Indonesia		1950		1997				1952 (1945 [†])	
Iran		1959				1966		1975 [§]	1975 [§]
Iraq		1976						1972 [§]	1972 [§]
Ireland		1925		1927		1962	1930	1935 [§]	1959
Israel		1950		1950		1959		1949 [§]	1964
Italy	(Republic of Venice)	1884	Y	1887	Y	1938 (1984 [‡])	1931	1933	1963
Jamaica		1999		1994		1930 ⁶			
Japan		1899		1899		1957 (1992 [‡])	1952	1953	1963
Jordan		1972		1999				1969 (1946 [†])	1973§
Kazakhstan		1991		1999					2002 [§]
Kenya		1965		1993		1930 ⁶		1964 (1963 [†])	1999 [§]
Kiribati						1930 ⁶			
Korea, Democratic People's Republic		1980		2003				1961 [§]	1980 [§]
Korea, Republic		1980		1996					1967 [§]

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1648–1939**

	Peace of West phalia	Paris Conv ention	Berlin Act	Berne Conv ention for the Protec tion of Literary and Artistic Works	Conve ntion respecting the Free Navi gation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Interna tional Conv ention relating to Econ omic Statistics	Warsaw Conv ention (Intern ational Carriage by Air)	Hague Protocol (to the Warsaw Conv ention)
<i>Date</i>	1648	1883 (Stockholm Amen dment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratify cation and accession</i>		in force		in force		Acces sion or ratific ation	Ratify cation (no territories incl.)	(ratific ation/ acces sion)	sign*, then ratify or accede and, if different, in force
Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Kuwait						1969		1975 [§]	1975 [§]
Kyrg yzstan		1991		1999				2000 [§]	2000 [§]
Laos		1998						1956 (1949*)	1956
Latvia		1993		1995			1937	1932	1998§
Lebanon		1924		1947		1975 (1997*)		1962 (1943*)	1978 [§]
Lesotho		1989		1989				1975 (1966*)	1975 [§]
Liberia		1994		1989				1942 [§]	

Libya		1976		1976				1969 [§]	1969 [§]
Liechtenstein		1933		1931				1934 [§]	1966
Lithuania		1994		1994				1938 [§]	1996 [§]
Luxembourg		1922		1888	Y ⁴			1949	1957
Macedonia, Former Yugoslav Republic		1991		1991				1994 (1991 [†])	1994 (1991 [†])
Madagascar		1963		1966		1965		1962 (1960 [†])	1962 (1963 [†])
Malawi		1964		1991				1977 [§]	1971 [§]
Malaysia		1989		1990		1930 ⁶⁸		1970 (1963 [†])	1974 [§]
Maldives								1995 [§]	1995 [§]
Mali		1983		1962				1961 [§]	1963
Malta		1967		1964				1986 (1964 [†])	
Marshall Islands									
Mauritania		1965		1973				1962 [§]	

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<i>Notes on ratification and accession</i>		in force		in force		accession or ratific ation	Ratific ation (no territories incl.)	(ratify cation/ accession)	sign*, then ratify or accede and, if different, in force
<i>Chapter No.</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>8a</i>
Countries and Territories									
Mauritius		1976		1989		1970		1989 [§]	1989 [§]
Mexico		1903		1967				1933 [§]	1957
Micronesia, Federated States				2003					
Moldova		1991		1995				1997 [§]	1997 [§]
Monaco		1956		1889		1931			1979 [§]
Mongolia		1985		1998				1962 [§]	
Morocco		1917		1917				1958 [§]	1975
Moza mbique		1998				1952			

Myanmar (Burma)								1952 (1948 [†])	
Namibia		2004		1990					
Nauru						1955		1970 (1968 [†])	1970 (1968 [†])
Nepal		2001						1966 [§]	1966 [§]
Netherlands	Y	1834	Y	1912	Y	1956 (1982 [†])	1932	1933	1960
<i>Aruba (Netherlands)</i>							1933 ^{§4}		
<i>Netherlands Antilles (Neth erlands)</i>							1933 ^{§4}		
New Zealand		1921		1928				1937 [§]	1967
<i>Cook Islands</i>									
<i>Tokelau</i>									
Nicaragua		1996		2000					
Niger		1964		1962				1962(1960 [†])	1962 (1963 [†])

<i>tinian Authority</i>									
Panama		1996		1996				1996 [§]	1996 [§]
Papua New Guinea		1999				1955		1975 (1975 [†])	1975 [§]
Paraguay		1994		1992		1967		1969 [§]	1969 [§]
Peru		1995		1988		1964		1988 [§]	1988 [§]
Philip pines		1965		1951				1950 [§]	1966
Poland		1919		1920		1937	1931	1932	1956
Portugal		1884	Y	1911		1931	1931	1947 [§]	1963
Qatar		2000		2000		1937 (2002 [‡])		1986 [§]	1986 [§]
Romania		1920		1927			1931	1932	1958
Russia		1965	Y	1995	Y			1934 ¹⁰	1957 ¹⁰
Rwanda		1984		1984				1964 (1962 [†])	1990 [§]
Sahrawi Arab Dem ocratic Republic									
Saint Kitts and Nevis		1995		1995		1930 ⁶		2001 (1979 [†])	2001 [§]
Saint Lucia		1995		1993		1930 ⁶			

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	Peace of West phalia	Paris Conve ntion	Berlin Act	Berne Conv ention for the Prote ction of Literary and Artistic Works	Conve ntion respe cting the Free Navi gation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Interna tional Con vention relating to Economic Statistics	Warsaw Conve ntion (Intern ational Carriage by Air)	Hague Protocol (to the Warsaw Conven tion)
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Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Saint Vincent and the Grenadines		1995		1995		1930 ⁶			
Samoa								1964 (1962 [†])	1972 [§]
San Marino		1960							
Sao Tome and Principe		1998				1952			
Saudi		2004		2004				1969 [§]	1969 [§]

Arabia									
Senegal		1963		1962		1978		1964 [§]	1964 [§]
Serbia and Montenegro		1992		1992				2001 (1992 [†])	2001 (1992 [†])
Seychelles		1997				1930 ⁶		1980 [§]	1980 [§]
Sierra Leone		1997				1930 ⁶		1968 (1961 [†])	
Singapore		1995		1998		1930 ⁶		1971 [§]	1967 [§]
Slovakia		1993		1993			1931 ⁹	1995 (1993 [†])	1995 (1993 [†])
Slovenia		1991		1991		1991		1998 (1991 [†])	1998 (1991 [†])
Solomon Islands						1930 ⁶		1981 (1978 [†])	1981 (1978 [†])
Somalia						1930 ⁶			
South Africa		1947		1928			1930	1954	1967 [§]
Spain	Y	1884	Y	1887	Y	1930		1930	1965 [§]
Sri Lanka (Ceylon)		1952		1959		1930 ⁶		1951 (1948 [†])	1997 [§]
Sudan		1984		2000				1973 [§]	1973 [§]
Suriname		1975		1977				2003 [§]	2004 [§]
Swaziland		1991		1998					1971 [§]

Tajikistan		1991		2000					
Tanzania		1963		1994		1962		1965 [§]	
Thailand				1931					
Timor-Leste						1952 ⁷			
Togo		1967		1975				1980 [§]	1980 [§]
Tonga		2001		2001		1930 ⁶		1977 (1970 [†])	1970 [§]
Trinidad and Tobago		1964		1988		1930 ⁶		1983 (1962 [†])	1983 [§]
Tunisia		1884		1887				1963 [§]	1963 [§]
Turkey		1925	Y	1952	Y	1955		1978 [§]	1978 [§]
Turkmenistan		1991						1994 [§]	
Tuvalu						1930 ⁶			
Uganda		1965						1963 [§]	
Ukraine		1991		1995				1959 [§]	1960
United Arab Emirates		1996		2004				1986 [§]	1993 [§]
United Kingdom		1884	Y	1887	Y	1930 (1977 [†])	1930	1933	1967
<i>Channel Islands (Crown Dep.)</i>						Y ⁶		1934 ⁷	

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1648–1939**

	Peace of Westp halia	Paris Conve ntion	Berlin Act	Berne Conve ntion for the Protec tion of Literary and Artistic Works	Conve ntion respecting the Free Navig ation of the Suez Canal	Hague Rules (Interna tional Conve ntion)	Interna tional Conve ntion relating to Econ omic Statistics	Warsaw Conve ntion (Interna tional Carriage by Air)	Hague Protocol (to the Warsaw Conve ntion)
<i>Date</i>	1648	1883 (Stoc kholm Amen dment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratify cation and accession</i>		in force		in force		accession or ratific ation	Ratific ation (no territ ories incl.)	(ratific ation/ acces sion)	sign*, then ratify or accede and, if different, in force
Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Terri tories									
<i>Bailiwick of Guernsey</i>									
<i>Bailiwick of Jersey</i>									
<i>Isle of Man (Crown Dep.)</i>						Y ⁶		1934 ⁷	
<i>Anguilla</i>						1930 ⁶		1934 ⁷	
<i>Bermuda</i>						1930 (1983 [†]) ⁶		1934 ⁷	

<i>British Antarctic Territory</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>British Virgin Islands</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>Cayman Islands</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>Falkland Islands</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>Gibraltar</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>Turks and Caicos Islands</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>Montserrat</i>						1930 (1983 [†]) ⁶		1934 ⁷	
<i>St Helena, etc.</i>						1930 ⁶		1934 ⁷	
USA		1887	Y	1989		1937		1934 [§]	2003
<i>Northern Mariana Islands (C'wealth)</i>									
<i>Puerto Rico (C'wealth)</i>									
<i>American Samoa</i>									
<i>Guam</i>									
<i>Virgin Islands</i>									
Uruguay		1967		1967				1979 [§]	
Uzbekistan		1991		2005				1997 [§]	1997 [§]

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1648–1939**

	Peace of Westp halia	Paris Conve ntion	Berlin Act	Berne Conv ention for the Prote ction of Literary and Artistic Works	Conve ntion respe cting the Free Navig ation of the Suez Canal	Hague Rules (Intern ational Conve ntion)	Intern ational Conve ntion relating to Economic Statistics	Warsaw Conve ntion (Intern ational Carriage by Air)	Hague Proto col (to the Warsaw Conve ntion)
<i>Date</i>	1648	1883 (Stock holm Amen dment, 1967)	1885	1886	1888	1924	1928	1929	1955
<i>Notes on ratification and accession</i>		in force		in force		accession or ratifica tion	Ratify Cation (no territories incl.)	(ratify cation/ acces sion)	sign*, then ratify or accede and, if different, in force
Chapter No.	1	2	3	4	5	6	7	8	8a
Countries and Territories									
Vanuatu								1981 [§]	1981 [§]
Venezuela		1995		1982				1955 [§]	1960
Viet Nam		1949		2004				1982 [§]	1982 [§]
Yemen								1982 [§]	1982 [§]
<i>Yugoslavia (1918–92)</i>							1928*	Y	Y
Zambia		1965		1992				1970 (1964 [†])	1970 [§]
Zimbabwe (Southern		1980		1980			1931	1980 (1980 [†])	1980 [§]

Rhodesia)								

NOTES ¹with the Habsburg Empire. ²with Sweden. ³with Ottoman Turkey. ⁴with the Netherlands. ⁵party only on behalf of Hong Kong and Macao. ⁶by United Kingdom. ⁷ by Portugal (colonial power). ⁸Sarawak acceded separately in 1931. ⁹as part of Czechoslovakia. ¹⁰ as the USSR.	GENERAL NOTES Date is of ratification/accession or when in force, unless: *Signature (only); †Succession; ‡Denunciation; §accession when not first a signatory. Successor states: Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously. Where possible, information on the previous party is given. A later date for succession usually coincides with the date of deposit of the instrument of succession. Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993. Eritrea's separation from Ethiopia was recognised on 28 May 1993. Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002. The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation. The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR. The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro. Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan. The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	Intern ational Air Transport Agree ment	Chicago Conv ention on Intern ational Civil Aviation	Articles of Agree ment of the IBRD (World Bank)	Articles of Agree ment of the IMF	General Agre ement on Tariffs and Trade (GATT)	Treaty Establi shing the European Comm unity (Treaty of Nice	UN Conve ntion on the Recog nition and Enforc ement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratifi cation or adherence	date of membe rship	Memb ership	original signatories— see 1994 for WTO memb ership and GATT 1994	original ratification or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Afghanistan		1947	1955	1955			
Albania		1991	1991	1991			2001
Algeria		1963	1963	1963			1989
Andorra		2001					
Angola		1977	1989	1989			
Antigua and Barbuda		1981	1983	1982			1989
Argentina		1946	1956	1956			1958* 1989
Armenia		1992	1992	1992			1998
Australia		1947	1947	1947	Y		1975
<i>Norfolk</i>							

<i>Island</i>							
Austria		1948	1948	1948		1995	1961
Azerbaijan		1992	1992	1992			2000
Bahamas, The		1975	1973	1973			
Bahrain		1971	1972	1972			1988
Bangladesh		1972	1972	1972			1992
Barbados		1967	1974	1970			1993
Belarus		1993	1992	1992			1958* 1961
Belgium		1947	1945	1945	Y	1958	1958* 1975
Belize		1990	1982	1982			
Benin		1961	1963	1963			1974
Bhutan		1989	1981	1981			

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	International Air Transport Agreement	Chicago Convention on International Civil Aviation	Articles of Agreement of the IBRD (World Bank)	Articles of Agreement of the IMF	General Agreement on Tariffs and Trade (GATT)	Treaty Establishing the European Community (Treaty of Nice)	UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratification or adherence	date of membership	membership	original signatories— see 1994 for WTO membership and GATT 1994	original ratification or accession	signed and ratified, or year in force

<i>Chapter No.</i>	<i>10</i>	<i>11</i>	<i>12</i>	<i>13</i>	<i>83</i>	<i>15</i>	<i>16</i>
Countries and Territories							
Bolivia	1947	1947	1945	1945			1995
Bosnia and Herzegovina		1993	1993	1992			1992 (1993 [†])
Botswana		1978	1968	1968			1972
Brazil		1946	1946	1946	Y		2002
Brunei		1984	1995	1995			1996
Bulgaria		1967	1990	1990			1958* 1962
Burkina Faso		1962	1963	1963			1987
Burundi	1968	1968	1963	1963			
Cambodia		1956	1970	1969			1960
Cameroon		1960	1963	1963			1988
Canada		1946	1945	1945	Y		1986
Cape Verde		1976	1978	1978			
Central African Republic		1961	1963	1963			1963
Chad		1962	1963	1963			
Chile		1947	1945	1945	Y		1975
China, People's Republic		1946 ³	1945	1945 ⁴	Y4		1987
<i>Hong Kong (SAR)</i>				Y ⁷			
<i>Macao (SAR)</i>				Y ⁷			2000 ⁸
Colombia		1947	1946	1945			1979
Comoros		1985	1976	1976			
Congo, Democratic Republic		1961	1963	1963			

**TABLE OF MEMBERSHIP, RATIFICATION
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<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratification or adherence	date of membe rship	membership	original signatories— see 1994 for WTO membership and GATT 1994	original ratification or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Congo, Republic		1962	1963		1963		
Costa Rica	1958	1958	1946	1946			1958* 1988
Cote d'Ivoire		1960	1963	1963			1991
Croatia		1992	1993	1992			1992 (1993 [†])
Cuba		1949			Y		1975
Cyprus		1961	1961	1961		2004	1981
Czech Republic		1993	1993	1993		2004	1993*
<i>Czechoslovakia (1918–92)</i>			1945	1990	Y		1953

Denmark		1947	1946	1946		1973	1973
<i>Faeroe Islands</i>							
<i>Greenland</i>						1973–85	
Djibouti		1978	1980	1978			1977 (1983 [†])
Dominica			1980	1978			1989
Dominican Republic		1946	1945	1945			2002
Ecuador		1954	1945	1945			1958* 1962
Egypt		1947	1945	1945			2002
El Salvador	1945	1947	1946	1946			1958* 1998
Equatorial Guinea		1972	1970	1969			
Eritrea		1993	1994	1994			
Estonia		1992	1992	1992		2004	1993
Ethiopia	1945	1947	1945	1945			

**TABLE OF MEMBERSHIP, RATIFICATION
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<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratifica tion and accession</i>	Accep tance	Ratifi cation or adherence	date of memb ership	Memb ership	original signat ories—see 1994 for WTO memb ership and GATT	original ratific ation or accession	signed and ratified, or year in force

<i>Chapter No.</i>	<i>10</i>	<i>11</i>	<i>12</i>	<i>13</i>	<i>1994 83</i>	<i>15</i>	<i>16</i>
Countries and Territories							
European Community (EU)							
Fiji		1973	1971	1971			
Finland		1949	1948	1948		1995	1962
France		1947	1945	1945	Y	1958	1958* 1959
<i>Mayotte</i>							
<i>French Polynesia</i>							
<i>New Caledonia</i>							
Gabon		1962	1963	1963			
Gambia, The		1977	1967	1967			
Georgia		1994	1992	1992			1994
Germany		1956	1952	1952		1958	1958* 1961
Ghana		1957	1957	1957			1968
Greece	1946	1947	1945	1945		1981	1962
Grenada		1981	1975	1975			
Guatemala		1947	1945	1945			1984
Guinea		1959	1963	1963			1991
Guinea-Bissau		1977	1977	1977			
Guyana		1967	1966	1966			
<i>Habsburg Empire</i>							
Haiti		1948	1953	1953			1984
Holy See (or Vatican City)							1975

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<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratifi cation or adherence	date of memb ership	Membe rship	original signatories— see 1994 for WTO membe rship and GATT 1994	original ratific ation or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Honduras	1945	1953	1945	1945			2001
Hungary		1969	1982	1982		2004	1962
Iceland		1947	1945	1945			2002
India		1947	1945	1945	Y		1958* 1960
<i>Goa</i>							
Indonesia		1950	1954	1967			1982
Iran		1950	1945	1945			2002
Iraq		1947	1945	1945			
Ireland		1946	1957	1957		1973	1981
Israel		1949	1954	1954			1958* 1959

Italy		1947	1947	1947		1958	1969
Jamaica		1963	1963	1963			2002
Japan		1953	1952	1952			1961
Jordan		1947	1952	1952			1958* 1980
Kazakhstan		1992	1992	1992			1996
Kenya		1964	1964	1964			1989
Kiribati		1981	1986	1986			
Korea, Democratic People's Republic		1977					
Korea, Republic		1952	1955	1955			1973
Kuwait		1960	1962	1962			1978

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<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratifi cation or adherence	date of membe rship	Membe rship	original signat ories—see 1994 for WTO membership and GATT 1994	original ratific ation or acc ession	signed and ratified, or year in force

Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Kyrgyzstan		1993	1992	1992			1997
Laos		1955	1961	1961			1998
Latvia		1992	1992	1992		2004	1992
Lebanon		1949	1947	1947	Y		1998
Lesotho		1975	1968	1968			1989
Liberia	1945	1947	1962	1962			
Libya		1953	1958	1958			
Liechtenstein	1947 ¹	1947 ¹					
Lithuania		1992	1992	1992		2004	1995
Luxembourg		1948	1945	1945	Y	1958	1958* 1983
Macedonia, Former Yugoslav Republic		1992	1993	1992			1991 (1994 [†])
Madagascar		1962	1963	1963			1962
Malawi		1964	1965	1965			
Malaysia		1958	1958	1958			1986
Maldives		1974	1978	1978			
Mali		1960	1963	1963			1994
Malta		1965	1983	1968		2004	2000
Marshall Islands		1988	1992	1992			
Mauritania		1962	1963	1963			1997
Mauritius		1970	1968	1968			1996

**TABLE OF MEMBERSHIP, RATIFICATION
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	Interna tional Air Transport Agree ment	Chicago Conve ntion on Interna tional Civil Aviation	Articles of Agree ment of the IBRD (World Bank)	Articles of Agreement of the IMF	General Agreement on Tariffs and Trade (GATT)	Treaty Establi shing the European Community (Treaty of Nice)	UN Conven tion on the Recogn ition and Enforc ement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratifi cation or adher ence	date of membe rship	Memb ership	original signat ories—see 1994 for WTO membership and GATT 1994	original ratification or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Mexico		1946	1945	1945			1971
Micronesia, Federated States		1988	1993	1993			
Moldova		1992	1992	1992			1998
Monaco		1980					1958* 1982
Mongolia		1989	1991	1991			1995
Morocco		1956	1958	1958			1959
Mozambique		1977	1984	1984			1998
Myanmar		1948	1952	1952	Y		

(Burma)							
Namibia		1991	1990	1990			
Nauru		1975					
Nepal		1960	1961	1961			1998
Netherlands	1945	1947	1945	1945	Y	1958	1958* 1964
<i>Aruba (Netherlands)</i>	1945 ²	1947 ²		Y ²			
<i>Netherlands Antilles (Netherlands)</i>	1945 ²	1947 ²		Y ²			
New Zealand		1947	1961	1961	Y		1983
<i>Cook Islands</i>		1986					
<i>Tokelau</i>							
Nicaragua		1945	1946	1946			2003
Niger		1961	1963	1963			1965
Nigeria		1960	1961	1961			1970

**TABLE OF MEMBERSHIP, RATIFICATION
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	Interna tional Air Transport Agreement	Chicago Conve ntion on Interna tional Civil Aviation	Articles of Agreement of the IBRD (World Bank)	Articles of Agree ment of the IMF	General Agreement on Tariffs and Trade (GATT)	Treaty Estab lishing the European Com munity (Treaty of Nice)	UN Conve ntion on the Recog nition and Enforc ement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratific ation or adherence	date of membe rship	Memb ership	original signat ories—see 1994 for WTO	original ratification or accession	signed and ratified, or year in force

Chapter No.	10	11	12	13	membership and GATT 1994 83	15	16
Countries and Territories							
Norway		1947	1945	1945	Y		1961
Oman		1973	1971	1971			1999
Pakistan		1947	1950	1950	Y		1958*
Palau		1995	1997	1997			
<i>Palestinian Authority</i>							
Panama		1960	1946	1946			1985
Papua New Guinea		1975	1975	1975			
Paraguay	1945	1946	1945	1945			1998
Peru		1946	1945	1945			1988
Philippines		1947	1945	1945			1958* 1967
Poland		1945	1945	1986		2004	1958* 1962
Portugal		1947	1961	1961		1986	1995
Qatar		1971	1972	1972			2002
Romania		1965	1972	1972			1961
Russia		1970	1992	1992			1958* 1960
Rwanda		1964	1963	1963			
Sahrawi Arab Democratic Republic							
Saint Kitts and Nevis		2002	1984	1984			
Saint Lucia		1979	1980	1979			
Saint Vincent and		1983	1982	1979			2000

the Grenadines							

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	Interna tional Air Transport Agre ement	Chicago Conve nion on Interna tional Civil Aviation	Articles of Agree ment of the IBRD (World Bank)	Articles of Agree ment of the IMF	General Agree ment on Tariffs and Trade (GATT)	Treaty Establ ishing the European Com munity (Treaty of Nice)	UN Conve nion on the Recog nition and Enforc ement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	Accep tance	Ratifica tion or adherence	date of membership	Member ship	original signato ries— see 1994 for WTO mem bership and GATT 1994	original ratific ation or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Samoa		1996	1974	1971			
San Marino		1988	2000	1992			1979
Sao Tome and Principe		1977	1977	1977			
Saudi Arabia		1962	1957	1957			1994

Senegal		1960	1962	1962			1995
Serbia and Montenegro		2000	1993	1992			1992 [†] (2001 [†])
Seychelles		1977	1980	1977			
Sierra Leone		1961	1962	1962			
Singapore		1966	1966	1966			1986
Slovakia		1993	1993	1993		2004	1993 [†]
Slovenia		1992	1993	1992		2004	1991 (1992 [†])
Solomon Islands		1985	1978	1978			
Somalia		1964	1962	1962			
South Africa		1947	1945	1945	Y		1976
Spain		1947	1958	1958		1986	1977
Sri Lanka (Ceylon)		1948	1950	1950	Y		1958* 1962
Sudan		1956	1957	1957			
Suriname		1976	1978	1978			
Swaziland		1973	1969	1969			
Sweden		1946	1951	1951		1995	1958* 1972
Switzerland		1947	1992	1992			1958* 1965

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<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratification or adherence	date of membership	Membership	original signatories— see 1994 for WTO membership and GATT 1994	original ratification or accession	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Syria		1949	1947	1947	Y		1959
Taiwan (Republic of China/Chinese Taipei)		1946 ⁴	1945– 80 ⁴	1945– 80 ⁴	Y ⁴		
Tajikistan		1993	1993	1993			
Tanzania		1962	1962	1962			1970
Thailand		1947	1949	1949			1960
Timor-Leste			2002	2002			
Togo		1965	1962	1962			
Tonga		1984	1985	1985			
Trinidad and Tobago		1963	1963	1963			1966

Tunisia		1957	1958	1958			1967
Turkey	1945	1945	1947	1947			1992
Turkmenistan		1993	1992	1992			
Tuvalu							
Uganda		1967	1963	1963			1992
Ukraine		1992	1992	1992			1958* 1961
United Arab Emirates		1972	1972	1972			
United Kingdom		1947	1945	1945	Y	1973	1975
<i>Channel Islands (Crown Dep.)</i>		Y ⁵					
<i>Bailiwick of Guernsey</i>							
<i>Bailiwick of Jersey</i>							

**TABLE OF MEMBERSHIP, RATIFICATION
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	Interna tional Air Transport Agre ement	Chicago Conve ntion on Intern ational Civil Aviation	Articles of Agree ment of the IBRD (World Bank)	Articles of Agreement of the IMF	General Agreement on Tariffs and Trade (GATT)	Treaty Estab lishing the European Comm unity (Treaty of Nice)	UN Conven tion on the Recogni tion and Enforc ement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	acceptance	Ratification or adherence	date of memb ership	Memb ership	original signat ories—see 1994 for WTO memb	original ratification or accession	signed and ratified, or year in force

Chapter No.	10	11	12	13	ership and GATT 1994	15	16
Countries and Territories							
<i>Isle of Man (Crown Dep.)</i>		Y ⁵					
<i>Anguilla</i>		Y ⁵					
<i>Bermuda</i>		Y ⁵					
<i>British Antarctic Territory</i>		Y ⁵					
<i>British Virgin Islands</i>		Y ⁵					
<i>Cayman Islands</i>		Y ⁵					
<i>Falkland Islands</i>		Y ⁵					
<i>Gibraltar</i>		Y ⁵					
<i>Turks and Caicos Islands</i>		Y ⁵					
<i>Montserrat</i>		Y ⁵					
<i>St Helena, etc.</i>		Y ⁵					
USA		1946	1945	1945	Y		1970
<i>Northern Mariana Islands (C 'wealth)</i>		Y ⁶					
<i>Puerto Rico (C'wealth)</i>		Y ⁶					
<i>American Samoa</i>		Y ⁶					
<i>Guam</i>		Y ⁶					

<i>Virgin Islands</i>		y ⁶					
Uruguay		1954	1946	1946			1983
Uzbekistan		1992	1992	1992			1996
Vanuatu		1983	1981	1981			
Venezuela		1947	1946	1946			1995

**TABLE OF MEMBERSHIP, RATIFICATION
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	Interna tional Air Transport Agree ment	Chicago Conve ntion on Interna tional Civil Aviation	Articles of Agree ment of the IBRD (World Bank)	Articles of Agree ment of the IMF	General Agreement on Tariffs and Trade (GATT)	Treaty Establi shing the European Com munity (Treaty of Nice)	UN Conv ntion on the Recog ition and Enfor cement of Foreign Arbitral Awards
<i>Date</i>	1944	1944	1945	1945	1947	2001	1958
<i>Notes on ratification and accession</i>	Accept ance	Ratifi cation or adher ence	date of mem bership	Memb ership	original signat ories—see 1994 for WTO membership and GATT 1994	original ratific ation or acces sion	signed and ratified, or year in force
Chapter No.	10	11	12	13	83	15	16
Countries and Territories							
Viet Nam		1980	1956	1956			1995
Yemen		1964	1969	1990			
<i>Yugoslavia (1918– 92)</i>				1980–92			1982
Zambia		1964	1965	1965			2002

Zimbabwe (Southern Rhodesia/Rhodesia)		1981	1980	1980	Y	1994

NOTES

¹ Liechtenstein included as part of its customs union with Switzerland.
² with the Netherlands.
³ ratification by the Republic of China was recognized as valid by the People's Republic in 1974.
⁴ initially as the then internationally recognized Republic of China.
⁵ by the United Kingdom.
⁶ by the USA.
⁷ membership distinct from rest of China and pre-dating Special Administrative Region status.
⁸ by Portugal (colonial power).
⁹ not decided on succession to Yugoslavia membership of 1976.
¹⁰ accession by signing 1979 amendment.
¹¹ date for Federal Republic; German Democratic Republic (East Germany) signed and ratified in 1967.
¹² accession directly to 1979 amendment.
¹³ has not ratified

GENERAL NOTES

Date is of ratification/accession or when in force, unless: *Signature (only);
[†]Succession; [‡]Denunciation; [§]accession when not first a signatory.
Successor states:
Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously.
Where possible, information on the previous party is given.
A later date for succession usually coincides with the date of deposit of the instrument of succession.
Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.
Eritrea's separation from Ethiopia was recognised on 28 May 1993.
Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002.
The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.
The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR.
The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro.
Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan.
The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

the 1979 amendment.
¹⁴ admission processes not yet complete.

TABLE OF MEMBERSHIP, RATIFICATION
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	Agreement Estab- lishing the Inter- American Develo- pment Bank	Statute of the Organi- zation of the Petroleum Exporting Countries	Agre- ement Establ- ishing the African Devel- opment Bank	Conve- nion on the Settle- ment of Inves- tment Dis- putes	Conve- nion on the Transit Trade of Land- locked States	Conve- nion on the Service Abroad of Judicial and Extraj- udicial Docu- ments	Agree- ment Establ- ishing the Asian Develo- pment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Memb- ership	Memb- ership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb- ership
<i>Chapter No.</i>	<i>17</i>	<i>18</i>	<i>20</i>	<i>21</i>	<i>22</i>	<i>23</i>	<i>24</i>
Countries and Territories							
Afghanistan				1966 1968	1965*		1966
Albania				1991 1991			
Algeria		1969	1963 1964	1995 1996			
Andorra							
Angola			1981 (1982 ¹⁰)				
Antigua and Barbuda						1981*	

Argentina	1959		1985 (1985 ¹⁰)	1991 1994	1965*	2001	
Armenia				1992 1992			
Australia				1975 1991	1972		1966
<i>Norfolk Island</i>							
Austria	1977		1983 (1982 ¹⁰)	1966 1971			1966
Azerbaijan				1992 1992			1999
Bahamas, The	1977			1995 1995		1997	
Bahrain				1995 1996			
Bangladesh				1979 1980			1973
Barbados	1969			1981 1983		1969	
Belarus				1992 1992	1965 1972	1997	
Belgium	1976		1983 (1983 ¹⁰)	1965 1970	1965 1970	1966 1970	1966
Belize	1992			1986*			
Benin			1963 1964 (1982 ¹⁰)	1965 1966			

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	Agreement Estab- lishing the Inter- American Develo- pment Bank	Statute of the Organ- ization of the Petroleum Exporting Countries	Agree- ment Establ- ishing the African Devel- opment Bank	Conve- nion on the Settle- ment of Invest- ment Disputes	Conven- tion on the Transit Trade of Land- locked States	Conven- tion on the Service Abroad of Judicial and Extra- judicial Documents	Agreement Establ- ishing the Asian Develop- ment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Memb- ership	Memb- ership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Membe- rship
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Bhutan							1982
Bolivia	1959			1991 1995	1965*		
Bosnia and Herzegovina				1997 1997			
Botswana			1972 (1982 ¹⁰)	1970 1970		1969	
Brazil	1959		1983 (1982 ¹⁰)		1965*		
Brunei				2002 2002			
Bulgaria				2000 2001		1999	
Burkina Faso			1963 1964 (1982 ¹⁰)	1965 1966	1987		
Burundi			1963 1968 (1980 ¹⁰)	1967 1969	1968		

Cambodia				1993 2004			1966
Cameroon			1963 1964 (1982 ¹⁰)	1965 1967	1965*		
Canada	1972		1982 (1982 ¹⁰)			1988	1966
Cape Verde			1976 (1982 ¹⁰)				
Central African Republic			1963 1970 (1982 ¹⁰)	1965 1966	1965 1989		
Chad			1968 (1982 ¹⁰)	1966 1966	1967		
Chile	1959			1991 1991	1965 1972		
China, People's Republic			1985 (1985 ¹⁰)	1990 1993		1991	1986
<i>Hong Kong</i> (SAR)						1970	19695
<i>Macao</i> (SAR)						1999	
Colombia	1959			1993 1997			
Comoros			1976 (1982 ¹⁰)	1978 1978			

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agreement Establishing the Inter- American Develop- ment Bank	Statute of the Organi- zation of the Petroleum Exporting Countries	Agreement Establishing the African Develop- ment Bank	Con- vention on the Settle- ment of Inves- tment Disputes	Con- vention on the Transit Trade of Land- locked States	Con- vention on the Service Abroad of Judicial and Extraju- dicial Documents	Agree- ment Establishing the Asian Develop- ment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and acce- ssion</i>	Membe- rship	Mem- bership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Membe- rship
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Congo, Democratic Republic			1963 1964 (1982 ¹⁰)	1968 1970			
Congo, Republic			1963 1965 (1982 ¹⁰)	1965 1966			
Costa Rica	1959			1981 1993			
Cote d'Ivoire			1963 1964 (1982 ¹⁰)	1965 1966			
Croatia	1993 [†]			1997 1998	1992 [†]		
Cuba							
Cyprus				1966 1966		1982	
Czech Republic				1993 1993	1993 [†]	1993	
<i>Czechoslovakia (1918–92)</i>				Y	1965 1967	1981	

Denmark	1976		1982 (1982 ¹⁰)	1965 1968	1969	1969 1969	1966
<i>Faeroe Islands</i>							
<i>Greenland</i>							
Djibouti			1978 (1982 ¹⁰)				
Dominica							
Dominican Republic	1959			2000*			
Ecuador	1959	1973–92		1986 1986			
Egypt			1963 1964 (1982 ¹⁰)	1972 1972		1966 1968	
El Salvador	1959			1982 1984			
Equatorial Guinea			1975 (1982 ¹⁰)				
Eritrea			1994 ¹⁰				
Estonia				1992 1992		1996	v

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	Agreement Establis hing the Inter- American Devel opment Bank	Statute of the Organi zation of the Petro leum Exporting Countries	Agreement Establis hing the African Develo pment Bank	Conv ention on the Settle ment of Invest ment Disputes	Conve nion on the Transit Trade of Land- locked States	Convention on the Service Abroad of Judicial and Extraju dicial Docu ments	Agreement Establishing the Asian Develo pment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratific ation and accession</i>	Membe rship	Membe rship	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb ership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Ethiopia			1963 1964 (1982 ¹⁰)	1965*			
European Community (EU)							
Fiji				1977 1977			1970
Finland	1977		1982 (1982 ¹⁰)	1967 1969	1971	1965 1969	1966
France	1977		1982 (1982 ¹⁰)	1965 1967		1967 1972	1970
<i>Mayotte</i>							
<i>French Polynesia</i>							
<i>New Caledonia</i>							
Gabon		1975–94	1972 (1982 ¹⁰)	1965 1966			

Gambia, The			1973 (1982 ¹⁰)	1974 1974			
Georgia				1992 1992	1999		
Germany	1976		1983 (1983 ¹⁰)	1966 1969	1965 [*]	1965 1979	1966
Ghana			1963 1964 (1982 ¹⁰)	1965 1966			
Greece				1966 1969		1983 1983	
Grenada				1991 1991			
Guatemala	1959			1995 2003			
Guinea			1963 1964 (1982 ¹⁰)	1968 1968			
Guinea- Bissau			1975 (1982 ¹⁰)	1991 [*]			
Guyana	1976			1969 1969			
<i>Habsburg Empire</i>							
Haiti				1985 [*]			

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	Agreement Estab lishing the Inter- American Devel opment Bank	Statute of the Organiz ation of the Petroleum Exporting Countries	Agree ment Estab lishing the African Develop ment Bank	Con vention on the Sett lement of Inves tment Disputes	Conve ntion on the Transit Trade of Land- locked States	Convention on the Service Abroad of Judicial and Extraj udicial Documents	Agreement Establishing the Asian Develo pment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratify cation and accession</i>	Memb ership	Memb ership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb ership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Holy See (or Vatican City)					1965*		
Honduras	1959			1986 1989			
Hungary				1986 1987	1965 1967	2004	
Iceland				1966 1966			
India			1983 (1983 ¹⁰)				1966
<i>Goa</i>							
Indonesia		1962		1968 1968			1966
Iran		1960					
Iraq		1960					
Ireland				1966		1989 1994	

				1981			
Israel	1976			1980 1983		1965 1972	
Italy	1977		1982 (1982 ¹⁰)	1965 1971	1965*	1979 1981	1966
Jamaica	1969			1965 1966			
Japan	1976		1983 (1983 ¹⁰)	1965 1967		1970 1970	1966
Jordan				1972 1972			
Kazakhstan				1992 2000			1994
Kenya			1963 1964 (1982 ¹⁰)	1966 1967			
Kiribati							1974
Korea, Democratic People's Republic							
Korea, Republic	2005		1982 (1982 ¹⁰)	1966 1967		2000	1966

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	Agree ment Establ ishing the Inter- American Devel opment Bank	Statute of the Organiz ation of the Petroleum Exporting Countries	Agree ment Establ ishing the African Develo pment Bank	Conve nion on the Settlement of Investment Disputes	Conve nion on the Transit Trade of Land- locked States	Conve nion on the Service Abroad of Judicial and Extraj udicial Documents	Agree ment Establ ishing the Asian Develo pment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Memb ership	Mem bership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Mem bership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Kuwait		1960	1982 (1982 ¹⁰)	1978 1979		2002	
Kyrgyzstan				1995*			1994
Laos					1965 1967		1966
Latvia				1997 1997		1995	
Lebanon				2003 2003			
Lesotho			1973 (1982 ¹⁰)	1968 1969	1969		
Liberia			1963 1964 (1982 ¹⁰)	1965 1970			
Libya		1962	1963 1972				
Liechtenstein							
Lithuania				1992 1992		2000	
Luxembourg				1965 1970	1965*	1971 1975	2003

Macedonia, Former Yugoslav Republic				1998 1998			
Madagascar			1976 (1982 ¹⁰)	1966 1966			
Malawi			1966 (1982 ¹⁰)	1966 1966	1966	1972	
Malaysia				1966 1966			1966
Maldives					1967		1978
Mali			1963 1964 (1982 ¹⁰)	1976 1978			
Malta				2002 2003			
Marshall Islands							1990
Mauritania			1963 1964 (1982 ¹⁰)	1965 1966			

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	Agreement Estab lishing the Inter- American Develo pment Bank	Statute of the Organiz ation of the Petro leum Exporting Countries	Agree ment Establi shing the African Develo pment Bank	Conve ntion on the Settlement of Invest ment Disputes	Conve ntion on the Transit Trade of Land- locked States	Conven tion on the Service Abroad of Judicial and Extra judicial Docu ments	Agreement Establ ishing the Asian Develop ment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Membe rship	Members hip	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Mem bership
Chapter No.	17	18	20	21	22	23	24

Countries and Territories							
Mauritius			1974 (1982 ¹⁰)	1969 1969			
Mexico	1959					1999	
Micronesia, Federated States				1993 1993			1990
Moldova				1992 [*]			
Monaco							
Mongolia				1991 1991	1966		1991
Morocco			1963 1964 (1982 ¹⁰)	1965 1967			
Mozambique			1976 (1982 ¹⁰)	1995 1995			
Myanmar (Burma)							1973
Namibia			1991 ¹⁰	1998 [*]			
Nauru							1991
Nepal				1965 1969	1965 1966		1966
Netherlands	1977		1983 (1982 ¹⁰)	1966 1966	1965 1971	1965 1975	1966
<i>Aruba (Netherlands)</i>	Y ²						
<i>Netherlands Antilles (Netherlands)</i>	Y ²						
New Zealand				1970 1980			1966
<i>Cook Islands</i>							1976
<i>Tokelau</i>							
Nicaragua	1959			1994 1995			
Niger			1963 1964 (1982 ¹⁰)	1965 1966	1966		

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	Agreement Establishing the Inter- American Development Bank	Statute of the Organ- ization of the Petroleum Exporting Countries	Agreement Establishing the African Develop- ment Bank	Con- vention on the Settle- ment of Inves- tment Disputes	Con- vention on the Transit Trade of Land- locked States	Convention on the Service Abroad of Judicial and Extra- judicial Documents	Agreement Establishing the Asian Develop- ment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Membe- rship	Memb- ership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb- ership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Nigeria		1971	1963 1964 (1982 ¹⁰)	1965 1965	1966		
Norway	1986		1982 (1982 ¹⁰)	1966 1967	1968	1968 1969	1966
Oman				1995 1995			
Pakistan				1965 1966		1988	1966
Palau							2003
<i>Palestinian Authority</i>							
Panama	1959			1995 1996			
Papua New Guinea				1978 1978			1971
Paraguay	1959			1981 1983	1965*		
Peru	1959			1991			

				1993			
Philippines				1978 1978			1966
Poland						1996	
Portugal			1983 (1983 ¹⁰)	1983 1984		1971 1973	2002
Qatar		1961					
Romania				1974 1975		2003	
Russia				1992*	1965 1972	2001	
Rwanda			1963 1965 (1982 ¹⁰)	1978 1979	1965 1968		
Sahrawi Arab Democratic Republic							
Saint Kitts and Nevis				1994 1995			
Saint Lucia				1984 1984			

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1940–1969

	Agreement Estab lishing the Inter- American Devel opment Bank	Statute of the Organi zation of the Petroleum Exporting Countries	Agreement Estab lishing the African Develo pment Bank	Conve ntion on the Settle ment of Inves tment Disputes	Conv ention on the Transit Trade of Land- locked States	Conve ntion on the Service Abroad of Judicial and Extraj udicial Docum ents	Agreement Establi shing the Asian Develop ment Bank
<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Mem bership	Membe rship	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb ership

<i>Chapter No.</i>	<i>17</i>	<i>18</i>	<i>20</i>	<i>21</i>	<i>22</i>	<i>23</i>	<i>24</i>
Countries and Territories							
Saint Vincent and the Grenadines				2001 2002		1979 [†]	
Samoa				1978 1978			1966
San Marino					1965 1968	2002	
Sao Tome and Principe			1976 (1982 ¹⁰)	1999 so			
Saudi Arabia		1960	1983 (1983 ¹⁰)	1979 1980			
Senegal			1963 1964 (1982 ¹⁰)	1966 1967	1985		
Serbia and Montenegro	19769			2002*	2001 [†]		
Seychelles			1977 (1982 ¹⁰)	1978 1978		1980	
Sierra Leone			1963 1964 (1982 ¹⁰)	1965 1966			
Singapore				1968 1968			1966
Slovakia				1993 1994	1993*	1993	
Slovenia	1993 [†]			1994 1994		2000	
Solomon Islands				1979 1981			1973
Somalia			1963 1964 (1982 ¹⁰)	1965 1968			
South Africa			1995 ¹⁰				
Spain	1976		1984 1984 (1984 1984) ¹⁰	1994 1994		1976 1987	1986

Sri Lanka (Ceylon)				1967 1967		2000	1966
Sudan			1963 1963 (1982 ¹⁰)	1967 1973	1965*		
Suriname	1980						
Swaziland			1971 (1982 ¹⁰)	1970 1971	1969		

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<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Memb- rship	Mem- bership	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Memb- ership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
Sweden	1977		1982 (1982 ¹⁰)	1965 1966	1971	1969 1969	1966
Switzerland	1976		1982 (1982 ¹⁰)	1967 1968	1965*	1985 1994	1967
Syria			1964				
Taiwan (Republic of China/Chinese Taipei)							1966
Tajikistan							1998

Tanzania			1963 1963 (1982 ¹⁰)	1992 1992			
Thailand				1985*			1966
Timor-Leste				2002 2002			2002
Togo			1963 1964 (1982 ¹⁰)	1966 1967			
Tonga				1989 1990			1972
Trinidad and Tobago	1967			1966 1967			
Tunisia			1963 1964 (1982 ¹⁰)	1965 1966			
Turkey				1987 1988	1969	1968 1972	1991
Turkmenistan				1992 1992			2000
Tuvalu							1993
Uganda			1963 1963 (1982 ¹⁰)	1966 1966	1965*		
Ukraine				1998 2000	1965 1972	2001	
United Arab Emirates		1967		1981 1981			
United Kingdom	1976		1983 (1982 ¹⁰)	1965 1966		1965 1967	1966
<i>Channel Islands (Crown Dep.)</i>						1967	

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<i>Date</i>	1959	1960	1963	1965	1965	1965	1965
<i>Notes on ratification and accession</i>	Membe- rship	Member- ship	signed and ratified, or year of accession	years signed and ratified	signed and ratified, or year of accession	signed and ratified, or year of accession	Mem- bership
Chapter No.	17	18	20	21	22	23	24
Countries and Territories							
<i>Bailiwick of Guernsey</i>							
<i>Bailiwick of Jersey</i>							
<i>Isle of Man (Crown Dep.)</i>						1967	
<i>Anguilla</i>						1967	
<i>Bermuda</i>						1967	
<i>British Antarctic Territory</i>						1967	
<i>British Virgin Islands</i>						1967	
<i>Cayman Islands</i>						1967	

<i>Falkland Islands</i>						1967	
<i>Gibraltar</i>						1967	
<i>Turks and Caicos Islands</i>						1967	
<i>Montserrat</i>						1967	
<i>St Helena, etc.</i>						1967	
USA	1959		1983 (1983 ¹⁰)	1965 1966	1965 1968	1965 1967	1966
<i>Northern Mariana Islands (C'wealth)</i>						1967	
<i>Puerto Rico (C'wealth)</i>						1967	
<i>American Samoa</i>						1967	
<i>Guam</i>						1967	
<i>Virgin Islands</i>						1967	
Uruguay	1960			1992 2000			
Uzbekistan				1994 1995	1996		1995

its customs union with Switzerland. ²with the Netherlands. ³ratification by the Republic of China was recognized as valid by the People's Republic in 1974. ⁴initially as the then internationally recognized Republic of China. ⁵by the United Kingdom. 6 by the USA. ⁷membership distinct from rest of China and pre-dating Special Administrative Region status. ⁸by Portugal (colonial power). ⁹not decided on succession to Yugoslavia membership of 1976. ¹⁰accession by signing 1979 amendment. ¹¹date for Federal Republic; German Democratic Republic (East Germany) signed and ratified in 1967. ¹²accession directly to 1979 amendment. ¹³has not ratified the 1979 amendment. ¹⁴admission processes not yet complete.	Successor states: Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously. Where possible, information on the previous party is given. A later date for succession usually coincides with the date of deposit of the instrument of succession. Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993. Eritrea's separation from Ethiopia was recognised on 28 May 1993. Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002. The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation. The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR. The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro. Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan. The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Interna- tional Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conv- ention Establis- hing the World Intell- ectual Property Organi- zation	The ASEAN Declar- ation	Hague- Visby Rules: Visby Amen- dment (Brussels Protocol) to the 1924 Hague Rules	EC Conve- ntion on Jurisd- iction and the Enforc- ement of Judgments	Agree- ment Estab- lishing the Caribbean Devel- opment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratif- ication and accession</i>	year of ratification or accession	year of ratification or accession	Membe- rship	Membe- rship	year of ratification or accession		Mem- bership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Afghanistan	1983 [§]	1988					
Albania	1992 [§]		1992				
Algeria	1989	Y	1975				
Andorra			1994				
Angola	1992 [§]		1985				
Antigua and Barbuda		1981 [§]	2000				1969
Argentina	1986	1969	1980				
Armenia	1993 [§]		1993				
Australia	1976	1967	1972		1993 ¹²		
<i>Norfolk Island</i>							
Austria	1978	1968	1973			Y	

Azerbaijan	1992 [§]		1995				
Bahamas, The		1976 [§]	1977				1969
Bahrain			1995				
Bangladesh	1999 [§]	1986 [§]	1985				
Barbados	1976 [§]	1968 [§]	1979				1969
Belarus	1976	1967	1970				
Belgium	1983	1973	1975		1978	Y	
Belize	2000*		2000				1969
Benin	1992 [§]	1986 [§]	1975				
Bhutan			1994				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Inter national Covenant on Econ omic, Cultural and Social Rights	Outer Space Treaty	Conv ention Establ ishing the World Intell ectual Property Organization	The ASEAN Declar ation	Hague- Visby Rules: Visby Amend ment (Brussels Protocol) to the 1924 Hague Rules	EC Conve ntion on Jurisdi ction and the Enforc ement of Judg ments	Agre ement Establ ishing the Caribbean Devel opment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratify cation or accession	year of ratification or accession	Memb ership	Mem bership	year of ratification or accession		Memb ership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Bolivia	1982 [§]	1967*	1993				
Bosnia and	1992 [†]		1992 [†]				

Herzegovina							
Botswana		1967*	1998				
Brazil	1992 [§]	1969	1975				
Brunei		1984	1994	1984			
Bulgaria	1976	1967 [§]	1970				
Burkina Faso	1999 [§]	1968	1975				
Burundi	1990 [§]	1967*	1977				
Cambodia	1992 [§]		1995	1994			
Cameroon	1984 [§]	1967*	1973				
Canada	1976 [§]	1967	1970				1969
Cape Verde	1993 [§]		1997				
Central African Republic	1981 [§]	1967*	1978				
Chad	1995 [§]		1970				
Chile	1976	1981	1975				
China, People's Republic	2001	1983	1980				1998
<i>Hong Kong (SAR)</i>					1980		
<i>Macao (SAR)</i>							
Colombia	1976	1967*	1980				1974
Comoros			2005				
Congo, Democratic Republic	1977 [§]	1967*	1975				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Interna- tional Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conve- ntion Establi- shing the World Intellectual Property Orga- nization	The ASEAN Declar- ation	Hague- Visby Rules: Visby Amen- dment (Brussels Protocol) to the 1924 Hague Rules	EC Conv- ention on Jurisd- iction and the Enforc- ement of Jud- gments	Agreement Establis- hing the Caribbean Develo- pment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratific- ation or accession	year of ratific- ation or accession	Memb- ership	Mem- bership	year of ratification or accession		Memb- ership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Congo, Republic	1984 [§]		1975				
Costa Rica	1976		1981				
Cote d'Ivoire	1992 [§]		1974				
Croatia	1991 [†]		1991 [†]		1998 ^{§13}		
Cuba		1977 [§]	1975				
Cyprus	1976	1972	1984			Y	
Czech Republic	1993 [†]	1993 [†]	1993 [†]			Y	
<i>Czechoslovakia (1918–92)</i>	Y	1967	1966				
Denmark	1976	1967	1970		1975	Y	
<i>Faeroe Islands</i>							
<i>Greenland</i>							
Djibouti	2003 [§]		2002				

Dominica	1993 [§]	1978 [§]	1998				1969
Dominican Republic	1978 [§]	1968	2000				
Ecuador	1976	1969	1988		1977 ^{§13}		
Egypt	1982	1967	1975		1983 ^{§13}		
El Salvador	1980	Y	1979				
Equatorial Guinea	1987 [§]	Y	1997				
Eritrea	2001 [§]		1997				
Estonia	1992 [§]		1994			Y	
Ethiopia	1993 [§]	1967*	1998				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Interna tional Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conve ntion Establi shing the World Intellec tual Property Organiz ation	The ASEAN Declar ation	Hague- Visby Rules: Visby Amen dment (Brussels Protocol) to the 1924 Hague Rules	EC Conven tion on Jurisdi ction and the Enforcement of Judgm ents	Agree ment Establ ishing the Caribbean Develo pment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratific ation and accession</i>	year of ratific ation or accession	year of ratific ation or accession	Memb ership	Memb ership	year of ratification or accession		Memb ership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
European Community (EU)							

Fiji		1972	1972				
Finland	1976	1967	1970		1984	Y	
France	1981	1970	1974		1977	Y	
<i>Mayotte</i>							
<i>French Polynesia</i>							
<i>New Caledonia</i>							
Gabon	1983 [§]		1975				
Gambia, The	1979 [§]	1967 [*]	1980				
Georgia	1994 [§]		1991		1996 [§]		
Germany	1976	1971 ¹¹	1970			Y	1989
Ghana	2000	1967 [*]	1976				
Greece	1985 [§]	1971	1976		1993 [§]	Y	
Grenada	1991 [§]	1974 [§]	1998				1969
Guatemala	1988 [§]		1983				
Guinea	1978		1980				
Guinea-Bissau	1992 [§]	1976 [§]	1988				
Guyana	1977	1967 [*]	1994				1969
<i>Habsburg Empire</i>							
Haiti		1967 [*]	1983				2003 ¹⁴
Holy See (or Vatican City)		1967 [*]	1975				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Interna tional Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conve ntion Establ ishing the World Intell ectual Property Organ ization	The ASEAN Decla ration	Hague- Visby Rules: Visby Amend ment (Brussels Protocol) to the 1924 Hague Rules	EC Conv ention on Jurisdiction and the Enforce ment of Judgm ents	Agreement Establ ishing the Caribbean Develop ment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratif ication or accession	year of ratification or accession	Member ship	Memb ership	year of ratification or accession		Memb ership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Honduras	1981	1967*	1983				
Hungary	1976	1967	1970			Y	
Iceland	1979	1968	1986				
India	1979 [§]	1982	1975				
<i>Goa</i>							
Indonesia		1967*	1979	1967			
Iran	1976	1967*	2002				
Iraq	1976	1968	1976				
Ireland	1990	1968	1970			Y	
Israel	1992	1977	1970				
Italy	1978	1972	1977		1985	Y	1988
Jamaica	1976	1970	1978				1969
Japan	1979	1967	1975		1993 ¹²		

Jordan	1976	1967*	1972				
Kazakhstan	2003	1991*	1991				
Kenya	1976 [§]	1984 [§]	1971				
Kiribati							
Korea, Democratic People's Republic	1981 [§]		1974				
Korea, Republic	1990 [§]	1967	1979				
Kuwait	1996 [§]	1972 [§]	1998				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN International Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Convention Establishing the World Intellectual Property Organization	The ASEAN Declaration	Hague- Visby Rules: Visby Amendment (Brussels Protocol) to the 1924 Hague Rules	EC Convention on Jurisdiction and the Enforcement of Judgments	Agreement Establishing the Caribbean Development Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratification or accession	year of ratification or accession	Membership	Membership	year of ratification or accession		Membership
<i>Chapter No.</i>	25	26	27	28	29	30	31
Countries and Territories							
Kyrgyzstan	1994 [§]		1991				
Laos	2000	1972 [§]	1995	1997			
Latvia	1992 [§]		1993			Y	

Lebanon	1976 [§]	1969	1986		1975 [§]		
Lesotho	1992 [§]	1967 [*]	1986				
Liberia	1967 [*]		1989				
Libya	1976 [§]	1968 [§]	1976				
Liechtenstein	1999 [§]		1972				
Lithuania	1992 [§]		1992			Y	
Luxembourg	1983	1967 [*]	1975			Y	
Macedonia, Former Yugoslav Republic	1994 [†]		1991 [†]				
Madagascar	1976	1968 [§]	1989				
Malawi	1994 [§]		1970				
Malaysia		1967 [*]	1989	1967			
Maldives			2004				
Mali	1976 [§]	1968 [§]	1982				
Malta	1990		1977			Y	
Marshall Islands							
Mauritania			1976				
Mauritius	1976 [§]	1969 [§]	1976				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Interna tional Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Convention Establ ishing the World Intellectual Property Organi zation	The ASEAN Declara tion	Hague- Visby Rules: Visby Ame ndment (Brussels Protocol) to the 1924 Hague Rules	EC Conve ntion on Jurisdiction and the Enfor cement of Judgm ents	Agree ment Establ ishing the Caribbean Develop ment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratific ation or accession	year of ratific tion or accession	Member ship	Mem bership	year of ratification or accession		Mem bership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Mexico	1981 [§]	1968	1975		1994 ¹²		1982
Micronesia, Federated States							
Moldova	1993 [§]		1991				
Monaco	1997		1975				
Mongolia	1976	1967	1979				
Morocco	1979	1967 [§]	1971				
Mozambique			1996				
Myanmar (Burma)		1970	2001	1997			
Namibia	1995 [§]		1991				
Nauru							
Nepal	1991 [§]	1967	1997				

Netherlands	1979	1969	1975		1982	Y	
<i>Aruba (Netherlands)</i>							
<i>Netherlands Antilles (Netherlands)</i>							
New Zealand	1979	1968	1984		1994 ¹²		
<i>Cook Islands</i>							
<i>Tokelau</i>							
Nicaragua	1980 [§]	1967 [*]	1985				
Niger	1986 [§]	1967	1975				
Nigeria	1993 [§]	1967 [§]	1995				

**TABLE OF MEMBERSHIP, RATIFICATION
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<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
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<i>Chapter No.</i>	25	26	27	28	29	30	31
Countries and Territories							
Norway	1976	1969	1974		1974		
Oman			1997				

Pakistan		1968	1977				
Palau							
<i>Palestinian Authority</i>							
Panama	1977 [§]	1967*	1983				
Papua New Guinea		1980 [§]	1997				
Paraguay	1992 [§]		1987				
Peru	1978	1979	1980				
Philippines	1976	1967*	1980	1967			
Poland	1977	1968	1975		1980	Y	
Portugal	1978	Y	1975			Y	
Qatar			1976				
Romania	1976	1968	1970				
Russia	1976	1967	1970		1999 [§]		
Rwanda	1976 [§]	1967*	1984				
Sahrawi Arab Democratic Republic							
Saint Kitts and Nevis		1983 [§]	1995				1969
Saint Lucia		1979 [§]	1993				1969
Saint Vincent and the Grenadines	1982 [§]		1995				1969

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1940–1969**

	UN Internat ional Covenant on Econ omic, Cultural and Social Rights	Outer Space Treaty	Conv ention Estab lishing the World Intellectual Property Orga nization	The ASEAN Decla ration	Hague- Visby Rules: Visby Ame ndment (Brussels Protocol) to the 1924 Hague Rules	EC Conv ention on Jurisd iction and the Enforc ement of Jud gments	Agreement Establ ishing the Caribbean Develo pment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratification or accession	year of ratification or accession	Membe rship	Member ship	year of ratification or accession		Membe rship
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Samoa			1997				
San Marino	1986 [§]	1968	1991				
Sao Tome and Principe	1995 [*]		1998				
Saudi Arabia		1976 [§]	1982				
Senegal	78		1970				
Serbia and Montenegro	1992 [†]		1992 [†]				
Seychelles	1992 [§]	1978 [§]	2000				
Sierra Leone	1996 [§]	1967	1986				
Singapore		1976 [§]	1990	1967	1972 [§]		
Slovakia	1993 [†]	1993 [†]	1993 [†]			Y	

Slovenia	1992 [†]		1991 [†]			Y	
Solomon Islands	1982 [†]	1978 [§]					
Somalia	1990 [§]	1967 [*]	1982				
South Africa	1994 [*]	1968	1975				
Spain	1977	1968 [§]	1970		1982 ¹²	Y	
Sri Lanka (Ceylon)	1980 [§]	1986	1978		1981 ^{§13}		
Sudan	1986 [§]		1974				
Suriname	1977 [§]		1975				1997 ¹⁴
Swaziland	2004 [§]	1968 [§]	1988				
Sweden	1976	1967	1970		1974	Y	
Switzerland	1992 [§]	1969	1970		1975		

**TABLE OF MEMBERSHIP, RATIFICATION
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	UN Inter ational Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Convention Esta blishing the World Intellectual Property Organization	The ASEAN Declar ation	Hague- Visby Rules: Visby Amen dment (Brussels Protocol) to the 1924 Hague Rules	EC Convention on Jurisdi ction and the Enforcement of Judgments	Agreem ent Establ ishing the Caribbean Develo pment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratify cation or accession	year of ratific ation or accession	Member ship	Me mbership	year of ratify cation or accession		Membe rship
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							

Syria	1976 [§]	1968 [§]	2004		1974 ^{§13}		
Taiwan (Republic of China/ Chinese Taipei)		1970					
Tajikistan	1999 [§]		1991				
Tanzania	1976 [§]		1983				
Thailand	1999 [§]	1968	1989	1967			
Timor-Leste	2004 [§]						
Togo	1984 [§]	1967 [*]	1975				
Tonga		1971 [§]	2001		1978 ^{§13}		
Trinidad and Tobago	1979 [§]	1967 [*]	1988				1969
Tunisia	1976	1968	1975				
Turkey	2003	1968	1976				
Turkmenistan	1997 [§]		1991				
Tuvalu							
Uganda	1987 [§]	1968 [§]	1973				
Ukraine	1976	1967	1970				
United Arab Emirates			1974				
United Kingdom	1976	1967	1970		1976	Y	1969
<i>Channel Islands (Crown Dep.)</i>					1976 [§]		
<i>Bailiwick of Guernsey</i>							
<i>Bailiwick of Jersey</i>							

**TABLE OF MEMBERSHIP, RATIFICATION
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	UN Intern ational Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conve ntion Establi shing the World Intelle ctual Property Organiz ation	The ASEAN Declar ation	Hague- Visby Rules: Visby Ame ndment (Brussels Protocol) to the 1924 Hague Rules	EC Conv ention on Jurisd iction and the Enforc ement of Judg ments	Agree ment Estab lishing the Caribbean Develo pment Bank
<i>Date</i>	1966	1967	1967	1967	1968	1968	1969
<i>Notes on ratification and accession</i>	year of ratification or accession	year of ratification or accession	Memb ership	Memb ership	year of ratification or accession		Memb ership
Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
<i>Isle of Man (Crown Dep.)</i>					1976 [§]		
<i>Anguilla</i>					1983 [§]		1982
<i>Bermuda</i>					1980 [§]		
<i>British Antarctic Territory</i>					1983 [§]		
<i>British Virgin Islands</i>					1983 [§]		1969
<i>Cayman Islands</i>					1983 [§]		1969
<i>Falkland Islands</i>					1983 [§]		

<i>Gibraltar</i>					1977 [§]		
<i>Turks and Caicos Islands</i>					1983 [§]		1969
<i>Montserrat</i>					1983 [§]		1969
<i>St Helena, etc.</i>					1983 [§]		
USA	1977 [*]	1967	1970				
<i>Northern Mariana Islands (C'wealth)</i>							
<i>Puerto Rico (C'wealth)</i>							
<i>American Samoa</i>							
<i>Guam</i>							
<i>Virgin Islands</i>							
Uruguay	1976	1970	1979				
Uzbekistan	1995 [§]		1991				
Vanuatu							
Venezuela	1978	1970	1984				1973

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1940–1969

	UN Intern ational Covenant on Economic, Cultural and Social Rights	Outer Space Treaty	Conve ntion Establ ishing the World Intellectual Property Organiz ation	The ASEAN Decl aration	Hague- Visby Rules: Visby Amen dment (Brussels Protocol) to the 1924 Hague Rules	EC Conve ntion on Jurisdi ction and the Enfor cement of Judg ments	Agree ment Estab lishing the Caribbean Develo pment Bank
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Chapter No.	25	26	27	28	29	30	31
Countries and Territories							
Viet Nam	1982 [§]	1980 [§]	1976	1995			
Yemen	1987 [§]	1979 [§]	1979				
<i>Yugoslavia (1918– 92)</i>		1967 [*]	1973				
<i>Zambia</i>	1984 [§]	1973 [§]	1977				
Zimbabwe (Southern Rhodesia/Rhodesia)	1991 [§]		1981				

NOTES ¹ Liechtenstein included as part of its customs union with Switzerland. ² with the Netherlands. ³ ratification by the Republic of China was recognized as	GENERAL NOTES Date is of ratification/accession or when in force, unless: *Signature (only); [†]Succession; [‡]Denunciation; [§]accession when not first a signatory. Successor states: Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously. Where possible, information on the previous party is given. A later date for succession usually coincides with the date of deposit of the instrument of succession.

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⁴ initially as the
then internationally
recognized

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⁵ by the United

Kingdom.

⁶ by the USA.

⁷ membership
distinct from rest of

China and pre-
dating Special
Administrative
Region status.

⁸ by Portugal
(colonial power).

⁹ not decided on
succession to
Yugoslavia
membership of
1976.

¹⁰ accession by
signing 1979
amendment.

¹¹ date for Federal
Republic; German
Democratic
Republic (East
Germany) signed
and ratified in
1967.

¹² accession directly
to 1979
amendment.

¹³ has not ratified
the 1979
amendment.

¹⁴ admission
processes not yet
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Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.

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The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.

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The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Conve ntion on the Taking of Evidence Abroad	Treaty Estab lishing the Caribbean Comm unity and Common Market	Agree ment on an Interna tional Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Cans Treaties	Ham burg Rules (UN Conv ention on the Interna tional Carriage of Goods by Sea)	UN Conven tion on Contracts for the Intern ational Sale of Goods	UN Conve ntion on Intern ational Multi modal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession	Memb ership	signed and ratified, or year of accession	Mem bership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of accession
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Afghanistan								
Albania								
Algeria								
Andorra								
Angola								
Antigua and Barbuda		1973/74						
Argentina	1987						1988 ^s	
Armenia								
Australia	1992		1979				1989 ^s	
<i>Norfolk Island</i>	Y							
Austria			1974 1976			1979 1993	1989	

Azerbaijan								
Bahamas, The		1983 ¹						
Bahrain								
Bangladesh								
Barbados	1981	1973				1981		
Belarus	2001						1990§	
Belgium			1974 1976				1997 [§]	
Belize		1973/74						
Benin				1975				
Bhutan								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conve ntion on the Taking of Evidence Abroad	Treaty Establis hing the Caribbean Com munity and Common Market	Agreement on an Intern ational Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conve ntion on the Intern ational Carriage of Goods by Sea)	UN Conve ntion on Contracts for the Intern ational Sale of Goods	UN Conve ntion on Intern ational Multim odal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratific ation and accession</i>	signed and ratified, or year of accession	Membe rship	signed and ratified, or year of accession	Memb ership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of acces sion
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Bolivia								
Bosnia and							1992	

Herze govina								
Botswana						1988		
Brazil						1978*		
Brunei								
Bulgaria	1999						1991 [§]	
Burkina Faso				1975		1989		
Burundi							1999 [§]	1998 [§]
Cambodia								
Cameroon						1993		
Canada			1974 1975				1992 [§]	
Cape Verde				1977				
Central African Republic								
Chad								
Chile						1978 1992	1991	1981 1982
China, People's Republic	1997						1988	
<i>Hong Kong (SAR)</i>	1976							
<i>Macao (SAR)</i>	1975							
Colombia		Y ²					2002 [§]	
Comoros								
Congo, Democratic Republic						1979*		

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conv ention on the Taking of Evidence Abroad	Treaty Estab lishing the Caribbean Com munity and Common Market	Agreement on an Interna tional Energy Progr amme	Treaty of the Econo mic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conv ention on the Interna tional Carriage of Goods by Sea)	UN Conven tion on Contracts for the Interna tional Sale of Goods	UN Conv ention on Interna tional Multim odal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratify cation and ac cession</i>	signed and ratified, or year of accession	Memb ership	Signed and ratified, or year of acce ssion	Memb ership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of acce ssion
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Congo, Republic								
Costa Rica								
Cote d'Ivoire				1975				
Croatia							1991	
Cuba							1995 [§]	
Cyprus	1983						2006 [§]	
Czech Republic	1993 [†]		2001			1993 (1995 [†])	1993	
<i>Czechos lovakia (1918–92)</i>	1975 1976					1979 [*]		
Denmark	1972 1972		1974 1975			1979 [*]	1990	

<i>Faeroe Islands</i>	Y							
<i>Greenland</i>	Y							
Djibouti								
Dominica		1973/74						
Dominican Republic		Y ²						
Ecuador							1993 [§]	
Egypt						1978 1979	1988 [§]	
El Salvador						1978*		
Eritrea								
Estonia	1996						1994 [§]	
Ethiopia								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conve nion on the Taking of Evidence Abroad	Treaty Establ ishing the Caribbean Comm unity and Common Market	Agreement on an Internati onal Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conve nion on the Intern ational Carriage of Goods by Sea)	UN Conve nion on Contracts for the Intern ational Sale of Goods	UN Conve nion on Intern ational Multim odal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratific ation and acce ssion</i>	signed and ratified, or year of accession	Membe rship	signed and ratified, or year of acces sion	Mem bership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of acces sion
<i>Chapter No.</i>	32	33	34	35	36	37	38	39
Countries and								

Territories								
European Com munity (EU)			Y ⁴					
Fiji								
Finland	1976 1976		1991			1979 [*]	1989	
France	1972 1974		1992			1979 [*]	1988	
<i>Mayotte</i>	Y							
<i>French Polynesia</i>	Y							
<i>New Caledonia</i>	Y							
Gabon							2006 [§]	
Gambia, The				1975		1978 1996		
Georgia						1996	1995 [§]	1996 [§]
Germany	1970 1979		1974 1975			1978 [*]	1991	
Ghana				1975		1978 [*]	1980/81 [*]	
Greece	2005 2005		1977 ⁴				1999 [§]	
Grenada		1973/74						
Guatemala								
Guinea				1975		1978 1991	1992 [§]	
Guinea-Bissau				1975				
Guyana		1973						
<i>Habsburg Empire</i>								
Haiti		2002						
Holy See (or Vatican City)						1978 [*]		

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conv ention on the Taking of Evidence Abroad	Treaty Establ ishing the Caribbean Comm unity and Com mon Market	Agree ment on an Internat ional Energy Prog ramme	Treaty of the Econ omic Com munity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conve ntion on the Interna tional Carriage of Goods by Sea)	UN Conv ention on Contracts for the Intern ational Sale of Goods	UN Conve ntion on Internat ional Multi modal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratification and accession</i>	signed and ratified, or year of acces sion	Membe rship	signed and ratified, or year of accession	Memb ership		signed and ratified, or year of access ion	entry into force	signed and ratified, or year of acces sion
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Honduras							2003 ^s	
Hungary	2004					1979 1984	1988	
Iceland							2002 ^s	
India								
Goa								
Indonesia								
Iran								
Iraq							1991 ^s	
Ireland			1974 1975					
Israel	1977 1979						2003 ^s	
Italy	1975 1982		1974 1978				1988	

Jamaica		1973						
Japan			1974 1975					
Jordan						2001		
Kazakhstan								
Kenya						1989		
Kiribati								
Korea, Democratic People's Republic								
Korea, Republic							2005 [§]	
Kuwait	2002							

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conve ntion on the Taking of Evidence Abroad	Treaty Establ ishing the Caribbean Comm unity and Common Market	Agree ment on an Interna tional Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conv ention on the Internat ional Carria ge of Goods by Sea)	UN Conve ntion on Contracts for the Interna tional Sale of Goods	UN Conven tion on Interna tional Mult imodal Transp ort of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession	Mem bership	signed and ratified, or year of accession	Memb ership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of access ion
<i>Chapter No.</i>	32	33	34	35	36	37	38	39
Countries and								

Territories								
Kyrgyzstan							2000 ^s	
Laos								
Latvia	1995						1998 ^s	
Lebanon						1983		2001
Lesotho						1989	1988	
Liberia				1975				
Libya								
Liechtenstein								
Lithuania	2000						1996 ^s	
Luxembourg	1975 1977		1974 1975				1998 ^s	
Macedonia, Former Yugoslav Republic							1980/81 [*]	
Madagascar						1978 [*]		
Malawi						1978 1991		1984
Malaysia								
Maldives								
Mali				1975				
Malta								
Marshall Islands								
Mauritania							2000 ^s	
Mauritius								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conv ention on the Taking of Evidence Abroad	Treaty Establ ishing the Caribbean Comm unity and Common Market	Agree ment on an Interna tional Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conv ention on the Intern ational Carriage of Goods by Sea)	UN Conve ntion on Cont racts for the Intern ational Sale of Goods	UN Conve ntion on Interna tional Mult imodal Trans port of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratific ation and accession</i>	signed and ratified, or year of accession	Membe rship	signed and ratified, or year of accession	Memb ership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of acces sion
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Mexico	1989	Y ²				1978*	1989 [§]	1980 1982
Micronesia, Federated States								
Moldova							1995 [§]	
Monaco	1986							
Mongolia							1999 [§]	
Morocco						1981		1980 1993
Mozam bique								
Mvanmar								

(Burma)								
Namibia								
Nauru								
Nepal								
Netherlands	1979 1981		1974 1976				1992	
<i>Aruba (Nether lands)</i>	Y	Y ²						
<i>Netherlands Antilles (Neth erlands)</i>	Y	Y ²						
New Zealand			19764				1995 ^s	
<i>Cook Islands</i>	Y							
<i>Tokelau</i>	Y							
Nicaragua								
Niger				1975				
Nigeria				1975		1988		

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conve ntion on the Taking of Evidence Abroad	Treaty Establi shing the Caribbean Comm unity and Common Market	Agree ment on an Interna tional Energy Progr amme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conv ention on the Interna tiona Carriage of Goods by Sea)	UN Conve ntion on Contracts for the Interna tional Sale of Goods	UN Conve ntion on Interna tional Multim odal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on rati fication and</i>	signed and ratified, or vear	Memb ership	signed and ratified, or vear	Memb ership		signed and ratified, or vear	entry into force	signed and ratified, or vear of

<i>accession</i>	of accession		of accession			of accession		accession
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Norway	1970 1972		Y ⁴			1979*	1989	1981*
Oman								
Pakistan						1979*		
Palau								
<i>Palestinian Authority</i>								
Panama					Y	1978*		
Papua New Guinea								
Paraguay								
Peru							2000 [§]	
Philippines						1978*		
Poland	1996						1996	
Portugal	1970 1975		1981 ⁴			1978*		
Qatar								
Romania	2003					1982	1992 [§]	
Russia	2001						1991 [§]	
Rwanda								1987 [§]
Sahrawi Arab Democratic Republic								
Saint Kitts and Nevis		1973/74						
Saint Lucia		1973/74						
Saint Vincent and the Grenadines		1973/74				2000	2001 [§]	

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	Conv ention on the Taking of Evidence Abroad	Treaty Establi shing the Caribbean Comm unity and Common Market	Agree ment on an Intern ational Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Con vention on the Intern ational Carriage of Goods by Sea)	UN Conve nion on Contracts for the Intern ational Sale of Goods	UN Conven tion on Internat ional Mul timodal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratify cation and accession</i>	signed and ratified, or year of accession	Memb ership	signed and ratified, or year of accession	Mem bership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of acces sion
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Samoa								
San Marino								
Sao Tome and Principe								
Saudi Arabia								
Senegal				1975		1978 1986		1981 1984
Serbia and Montenegro							1992	
Seychelles	2004							
Sierra Leone				1975		1978 1988		
Singapore	1978					1978*	1996	
Slovakia	1993 [†]						1993	

Slovenia	2000						1991	
Solomon Islands								
Somalia								
South Africa	1997							
Spain	1976 1987		1974 1975				1991 [§]	
Sri Lanka (Ceylon)	2000							
Sudan								
Suriname		1995						
Swaziland								
Sweden	1975 1975		1974 1975			1979*	1989	
Switzerland	1985 1994		1974 1975				1991 [§]	

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conve ntion on the Taking of Evidence Abroad	Treaty Establi shing the Caribbean Comm unity and Common Market	Agree ment on an Internat ional Energy Progra mme	Treaty of the Econo mic Commu nity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conve ntion on the Internat ional Carriage of Goods by Sea)	UN Conve ntion on Contracts for the Intern ational Sale of Goods	UN Conv ention on Intern ational Multi modal Trans port of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratific ation and accession</i>	signed and ratified, or year of acces sion	Memb ership	signed and ratified, or year of acces sion	Memb ership		signed and ratified, or year of acce ssion	entry into force	signed and ratified, or year of acce ssion
<i>Chapter No.</i>	32	33	34	35	36	37	38	39
Countries and								

Territories								
Syria						2002	1988 [§]	
Taiwan (Republic of China/Chinese Taipei)								
Tajikistan								
Tanzania						1979		
Thailand								
Timor-Leste								
Togo				1975				
Tonga								
Trinidad and Tobago		1973						
Tunisia						1980		
Turkey	2000 2004		1974 1981					
Turkmenistan								
Tuvalu								
Uganda						1979	1993 [§]	
Ukraine	2001						1991 [§]	
United Arab Emirates								
United Kingdom	1970 1976		1974 1975					
<i>Channel Islands (Crown Dep.)</i>	Y							
<i>Bailiwick of Guernsey</i>								
<i>Bailiwick of Jersey</i>								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Conv ention on the Taking of Evidence Abroad	Treaty Establi shing the Carib bean Comm unity and Common Market	Agreement on an Intern ational Energy Progra mme	Treaty of the Econ omic Comm unity of West African States	Panama Canal Treaties	Hamburg Rules (UN Conve nion on the Intern ational Carriage of Goods by Sea)	UN Conv ention on Contracts for the Intern ational Sale of Goods	UN Conve nion on Intern ational Multi modal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratification and accession</i>	signed and ratified, or year of acce ssion	Mem bership	signed and ratified, or year of accession	Memb ership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of accession
Chapter No.	32	33	34	35	36	37	38	39
Countries and Terri tories								
<i>Isle of Man (Crown Dep.)</i>	Y							
<i>Anguilla</i>	Y	1999 ³						
<i>Bermuda</i>	Y	2003 ³						
<i>British Antarctic Territory</i>	Y							
<i>British Virgin Islands</i>	Y	1991 ³						
<i>Cayman Islands</i>	Y	2002 ³						
<i>Falkland Islands</i>	Y							

<i>Gibraltar</i>	Y							
<i>Turks and Caicos Islands</i>	Y	1991 ³						
<i>Montserrat</i>	Y	1973/74						
<i>St Helena, etc.</i>	Y							
USA	1970 1972		1974 1976		Y	1979 [*]	1988	
<i>Northern Mariana Islands (C'wealth)</i>	Y							
<i>Puerto Rico (C'wealth)</i>	Y	Y ²						
<i>American Samoa</i>	Y							
<i>Guam</i>	Y							
<i>Virgin Islands</i>	Y							
Uruguay							2000 [§]	
Uzbekistan							1997 [§]	
Vanuatu								
Venezuela	1993	Y ²				1978 [*]	1980/81 [*]	1981 [*]

**TABLE OF MEMBERSHIP, RATIFICATION
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	Convention on the Taking of Evidence Abroad	Treaty Establishing the Caribbean Community and Common Market	Agreement on an International Energy Programme	Treaty of the Economic Community of West African States	Panama Canal Treaties	Hamburg Rules (UN Convention on the International Carriage of Goods by Sea)	UN Convention on Contracts for the International Sale of Goods	UN Convention on International Multimodal Transport of Goods
<i>Date</i>	1970	1973	1974	1975	1977	1978	1980	1980
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession	Membership	signed and ratified, or year of accession	Membership		signed and ratified, or year of accession	entry into force	signed and ratified, or year of accession
Chapter No.	32	33	34	35	36	37	38	39
Countries and Territories								
Viet Nam								
Yemen								
<i>Yugoslavia (1918–92)</i>								
Zambia						1991	1988 [§]	1991 [§]
Zimbabwe (Southern Rhodesia /Rhodesia)								

NOTES

¹
E=exporting member:

GENERAL NOTES

Date is of ratification/accession or when in force, unless: *Signature (only); †Succession; ‡Denunciation; §accession when not first a signatory.

Successor states:

I=Importing member. ²	Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously.
provisional application. ³	Where possible, information on the previous party is given.
accession not yet complete (beginning of 2005).	A later date for succession usually coincides with the date of deposit of the instrument of succession.
⁴ with the United Kingdom.	Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.
⁵ applicant member.	Eritrea's separation from Ethiopia was recognised on 28 May 1993.
⁶ including Macao, but local legislation necessary in Hong Kong.	Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002.
⁷ not including dependent territories.	The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.
	The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR.
	The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro.
	Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan.
	The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agree ment Establis hing the Common Fund for Comm odities	Charter Estab lishing the Gulf Co- operation Council	Vienna Conv ention on Succ ession of States	European Agree ment on Main Interna tional Railway Lines	The Hague Conv ention on the Law Applicable to Trusts and on their Recog nition	Conve ntion Establ ishing the MIGA	ASEAN Agree ment for the Prom otion and Prote ction of Inves tments,	Lugano Conve ntion (on Jurisdi ction and the Enforc ement of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratific ation and accession</i>	signed and ratified, or year of accession		signature, succe ssion to signature or accession	signed and ratified /acceded, or year of accession	signed and ratified, or year of accession	Memb ership, 2004	original and subse quent signa tories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Afghanistan	1981 1984					2003		
Albania						1991		
Algeria	1982 1982		1983*			1996		
Andorra								
Angola	1983 1986					1989		
Antigua and Barbuda						Y ¹¹		
Argentina	1982 1983		1983*			1992		
Armenia						1995		
Australia	1981 19925				1991 1991	1999		

<i>Norfolk Island</i>								
Austria	1981 1983			2001 [§]		1997		1988
Azerbaijan						1992		
Bahamas, The						1994		
Bahrain		Y				1988		
Bangladesh	1980 1981					1988		
Barbados	1985*					1988		
Belarus				1986* 1987 [§]		1992		
Belgium	1981 1985			1999 [§]		1992		1988
Belize						1992		

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	Agreement Establishing the Common Fund for Commodities	Charter Establishing the Gulf Co-operation Council	Vienna Convention on Succession of States	European Agreement on Main International Railway Lines	The Hague Convention on the Law Applicable to Trusts and on their Recognition	Convention Establishing the MIGA	ASEAN Agreement for the Promotion and Protection of Investments,	Lugano Convention (on Jurisdiction and the Enforcement of Judgments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		Signature, succession to signature or accession	signed and ratified/acceded, or year of accession	signed and ratified, or year of accession	Membership, 2004	original and subsequent signatories	in force
Chapter No.	40	41	42	43	44	45	46	47

Countries and Territories								
Benin	1981 1982					1994		
Bhutan	1983 1984							
Bolivia						1991		
Bosnia and Herzegovina				1993 [†]		1993		
Botswana	1981 1982					1990		
Brazil	1981 1984					1993		
Brunei							1987	
Bulgaria	1987 [§]			1990 [§]		1992		
Burkina Faso	1981 1983					1988		
Burundi	1981 1982					1998		
Cambodia						1999		
Cameroon	1981 1983					1988		
Canada	1983 19935				1988 1992	1988		
Cape Verde	1981 1984					1993		
Central African Republic	1982 1983					2000		
Chad	1981 1984					2002		
Chile						1988		
China, People's Republic	1981 [§]					1988		
<i>Hong Kong (SAR)</i>					1992 ⁹ (1997 [†])			
<i>Macao</i>								

(SAR)								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agreement Establishing the Common Fund for Commodities	Charter Establishing the Gulf Co-operation Council	Vienna Convention on Succession of States	European Agreement on Main International Railway Lines	The Hague Convention on the Law Applicable to Trusts and on their Recognition	Convention Establishing the MIGA	ASEAN Agreement for the Promotion and Protection of Investments,	Lugano Convention (on Jurisdiction and the Enforcement of Judgments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		Signature, succession to signature or accession	signed and ratified/acceded, or year of accession	signed and ratified, or year of accession	Membership, 2004	original and subsequent signatories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Colombia	1983 1986					1995		
Comoros	1981 1984							
Congo, Democratic Republic	1981 1983					1989		
Congo, Republic	1981 1987					1991		
Costa Rica	1981* 2002 [§]					1994		
Côte	1987*					1988		

d'Ivoire	1996 [§]							
Croatia			1994 [§]	1994 [†]		1993		
Cuba	1983 1988							
Cyprus					1998*	1988		2004
Czech Republic				1993 [†]		1993		2004
<i>Czechoslovakia (1918–92)</i>				1990 [§]				
Denmark	1980 1981					1988		1988
<i>Faeroe Islands</i>								Y ¹²
<i>Greenland</i>								Y ¹²
Djibouti	1980 1981							
Dominica						1991		
Dominican Republic	1983*					1997		
Ecuador	1980 1982					1988		
Egypt	1981 1982		1984*			1988		
El Salvador	1983*					1991		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Agreement Establishing the Common Fund for Commodities	Charter Establishing the Gulf Co-operation Council	Vienna Convention on Succession of States	European Agreement on Main International Railway Lines	The Hague Convention on the Law Applicable to Trusts and on their Recognition	Convention Establishing the MIGA	ASEAN Agreement for the Promotion and Protection of Investments,	Lugano Convention (on Jurisdiction and the Enforcement of Judgments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		signature, succession to signature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of accession	Membership, 2004	original and subsequent signatories	in force
Countries and Territories								
<i>Chapter No.</i>	<i>40</i>	<i>41</i>	<i>42</i>	<i>43</i>	<i>44</i>	<i>45</i>	<i>46</i>	<i>47</i>
Equatorial Guinea	1983 1983					1994		
Eritrea						1996		
Estonia			1991 [§]			1992		2004
Ethiopia	1981 1981					1991		
European Community (EU)	1981* 1990 ^{§8}							Y ¹²
Fiji						1990		
Finland	1980 1981					1988		1988
France	1982 [§]			1986* 1989 [§]	1991*	1989		1988
Mayotte								

<i>French Polynesia</i>								
<i>New Caledonia</i>								
Gabon	1981 1981					2003		
Gambia, The	1981 1983					1992		
Georgia			1993§			1992		
Germany	1981 1985			1986 1987		1988		1988
Ghana	1982 1983					1988		
Greece	1981 1984			1986 1995		1993		1988
Grenada	1983*					1988		
Guatemala	1983 1985					1996		
Guinea	1981 1982					1995		

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agree ment Establi shing the Common Fund for Comm odities	Charter Establi shing the Gulf Co- oper ation Council	Vienna Conve ntion on Succe ssion of States	European Agree ment on Main Inter national Railway Lines	The Hague Conve ntion on the Law Appli cable to Trusts and on their Recognition	Conv ention Establ ishing the MIGA	ASEAN Agree ment for the Prom otion and Protec tion of Invest ments,	Lug ano Con vention (on Juris diction and the Enforce ment of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratif ication and accession</i>	signed and ratified, or year of acces sion		signature, success sion to signature or access ion	signed and ratified/ acceded, or year of access ion	signed and ratified, or year of accession	Membe rship, 2004	Origina l and subse quent signa tories	in force
<i>Chapter No.</i>	40	41	42	43	44	45	46	47

Countries and Territories								
Guinea-Bissau	1981 1983					Y ¹¹		
Guyana	1983*					1989		
<i>Habsburg Empire</i>								
Haiti	1981 1981					1996		
Holy See (or Vatican City)								
Honduras	1983 1988					1992		
Hungary				1986* 1997 ^s		1988		2004
Iceland						1998		1988
India	1981 ^s					1994		
<i>Goa</i>								
Indonesia	1980 1981					1988	1987	
Iran						2003		
Iraq	1981 1981							
Ireland	1981 1982					1989		1988
Israel						1992		
Italy	1980 1984			1986 1991	1985 1990	1988		1988
Jamaica	1983 1985					1988		
Japan	1981 ^s					1988		
Jordan						1988		
Kazakhstan						1993		

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agreement Establishing the Common Fund for Commodities	Charter Establishing the Gulf Co- operation Council	Vienna Convention on Succession of States	European Agreement on Main International Railway Lines	The Hague Convention on the Law Applicable to Trusts and on their Recognition	Convention Establishing the MIGA	ASEAN Agreement for the Promotion and Protection of Investments,	Lugano Convention (on Jurisdiction and the Enforcement of Judgments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		Signature, succession to signature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of accession	Membership, 2004	original and subsequent signatories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Kenya	1982 1982					1988		
Kiribati								
Korea, Democratic People's Republic	1983 1987							
Korea, Republic	1981 1982					1988		
Kuwait	1981 1983	Y				1988		
Kyrgyzstan						1993		

Laos	2002 ^s					2000	Y	
Latvia						1998		2004
Lebanon						1994		
Lesotho	1981 1983					1988		
Liberia	1981 [*]					Y ¹¹		
Libya						1993		
Liechtenstein					2004 ^{s10}			1988
Lithuania				2002 ^s		1993		2004
Luxem bourg	1980 1985			1986 1996	1985 2003	1991		1988
Macedonia, Former Yugoslav Republic			1997 ^s	1994 [†]		1993		
Mada gascar	1983 1987					1988		
Malawi	1981 1981					1988		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Agree ment Establi shing the Com mon Fund for Commo dities	Charter Establ ishing the Gulf Co- opera tion Council	Vienna Conven tion on Succe ssion of States	European Agreement on Main Interna tional Railway Lines	The Hague Conv ention on the Law Appli cable to Trusts and on their Recogn ition	Conve ntion Establis hing the MIGA	ASEAN Agre ement for the Promo tion and Protection of Invest ments,	Lugano Conven tion (on Jurisdic tion and the Enforce ment of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of		signature, succe ssion to signature or acce	signed and ratified/ acceded, or year of	signed and ratified, or year of	Memb ership, 2004	original and subs equent signat ories	in force

	accession		ssion	accessi on	accession			
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Malaysia	1980 1983					1991	1987	
Maldives	1988 1988					Y ¹¹		
Mali	1981 1982					1992		
Malta					1994 [§]	1990		2004
Marshall Islands								
Mauritania	1988 1990					1992		
Mauritius						1990		
Mexico	1980 1982							
Micronesia, Federated States						1993		
Moldova				1996 [§]		1993		
Monaco								
Mongolia						1999		
Morocco	1981 1987					1992		
Mozambique	1982 1993					1994		
Myanmar (Burma)	1996 [§]						Y	
Namibia						1990		
Nauru								
Nepal	1981 1984					1994		
Netherlands	1980 1983				1985 1995	1988		1988
<i>Aruba (Netherlands)</i>	1983 ⁶				1995 ⁶			

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Agree ment Establ ishing the Com mon Fund for Com modities	Charter Establ ishing the Gulf Co- opera tion Council	Vienna Conv Ention on Succe ssion of States	Europ ean Agree ment on Main Intern ational Railway Lines	The Hague Conv ention on the Law Appli cable to Trusts and on their Recog nition	Conve ntion Establ ishing the MIGA	ASEAN Agree ment for the Prom otion and Prote ction of Investm ents,	Lugano Conv ention (on Jurisd iction and the Enforc ement of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		signature, succ ession to signature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of access ion	Memb ership, 2004	original and subsequent signatories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
<i>Netherlands Antilles (Netherlands)</i>	1983 ⁶				1995 ⁶			
New Zealand	1983 (1994 [‡])							
<i>Cook Islands</i>	1994 ⁷							
<i>Tokelau</i>	1994 ⁷							
Nicaragua	1981 1984					1992		
Niger	1981 [§]		1984 [§]			Y ¹¹		
Nigeria	1981 1983					1988		
Norway	1980 1981					1989		1988
Oman		Y				1989		

Pakistan	1982 1983					1988		
Palau						1997		
<i>Palestinian Authority</i>								
Panama						1997		
Papua New Guinea	1981 1982					1991		
Paraguay						1992		
Peru	1981 1987		1983 ^s			1991		
Philippines	1981 1981					1994	1987	
Poland				1986 1988		1990		2002
Portugal	1981 1989			1985*		1988		1988

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agree ment Establ ishing the Com mon Fund for Comm odities	Charter Estab lishing the Gulf Co- operation Council	Vienna Conv ention on Succe ssion of States	European Agre ement on Main Interna tional Railway Lines	The Hague Conve ntion on the Law Appli cable to Trusts and on their Reco gnition	Conve ntion Estab lishing the MIGA	ASEAN Agree ment for the Promotion and Protection of Invest ments,	Lugano Conv ention (on Jurisdi ction and the Enforc ement of Judg ments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		signature, succ ession to signature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of accession	Membe rship, 2004	original and subse quent signatories	in force
<i>Chapter No.</i>	40	41	42	43	44	45	46	47
Countries and								

Territories								
Qatar		Y				1996		
Romania				1996 [§]		1992		
Russia	1987 [§]			1986 [*] 1987 [§]		1992		
Rwanda	1981 1983					2002		
Sahrawi Arab Democratic Republic								
Saint Kitts and Nevis						1999		
Saint Lucia	1984 [*]					1988		
Saint Vincent and the Grenadines						1990		
Samoa	1982 1984					1988		
San Marino								
São Tomé and Príncipe	1983 1983							
Saudi Arabia	1983 1983	Y				1988		
Senegal	1981 1983					1988		
Serbia and Montenegro			2001 ^{*†}	2001 [†]		1993		
Seychelles						1992		
Sierra Leone	1981 1982					1996		
Singapore	1982 1983					1998	1987	
Slovakia				1993 [†]		1993		2004

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agree ment Establ ishing the Common Fund for Comm odities	Charter Establ ishing the Gulf Co- operation Council	Vienna Conv ention on Succ ession of States	European Agree ment on Main Interna tional Railway Lines	The Hague Conv ention on the Law Appl icable to Trusts and on their Recog nition	Conve ntion Establ ishing the MIGA	ASEAN Agree ment for the Prom otion and Protection of Invest ments,	Lugano Conve ntion (on Jurisd iction and the Enforc ement of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		signature, succe ssion to signature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of accession	Membe rship, 2004	original and subse quent signa tories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Slovenia			2002 ^s	1992 [†]		1993		2004
Solomon Islands						Y ¹¹		
Somalia	1981 1984							
South Africa						1994		
Spain	1981 1984					1988		1988
Sri Lanka (Ceylon)	1981 1981					1988		
Sudan	1981 1983					1991		
Suriname	1983*					2003		
Swaziland	1987 1988					1990		
Sweden	1980 1981					1988		1988
Switzerland	1981 1982					1988		1988

Syria	1982 1983					2002		
Taiwan (Republic of China/Chinese Taipei)								
Tajikistan						2002		
Tanzania	1981 1982					1992		
Thailand	1983* 1992 [§]					2000	1987	
Timor-Leste						2002		
Togo	1983 1984					1988		
Tonga								

**TABLE OF MEMBERSHIP, RATIFICATION
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	Agree ment Establi shing the Common Fund for Comm odities	Charter Establ ishing the Gulf Co- operation Council	Vienna Conv ention on Succ ession of States	European Agreement on Main Interna tional Railway Lines	The Hague Conve ntion on the Law Appl icable to Trusts and on their Reco gnition	Conve ntion Establ ishing the MIGA	ASEAN Agree ment for the Prom otion and Prot ection of Investm ents,	Lugano Conve ntion (on Jurisd iction and the Enforc ement of Judgm ents)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratify cation and accession</i>	signed and ratified, or year of accession		signature, success sion to sign ature or accession	signed and ratified/ acceded, or year of accession	signed and ratified, or year of accession	Membe rship, 2004	original and subseq uent signa tories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
Trinidad	1998 [§]					1992		

and Tobago								
Tunisia	1982 1982					1988		
Turkey	1990 1995 ⁵			1993 [§]		1988		
Turkme nistan						1993		
Tuvalu								
Uganda	1982 1982					1992		
Ukraine			1993 [§]	1986* 1987 [§]		1994		
United Arab Emirates	1982 1983	Y				1993		
United Kingdom	1980 1981				1986 1989	1988		1988
<i>Channel Islands (Crown Dep.)</i>					1989 ⁹			Y ¹²
<i>Bailiwick of Guernsey</i>								
<i>Bailiwick of Jersey</i>								
<i>Isle of Man (Crown Dep.)</i>					1989 ⁹			Y ¹²
<i>Anguilla</i>					1989 ⁹			
<i>Bermuda</i>					1989 ⁹			
<i>British Antarctic Territory</i>					1989 ⁹			
<i>British Virgin Islands</i>					1989 ⁹			
<i>Cayman Islands</i>					1989 ⁹			
<i>Falkland Islands</i>					1989 ⁹			
<i>Gibraltar</i>					1989 ⁹			Y ¹²

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	Agreement Establishing the Common Fund for Commodities	Charter Establishing the Gulf Co-operation Council	Vienna Convention on Succession of States	European Agreement on Main International Railway Lines	The Hague Convention on the Law Applicable to Trusts and on their Recognition	Convention Establishing the MIGA	ASEAN Agreement for the Promotion and Protection of Investments,	Lugano Convention (on Jurisdiction and the Enforcement of Judgments)
<i>Date</i>	1980	1981	1983	1985	1985	1985	1987	1988
<i>Notes on ratification and accession</i>	signed and ratified, or year of accession		signature, succession to signature or accession	signed and ratified/acceded, or year of accession	signed and ratified, or year of accession	Membership, 2004	original and subsequent signatories	in force
Chapter No.	40	41	42	43	44	45	46	47
Countries and Territories								
<i>Turks and Caicos Islands</i>					1989 ⁹			
<i>Montserrat</i>					1989 ⁹			
<i>St Helena, etc.</i>					1989 ⁹			
USA	1980*				1988*	1988		
<i>Northern Mariana Islands (C'wealth)</i>								
<i>Puerto Rico (C'wealth)</i>								
<i>American Samoa</i>								

Guam								
Virgin Islands								
Uruguay	1986*					1993		
Uzbekistan						1993		
Vanuatu						1988		
Venezuela	1980 1982					1994		
Viet Nam						1994	Y	
Yemen	1981 1986					1996		
Yugoslavia (1918–92)	1982 1983			1990 [§]				
Zambia	1981 1983					1988		
Zimbabwe (Southern Rhodesia/ Rhodesia)	1983 1983					1992		

NOTES

¹ E=exporting member; I=Importing member. ² provisional application. ³ accession not yet complete (beginning of 2005). ⁴ with the United Kingdom. ⁵ applicant member. ⁶ including Macao, but local legislation necessary in Hong Kong. ⁷ not including dependent territories.

GENERAL NOTES

Date is of ratification/accession or when in force, unless:
*Signature (only); [†]Succession; [‡]Denunciation; [§]accession when not first a signatory.

Successor states:
Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously. Where possible, information on the previous party is given. A later date for succession usually coincides with the date of deposit of the instrument of succession. Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993. Eritrea’s separation from Ethiopia was recognised on 28 May 1993. Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002. The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation. The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that

Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR. The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro.

Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan.

The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE aOF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Conven tion on Internat ional Bills of Exchange and Internat ional Promi ssory Notes	Conve ntion on Insider Trading	Agree ment Estab lishing the EBRD	Euro pean Conven tion on Certain Interna tional Aspects of Bankru ptcy	Treaty of Asunc ion (Merco sur)	UN Conv ention on the Lia bility of Operato rs of Tra nsport Termi nals in International Trade	Treaty of the Sou thern African Develo pment Comm unity	North American Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratify cation and acce ssion</i>	year of acce ssion	year of ratif ication	Memb ership	signature or signature and ratific ation		year of accession	signed and ratified, or year of acces sion	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Afgha nistan								
Albania			1991					
Algeria								
Andorra								
Angola							1992 1993	
Antigua and Barbuda								
Argentina					Y			

Armenia			1992					
Australia			1990					
Norfolk Island								
Austria			1990					
Azerbaijan			1992					
Bahamas, The								
Bahrain								
Bangladesh								
Barbados								
Belarus			1992					
Belgium			1990	1990*				
Belize								

**TABLE OF MEMBERSHIP, RATIFICATION
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	UN Conve nion on Intern ational Bills of Ex change and Intern ational Prom issory Notes	Conve nion on Insider Trading	Agree ment Establis hing the EBRD	European Conve nion on Certain Intern ational Aspects of Bankr uptcy	Treaty of Asunc ion (Merc osur)	UN Conve nion on the Li ability of Op erators of Trans port Ter min als in Intern ational Trade	Treaty of the Southern African Develo pment Comm unity	North American Free Trade Agreement
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratify cation and acces sion</i>	year of acces sion	year of ratify cation	Member ship	signature or signature and ratific ation		year of accession	signed and ratified, or year of accession	

<i>Chapter No.</i>	<i>48</i>	<i>49</i>	<i>50</i>	<i>51</i>	<i>52</i>	<i>53</i>	<i>54</i>	<i>55</i>
Countries and Territories								
Benin								
Bhu tan								
Bolivia								
Bosnia and Herzegovina			1996					
Botswana							1992 1998	
Brazil					Y			
Brunei								
Bulgaria			1990					
Burkina Faso								
Burundi								
Cambodia								
Cameroon								
Canada	1989*		1990					Y
Cape Verde								
Central African Republic								
Chad								
Chile								
China, People's Republic								
<i>Hong Kong (SAR)</i>								

**TABLE OF MEMBERSHIP, RATIFICATION
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	UN Conve nion on Intern ational Bills of Exchange and Intern ational Prom issory Notes	Conve nion on Insider Trading	Agree ment Establ ishing the EBRD	European Conv ention on Certain Intern ational Aspects of Bankr uptcy	Treaty of Asunc ion (Merc osur)	UN Conve nion on the Liability of Operat ors of Transport Termi nals in Intern ational Trade	Treaty of the Southern African Develo pment Comm unity	North American Free Trade Agreem ent
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of accession	year of ratific ation	Memb ership	Sign ature or signature and ratific ation		year of acce ssion	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
<i>Macao (SAR)</i>								
Colombia								
Comoros								
Congo, Democratic Republic							1998	
Congo, Republic								
Costa Rica								
Côte d'Ivoire								
Croatia			1993					

Cuba								
Cyprus		1994	1990	1994 1994				
Czech Republic		2000	1993					
<i>Czechoslovakia (1918–92)</i>								
Denmark			1990					
<i>Faeroe Islands</i>								
<i>Greenland</i>								
Djibouti								
Dominica								
Dominican Republic								
Ecuador								

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Convention on International Bills of Exchange and International Promissory Notes	Convention on Insider Trading	Agreement Establishing the EBRD	European Convention on Certain International Aspects of Bankruptcy	Treaty of Asunción (Mercosur)	UN Convention on the Liability of Operators of Transport Terminals in International Trade	Treaty of the Southern African Development Community	North American Free Trade Agreement
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of accession	year of ratification	Membership	signature or signature and ratification		year of accession	signed and ratified, or year of	

<i>Chapter No.</i>	<i>48</i>	<i>49</i>	<i>50</i>	<i>51</i>	<i>52</i>	<i>53</i>	accession <i>54</i>	<i>55</i>
Countries and Territories								
Egypt			1990			1999		
El Salvador								
Equatorial Guinea								
Eritrea								
Estonia			1992					
Ethiopia								
European Community (EU)			1990 ¹³					
Fiji								
Finland		1995	1990					
France			1990	1990*		1991*		
<i>Mayotte</i>								
<i>French Polynesia</i>								
<i>New Caledonia</i>								
Gabon	2004					2004		
Gambia, The								
Georgia			1992			1996		
Germany			1990	1990*				
Ghana								
Greece			1990	1990*				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Conve nion on Interna tional Bills of Exchange and Interna tional Promis sory Notes	Conve nion on Insider Trading	Agree ment Establ ishing the EBRD	Euro pean Conve nion on Certain Intern ational Aspects of Bankru ptcy	Treaty of Asuncion (Merc osur)	UN Conve nion on the Liability of Operators of Transport Terminals in Interna tional Trade	Treaty of the Southern African Development Comm unity	North Ameri can Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of acces sion	year of ratify cation	Memb ership	signature or signature and ratification		year of acces sion	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Grenada								
Guatemala								
Guinea	1991							
Guinea- Bissau								
Guyana								
<i>Habsburg Empire</i>								
Haiti								
Holy See (or Vatican City)								
Honduras	2001							

Hungary			1990					
Iceland			1990					
India								
Goa								
Indonesia								
Iran								
Iraq								
Ireland			1990					
Israel			1990					
Italy			1990	1991*				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Conve nion on Internat ional Bills of Exchange and Intern ational Pro missory Notes	Conven tion on Insider Trading	Agree ment Estab lishing the EBRD	Euro pean Conv ention on Certain Inter national Aspects of Bankr uptcy	Treaty of Asuncion (Mercosur)	UN Conv ention on the Liability of Opera tors of Trans port Terminals in Interna tional Trade	Treaty of the Southern African Develo pment Comm unity	North American Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratif ication and accession</i>	year of acce ssion	year of ratify cation	Membe rship	signature or signature and ratific ation		year of accession	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Jamaica								

Japan			1990					
Jordan								
Kazakhstan			1992					
Kenya								
Kiribati								
Korea, Democratic People’s Republic								
Korea, Republic			1990					
Kuwait								
Kyrgyzstan			1992					
Laos								
Latvia			1992					
Lebanon								
Lesotho							1992 1993	
Liberia								
Libya								
Liecht enstein			1990					
Lithuania			1992					
Luxem bourg		1997	1990	1990*				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Convention on International Bills of Exchange and International Promissory Notes	Convention on Insider Trading	Agreement Establishing the EBRD	European Convention on Certain International Aspects of Bankruptcy	Treaty of Asuncion (Mercosur)	UN Convention on the Liability of Operators of Transport Terminals in International Trade	Treaty of the Southern African Development Community	North American Free Trade Agreement
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of accession	year of ratification	Membership	signature or signature and ratification		year of accession	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Macedonia, Former Yugoslav Republic			1993	1990*				
Madagascar								
Malawi							1992 1993	
Malaysia								
Maldives								
Mali								
Malta			1990					
Marshall Islands								
Mauritania								

Mauritius							1995	
Mexico	1992		1990			1991*		Y
Micronesia, Federated States								
Moldova			1992					
Monaco								
Mongolia			2000					
Morocco			1990					
Mozambique							1992 1993	
Myanmar (Burma)								
Namibia							1992 1992	

**TABLE OF MEMBERSHIP, RATIFICATION
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	UN Conve nion on Internat ional Bills of Exchange and Internat ional Promis sory Notes	Conven tion on Insider Trading	Agree ment Estab lishing the EBRD	European Conve nion on Certain Intern ational Aspects of Bankr uptcy	Treaty of Asuncion (Merc osur)	UN Conv ention on the Liability of Operators of Transport Terminals in Intern ational Trade	Treaty of the Southern African Devel opment Comm unity	North American Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratify cation and accession</i>	year of accession	year of ratify cation	Memb ership	signature or signature and ratify cation		year of accession	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries								

and Territories								
Nauru								
Nepal								
Netherlands		1994	1990					
<i>Aruba (Netherlands)</i>								
<i>Netherlands Antilles (Netherlands)</i>								
New Zealand			1990					
<i>Cook Islands</i>								
<i>Tokelau</i>								
Nicaragua								
Niger								
Nigeria								
Norway		1991	1990					
Oman								
Pakistan								
Palau								
<i>Palestinian Authority</i>								
Panama								
Papua New Guinea								
Paraguay					Y			

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Conve ntion on Intern ational Bills of Exchange and Internati onal Promi ssory Notes	Conv ention on Insider Trading	Agree ment Establ ishing the EBRD	European Conve ntion on Certain Interna tional Aspects of Bank ruptcy	Treaty of Asun cion (Me rcosur)	UN Conv ention on the Li ability of Opera tors of Transport Termi nals in Intern ational Trade	Treaty of the Southern African Develo pment Comm unity	North Ameri can Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of acce ssion	year of ratific ation	Membe rship	signature or signature and ratify cation		year of access ion	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Peru								
Philippines						1991*		
Poland			1990					
Portugal			1990					
Qatar								
Romania			1990					
Russia	1990*		1992					
Rwanda								
Sahrawi Arab Democratic Republic								

Saint Kitts and Nevis								
Saint Lucia								
Saint Vincent and the Grenadines								
Samoa								
San Marino								
São Tomé and Príncipe								
Saudi Arabia								
Senegal								
Serbia and Montenegro			2001					

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Convention on International Bills of Exchange and International Promissory Notes	Convention on Insider Trading	Agreement Establishing the EBRD	European Convention on Certain International Aspects of Bankruptcy	Treaty of Asuncion (Mercosur)	UN Convention on the Liability of Operators of Transport Terminals in International Trade	Treaty of the Southern African Development Community	North American Free Trade Agreement
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of accession	year of ratification	Membership	Signature or signature and ratification		year of accession	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55

[illegible]

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Convention on International Bills of Exchange and International Promissory Notes	Convention on Insider Trading	Agreement Establishing the EBRD	European Convention on Certain International Aspects of Bankruptcy	Treaty of Asuncion (Mercosur)	UN Convention on the Liability of Operators of Transport Terminals in International Trade	Treaty of the Southern African Development Community	North American Free Trade Agreement
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratification and accession</i>	year of accession	year of ratification	Membership	signature or signature and ratification		year of accession	signed and ratified, or year of accession	
Chapter No.	48	49	50	51	52	53	54	55
Countries and Territories								
Thailand								
Timor-Leste								
Togo								
Tonga								
Trinidad and Tobago								
Tunisia								
Turkey			1990					
Turkmenistan			1992					
Tuvalu								
Uganda								
Ukraine			1992					
United Arab								

Emirates								
United Kingdom		1990	1990					
Channel Islands (Crown Dep.)								
Bailiwick of Guernsey								
Bailiwick of Jersey								
Isle of Man (Crown Dep.)								
Anguilla								
Bermuda								

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	UN Conve nion on Internat ional Bills of Exchange and Internat ional Prom issory Notes	Conve nion on Insider Trading	Agree ment Establ ishing the EBRD	European Conve nion on Certain Intern ational Aspects of Bank ruptcy	Treaty of Asuncion (Merc osur)	UN Convention on the Liability of Operators of Transport Terminals in Internat ional Trade	Treaty of the Southern African Develop ment Com munity	North American Free Trade Agree ment
<i>Date</i>	1988	1989	1990	1990	1991	1991	1992	1992
<i>Notes on ratific ation and accession</i>	year of acce ssion	year of ratify cation	Memb ership	signature or signature and ratification		year of access ion	signed and ratified, or year of accession	
<i>Chapter No.</i>	48	49	50	51	52	53	54	55
Countries and Territ								

ories								
<i>British Antarctic Territory</i>								
<i>British Virgin Islands</i>								
<i>Cayman Islands</i>								
<i>Falkland Islands</i>								
<i>Gibraltar</i>								
<i>Turks and Caicos Islands</i>								
<i>Montserrat</i>								
<i>St Helena, etc.</i>								
USA	1990*		1990			1992*		Y
<i>Northern Mariana Islands (C'wealth)</i>								
<i>Puerto Rico (C'wealth)</i>								
<i>American Samoa</i>								
<i>Guam</i>								
<i>Virgin Islands</i>								
Uruguay					Y			
Uzbekistan			1992					
Vanuatu								
Venezuela								
Viet Nam								

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1970–1999

[illegible]

provisional application.	Where possible, information on the previous party is given.
³ accession	A later date for succession usually coincides with the date of deposit of the instrument of succession.
not yet complete	Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.
(beginning of 2005).	Eritrea's separation from Ethiopia was recognised on 28 May 1993.
⁴ with the United Kingdom.	Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002.
⁵ applicant member.	The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.
⁶ including Macao, but local legislation necessary in Hong Kong.	The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR.
⁷ not including dependent territories.	The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro. Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan. The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
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	Treaty on the Common Market for Eastern and Southern Africa (COMESA)	Agre ment Establi shing the World Trade Organ ization	Trade mark Law Treaty	Energy Charter Treaty	UNCI TRAL Model Law on Elect ronic Com merce	WIPO Copyright Treaty	Intern ational Conv ention on the Arrest of Ships	Food Aid Conve nion	Interna tional Conve ntion for the Supp ression of the Finan cing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratify cation and accession</i>		Memb ership		year of ratify cation	Legis lation enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of acces sion
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Afghanistan		Y ²							2001 2002
Albania		2000		1998			2004 [§]		
Algeria		Y ²		Y ²			2004 [§]		2000 2001
Andorra		Y ²							2001*
Angola	Y	1996							
Antigua and Barbuda		1995							2002
Argentina		1995				2002		Y	2001*
Armenia		2003		1998		2005			2001*
Australia		1995	1998	1994*	1999			Y	2001

									2002
<i>Norfolk Island</i>									
Austria		1995		1997	Y ¹⁵	1996*		Y	2001 2002
Azerbaijan		Y ²		1997					2001 2001
Bahamas, The		Y ²							2001*
Bahrain		1995		Y ²	2002				2001*
Bangladesh		1995							
Barbados		1995							2001 2002
Belarus		Y ²		1994*		2002			2001*
Belgium		1995	Y ¹⁴	1998		1996*		Y	2001*
Belize		1995							2001*
Benin		1996							2001*

**TABLE OF MEMBERSHIP, RATIFICATION
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	Treaty on the Common Mar ket for Easte rn and Southern Africa (COM ESA)	Agree ment Establ ishing the World Trade Organi zation	Trade mark Law Treaty	Energy Charter Treaty	UNCI TRAL Model Law on Electronic Comm erce	WIPO Cop yright Treaty	Interna tional Conve ntion on the Arrest of Ships	Food Aid Conv ention	Intern ational Conve ntion for the Suppre ssion of the Financing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratif ication and acc ession</i>		Mem bership		year of ratify cation	legislation enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of accession
<i>Chanter</i>	56	83	57	58	61	62	64	65	66

No.									
Countries and Territories									
Bhutan		Y ²							2001*
Bolivia		1995				1996*			2001 2002
Bosnia and Herzegovina		Y ²		2001					2001*
Botswana		1995				2005			2000 2000
Brazil		1995							2001*
Brunei		1995							2002
Bulgaria		1996		1996		2002	2000 2001		2001 2002
Burkina Faso		1995	Y ¹⁴			2002			
Burundi	Y	1995							2001*
Cambodia		2004							2001*
Cameroon		1995							
Canada		1995		Y ²	Y ¹⁵	1996*		Y	2000 2002
Cape Verde		Y ²							2001 2002
Central African Republic		1995							2001*
Chad		1996							
Chile		1995				2002			2001 2001
China, People's Republic		2001		Y ²					2001*
<i>Hong Kong (SAR)</i>		1995			2000				
<i>Macao (SAR)</i>		1995							
Colombia		1995			1999	2002			2001*
Comoros	Y								2001*

**TABLE OF MEMBERSHIP, RATIFICATION
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	Treaty on the Comm on Market for Eastern and Southern Africa (COM ESA)	Agree ment Establ ishing the World Trade Organi zation	Trade mark Law Treaty	Energy Charter Treaty	UNCI TRAL Model Law on Electronic Com merce	WIPO Copyright Treaty	Intern ational Con vention on the Arrest of Ships	Food Aid Conven tion	Inter national Conve nition for the Supp ression of the Fina ncing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and a ccession</i>		Memb ership		year of ratific ation	Legisl ation enacted	entry into force	signed and ratified, or year of acces sion		signed and ratified, or year of accession
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Congo, Democratic Republic	Y	1997							2001*
Congo, Republic		1997							2001*
Costa Rica		1995				2002			2000 2003
Côte d'Ivoire		1995							2002
Croatia		2000		1997		2002			2001*
Cuba		1995							2001 2001
Cyprus		1995	1997	1998		2003		2004 [§]	2001 2001
Czech Republic		1995	1996	1996		2002		2004 [§]	2001*

<i>Czechoslovakia (1918–92)</i>									
Denmark		1995	1998	1997	Y15	1996*	2000*	Y	2001 2002
<i>Faeroe Islands</i>									
<i>Greenland</i>									
Djibouti	Y	1995							2001*
Dominica		1995							
Dominican Republic		1995			2002				2001*
Ecuador		1996			2002	2002	2000*		2001*
Egypt	Y	1995	1999						2001*
El Salvador		1995				2002			
Equatorial Guinea		Y ²							2003
Eritrea	Y								
Estonia		1999	2003	1998		1996*	2000*	2004 [§]	2000 2002

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	Treaty on the Common Market for Eastern and Southern Africa (COMESA)	Agreement Establishing the World Trade Organization	Trade mark Law Treaty	Energy Charter Treaty	UNCITRAL Model Law on Electronic Commerce	WIPO Copyright Treaty	International Convention on the Arrest of Ships	Food Aid Convention	International Convention for the Suppression of the Financing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and accession</i>		Membership		year of ratification	Legislation enacted	entry into force	signed and ratified, or year of		signed and ratified, or year of acces

<i>Empire</i>									
Haiti		1996							

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	Treaty on the Common Market for Eastern and Southern Africa (COMESA)	Agreement Establishing the World Trade Organization	Trademark Law Treaty	Energy Charter Treaty	UNCITRAL Model Law on Electronic Commerce	WIPO Copyright Treaty	International Convention on the Arrest of Ships	Food Aid Convention	International Convention for the Suppression of the Financing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and accession</i>		Membership		year of ratification	Legislation enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of accession
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Holy See (or Vatican City)		Y ²							
Honduras		1995				2002			2001*
Hungary		1995	1998	1998		2002		2004 [§]	2001 2002
Iceland		1995		1994*					2001 2002
India		1995			2000				2001*
<i>Goa</i>									
Indonesia		1995	1997			2002			2001*
Iran		Y ²		Y ²					
Iraq		Y ²							

and Territories									
Kuwait		1995		Y ²					
Kyrgyzstan		1998	2002	1997		2002			
Laos		Y ²							
Latvia		1999	1999	1996		2002	2001 [§]	2004 [§]	2001 2002
Lebanon		Y ²							
Lesotho		1995							2000 2001
Liberia									
Libya		Y ²							2001 2002
Liechtenstein		1995	1998	1997					2001 [*]
Lithuania		2001	1998	1998		2002		2004 [§]	2003
Luxembourg		1995		1997		1996 [*]		Y	2001 [*]
Macedonia, Former Yugoslav Republic		2003		1998		2004			2000 [*]
Madagascar	Y	1995							2001 [*]
Malawi	Y	1995							
Malaysia		1995							
Maldives		1995							
Mali		1995				2002			2001 2002
Malta		1995		2001					2000 2001
Marshall Islands									2003
Mauritania		1995							

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Treaty on the Com mon Market for Eastern and Southern Africa (COM ESA)	Agree ment Establi shing the World Trade Organi zation	Trad emark Law Treaty	Energy Charter Treaty	UNCI TRAL Model Law on Electronic Com merce	WIPO Copy right Treaty	Intern ational Con vention on the Arrest of Ships	Food Aid Conv ention	Interna tional Conven tion for the Suppre ssion of the Financing of Terr orism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and accession</i>		Memb ership		year of ratific ation	Legisla tion enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of accession
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Mauritius	Y	1995			2000				2001*
Mexico		1995			2000	2002			2000 2003
Micronesia, Federated States									2001 2002
Moldova		2001	1996	1996		2002			2001 2002
Monaco			1996			1996*			2001 2001
Mongolia		1997		1999		2002			2001*
Morocco		1995		Y ²					2001 2002
Mozambique		1995							2001 2003
Myanmar (Burma)		1995							2001*
Namibia	Y	1995				1996*			2001*

Nauru									2001*
Nepal		2004							
Netherlands		1995	Y ¹⁴	1997		1996*		Y	2000 2002 ¹⁶
Aruba (Netherlands)		1995	Y ⁶						
Netherlands Antilles (Netherlands)		1995	Y ⁶						
New Zealand		1995			2002				2000 2002 ¹⁶
Cook Islands									2001*
Tokelau									
Nicaragua		1995				2003			2001 2002
Niger		1996							

**TABLE OF MEMBERSHIP, RATIFICATION
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	Treaty on the Common Market for Eastern and Southern Africa (COMESA)	Agreement Establishing the World Trade Organization	Trademark Law Treaty	Energy Charter Treaty	UNCITRAL Model Law on Electronic Commerce	WIPO Copyright Treaty	International Convention on the Arrest of Ships	Food Aid Convention	International Convention for the Suppression of the Financing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and accession</i>		Membership		year of ratification	Legislation enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of accession
Chapter No.	56	83	57	58	61	62	64	65	66

Countries and Territories									
Nigeria		1995		Y ²		1996*			2000*
Norway		1995		1994*			2000*	Y	2001 2002
Oman		2000		Y ²					
Pakistan		1995			2002		2000*		
Palau									2001
<i>Palestinian Authority</i>									
Panama		1997			2001	2002			2001 2002
Papua New Guinea		1996							
Paraguay		1995				2002			2001*
Peru		1995				2002			2000 2001
Philippines		1995			2000	2002			2001*
Poland		1995		2001		2004		2004 [§]	2001*
Portugal		1995		1997	Y ¹⁵	1996*		Y	2000 2002
Qatar		1996		Y ²					
Romania		1995	1998	1997	Y ¹⁵	2002			2000 2003
Russia		Y ²	1998	1994*					2000 2002
Rwanda	Y	1996							2001 2002
Sahrawi Arab Democratic Republic									
Saint Kitts and Nevis		1996							2001 2001
Saint Lucia		1995				2002			

**TABLE OF MEMBERSHIP, RATIFICATION
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	Treaty on the Com mon Market for Eastern and So uthern Africa (COM ESA)	Agree ment Estab lishing the World Trade Organ ization	Trade mark Law Treaty	Energy Charter Treaty	UNC ITRAL Model Law on Electronic Com merce	WIPO Copyright Treaty	Interna tional Con vention on the Arrest of Ships	Food Aid Conv ention	Interna tional Conve ntion for the Suppr ession of the Fina ncing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratify cation and accession</i>		Membe rship		year of ratify cation	Legisl ation enacted	entry into force	signed and ratified, or year of acce ssion		signed and ratified, or year of accession
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Saint Vincent and the Grenadines		1995							2001 2002
Samoa		Y ²							2001 2002
San Marino									2000 2002
São Tomé and Príncipe		Y ²							
Saudi Arabia		Y ²		Y ²					2001*
Senegal		1995				2002			
Serbia		Y ¹⁷	1998	Y ²		2003			2001 2002

and Montenegro									
Seychelles	Y	Y ²							2001*
Sierra Leone		1995							2001*
Singapore		1995			1998	2005			2001 2002
Slovakia		1995	1997	1995		2002		2004 [§]	2001 2002
Slovenia		1995	2002	1997	2000	2002		2004 [§]	2001*
Solomon Islands		1996							
Somalia									2001*
South Africa		1995			2002	1996*			2001*
Spain		1995	1999	1997	Y ¹⁵	1996*	2002 [§]	Y	2001 2002
Sri Lanka (Ceylon)		1995	1996						2000 2000
Sudan	Y	Y ²							
Suriname		1995							
Swaziland	Y	1995							

TABLE OF MEMBERSHIP, RATIFICATION AND ACCESSION: 1970–1999

	Treaty on the Common Market for Eastern and Southern Africa (COMESA)	Agreement Establishing the World Trade Organization	Trade mark Law Treaty	Energy Charter Treaty	UNCITRAL Model Law on Electronic Commerce	WIPO Copyright Treaty	International Convention on the Arrest of Ships	Food Aid Convention	International Convention for the Suppression of the Financing of Terrorism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and</i>		Membership		year of ratification	legislation enacted	entry into force	signed and ratified.		signed and ratified.

<i>accession</i>							or year of accession		or year of acce ssion
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Sweden		1995		1997		1996*		Y	2001 2002
Switzerland		1995	1997	1996		1996*		Y	2001*
Syria							2002 ^s		
Taiwan (Republic of China/ Chinese Taipei)		2002							
Tajikistan		Y ²		1997					2001*
Tanzania		1995							2003
Thailand		1995			2002				2001*
Timor-Leste									
Togo		1995				2003			2001*
Tonga		Y ²							2002
Trinidad and Tobago		1995	1998						
Tunisia		1995		Y ²					2001*
Turkey		1995	2005	2001					2001 2002
Turkm enistan				1997					
Tuvalu									
Uganda	Y	1995							2001*
Ukraine		Y ²	1996	1998		2002			2000 2002
United Arab Emirates		1996		Y ²		2004			
United		1995	1996	1997	Y ¹⁵	1996*		Y	2000

<i>Bermuda</i>					1999				
<i>British Antarctic Territory</i>									
<i>British Virgin Islands</i>									
<i>Cayman Islands</i>					2000				
<i>Falkland Islands</i>									
<i>Gibraltar</i>									
<i>Turks and Caicos Islands</i>					2000				
<i>Montserrat</i>									
<i>St Helena, etc.</i>									
USA		1995	2000	Y ²	Y ¹⁵	2002		Y	2000 2002
<i>Northern Mariana Islands (C'wealth)</i>									
<i>Puerto Rico (C'wealth)</i>									
<i>American Samoa</i>									
<i>Guam</i>									
<i>Virgin Islands</i>									
Uruguay		1995				1996*			2001*
Uzbekistan		Y ²	1998	1996					2000 2001

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 1970–1999**

	Treaty on the Com mon Market for Eastern and Southern Africa (COM ESA)	Agree ment Estab lishing the World Trade Organi zation	Trade mark Law Treaty	Energy Charter Treaty	UNCI TRAL Model Law on Elect ronic Com merce	WIPO Copy right Treaty	Intern ational Conve ntion on the Arrest of Ships	Food Aid Conve ntion	Intern ational Conv ention for the Suppre ssion of the Finan cing of Terror ism
<i>Date</i>	1993	1994	1994	1994	1996	1996	1999	1999	1999
<i>Notes on ratification and accession</i>		Mem bership		year of ratification	Legis lation enacted	entry into force	signed and ratified, or year of accession		signed and ratified, or year of acces sion
Chapter No.	56	83	57	58	61	62	64	65	66
Countries and Territories									
Vanuatu		Y ²							
Venezuela		1995		Y ²	2001	1996*			2001*
Viet Nam		Y ²							2002
Yemen		Y ²							
<i>Yugoslavia (1918–92)</i>									
<i>Zambia</i>	Y	1995							
Zimbabwe (Southern Rhodesia/ Rhodesia)	Y	1995							

NOTES

GENERAL NOTES

¹

Date is of ratification/accession or when in force, unless: *Signature (only): †Succession:

E=exporting member;	[‡] Denunciation; [§] accession when not first a signatory.
I=Importing member.	Successor states:
²	Dates of accession often coincide with those of independence, change of jurisdiction, secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously.
provisional application.	Where possible, information on the previous party is given.
³ accession	A later date for succession usually coincides with the date of deposit of the instrument of succession.
not yet complete	Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.
(beginning of 2005).	Eritrea's separation from Ethiopia was recognised on 28 May 1993.
⁴ with the United Kingdom.	Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002.
⁵ applicant member.	The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.
⁶ including Macao, but local legislation necessary in Hong Kong.	The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR.
⁷ not including dependent territories.	The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro.
	Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan.
	The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Const itutive Act of the African Union	International Coffee Agreement ¹	Inter- Govern mental Agreement on International 'North- South' Transport Corridor	UN Convention against Transnational Organized Crime	International Cocoa Agreement ¹	Agreement Estab lishing the Terms of Reference of the Intern ational Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Afghanistan				2000 2003		
Albania				2000 2002		
Algeria	2000 2001			2000 2002		
Andorra				2001*		
Angola	2001 2001	E		2001*		
Antigua and Barbuda				2001 2002		
Argentina				2000 2002		
Armenia			2004 [§]	2001 2003		
Australia				2000 2004		
<i>Norfolk Island</i>						
Austria		I		2000 2004	I	Y
Azerbaijan			2004 [§]	2000 2003		
Bahamas, The				2001*		

Bahrain				2004 ^s		
Bangladesh						Y
Barbados				2001*		
Belarus			2003 ^s	2000 2003		
Belgium		I ²		2000 2004	I	Y
Belize				2003 ^s		
Benin	2000 2001	E		2000 2004		
Bhutan						

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Const itutive Act of the African Union	Intern ational Coffee Agree ment ¹	Inter- Governmental Agreement on International ‘North-South’ Transport Corridor	UN Convention against Transnational Organized Crime	Intern ational Cocoa Agree ment ¹	Agreement Establ ishing the Terms of Reference of the Interna tional Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Bolivia		E		2000*		
Bosnia and Herzegovina				2000 2002		
Botswana	2001 2001			2002 2002		
Brazil		E		2000 2004	E	
Brunei						
Bulgaria			Y ⁵	2000 2001		

Burkina Faso	2000 2001			2000 2002		
Burundi	2000 2001	E		2000 [*]		
Cambodia				2001 [*]		
Cameroon	2001 2001	E		2000 [*]	E	
Canada				2000 2002		
Cape Verde	2000 2001			2000 2004		
Central African Republic	2000 2001	E		2004 [§]		
Chad	2000 2001					
Chile				2000 [*]		
China, People's Republic				2000 2003 ⁶		
<i>Hong Kong (SAR)</i>						
<i>Macao (SAR)</i>						
Colombia		E		2000 2004		
Comoros	2000 2001			2003 [§]		
Congo, Democratic Republic	2001 2002	E				

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Constitutive Act of the African Union	International Coffee Agreement ¹	Inter-Governmental Agreement on International 'North-South' Transport Corridor	UN Convention against Transnational Organized Crime	International Cocoa Agreement ¹	Agreement Establishing the Terms of Reference of the International Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Congo, Republic	2001 2002	E		2000*		
Costa Rica		E		2001 2003		
Côte d'Ivoire		E		2000*	E	
Croatia				2000 2003		
Cuba		E		2000*		
Cyprus		I		2000 2003	I	Y
Czech Republic		I ³		2000*	I	Y
<i>Czechoslovakia (1918–92)</i>						
Denmark		I		2000 2003 ⁷	I	Y
<i>Faeroe Islands</i>						
<i>Greenland</i>						
Djibouti	2000 2000					
Dominica						
Dominican		E		2000*	E	

Republic						
Ecuador		E		2000 2002	E	
Egypt	2001 2001			2000 2004		
El Salvador		E		2000 2004		
Equatorial Guinea	2000 2000			2000 2003		
Eritrea	2001 2001					
Estonia		I ³		2000 2003	I	Y
Ethiopia	2000 2001	E		2000*		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Constitutive Act of the African Union	International Coffee Agreement ¹	Inter-Governmental Agreement on International 'North-South' Transport Corridor	UN Convention against Trans national Organized Crime	Intern ational Cocoa Agre ement ¹	Agreement Establ ishing the Terms of Reference of the Intern ational Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
European Community (EU)		I		2000 2004	I	Y
Fiji						
Finland		I ³		2000 2003	I	Y
France		I ³		2000 2002	I	Y

<i>Mayotte</i>						
<i>French Polynesia</i>						
<i>New Caledonia</i>						
Gabon	2000 2001	E			E	
Gambia, The	2000 2001			2000 2003		
Georgia				2000*		
Germany		I		2000*	I	Y
Ghana	2000 2001	E ²			E	
Greece		I		2000*	I	Y
Grenada				2004 [§]		
Guatemala		E		2000 2003		
Guinea	2001 2002	E		2004 [§]		
Guinea- Bissau	2000 2001			2000*		
Guyana				2004 [§]		
<i>Habsburg Empire</i>						
Haiti		E		2000*		
Holy See (or Vatican City)						

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Const itutive Act of the African Union	Interna tional Coffee Agre ement ¹	Inter- Governmental Agreement on International 'North-South' Transport Corridor	UN Convention against Transnational Organized Crime	Interna tional Cocoa Agre ement ¹	Agreement Establi shing the Terms of Reference of the Interna tional Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Honduras		E		2000 2003		
Hungary		I ³		2000*	I	Y
Iceland				2000*		
India		E	2002	2002*		Y
<i>Goa</i>						
Indonesia		E		2000*		
Iran			2002	2000*		
Iraq				2000*		
Ireland		I		2000*	I	Y
Israel				2000*		
Italy		I ³		2000*	I	Y
Jamaica		E		2001 2003		
Japan		I		2000*		
Jordan				2002*		
Kazakhstan			2003	2000*		

Kenya	2001 2001	E		2004 ^s		
Kiribati						
Korea, Democratic People's Republic						
Korea, Republic				2000*		
Kuwait				2000*		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Constitutive Act of the African Union	International Coffee Agreement ¹	Inter-Governmental Agreement on International 'North-South' Transport Corridor	UN Convention against Transnational Organized Crime	International Cocoa Agreement ¹	Agreement Establishing the Terms of Reference of the International Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Kyrgyzstan			Y ⁵	2000 2003		
Laos				2003 ^s		
Latvia		I ³		2000 2001	I	Y
Lebanon				2001*		
Lesotho	2000 2001			2000 2003		
Liberia	2000 2001			2004 ^s		
Libya	2000 2000			2001 2004		

Liechtenstein				2000*		
Lithuania		I ³		2000 2002	I	Y
Luxembourg		I ²		2000*	I	Y
Macedonia, Former Yugoslav Republic				2000 2005		
Madagascar	2000 2003	E		2000*		
Malawi	2000 2001	E		2000 2005		
Malaysia				2000 2004	E	
Maldives						
Mali	2000 2000			2000 2002		
Malta		I ³		2000 2003	I	Y
Marshall Islands						
Mauritania	2001 2001					
Mauritius	2001 2001			2000 2003		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

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<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73

Countries and Territories						
Mexico		E		2000 2003		
Micronesia, Federated States				2004 [§]		
Moldova				2000 [*]		
Monaco				2000 2001		
Mongolia						
Morocco				2000 2002		
Mozambique	2000 2001			2000 [*]		
Myanmar (Burma)				2004 [§]		
Namibia	2000 2001			2000 2002		
Nauru				2001 [*]		
Nepal				2002 [*]		
Netherlands		I ³		2000 2004	I	Y
<i>Aruba (Netherlands)</i>						
<i>Netherlands Antilles (Netherlands)</i>						
New Zealand				2000 20027		
<i>Cook Islands</i>				2004 [§]		
<i>Tokelau</i>						
Nicaragua		E		2000 2002		
Niger	2000 2001			2000 2004		
Nigeria	2000 2001	E		2000 2001	E	

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Cons titutive Act of the African Union	Intern ational Coffee Agree ment ¹	Inter-Govern mental Agreement on Intern ational 'North- South' Transport Corridor	UN Convention against Transn ational Organized Crime	Intern ational Cocoa Agree ment ¹	Agre ement Establ ishing the Terms of Reference of the Interna tional Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Norway		I		2000 2003		
Oman			2003 [§]			
Pakistan				2000*		
Palau						
<i>Palestinian Authority</i>						
Panama				2000 2004		
Papua New Guinea		E			E	
Paraguay		E		2000 2002		
Peru				2000 2004		
Philippines		E		2000 2004		
Poland		I ³		2000 2001	I	Y
Portugal		I		2000 2004	I	Y
Qatar						

Romania				2000 2002		
Russia			2002	2000 2004	I	
Rwanda	2000 2001	E		2000 2003		
Sahrawi Arab Democratic Republic	2000 2000					
Saint Kitts and Nevis				2001 2004		
Saint Lucia				2001*		
Saint Vincent and the Grenadines				2002*		

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Const itutive Act of the African Union	Interna tional Coffee Agree ment ¹	Inter- Govern mental Agreement on Intern ational 'North- South' Transport Corridor	UN Convention against Transna tional Organized Crime	International Cocoa Agreement ¹	Agree ment Estab lishing the Terms of Reference of the Interna tional Jute Study Group
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<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Samoa						
San Marino				2001*		
São Tomé and Príncipe	2000 2001					

Saudi Arabia				2000 2005		
Senegal	2000 2000			2000 2003		
Serbia and Montenegro				2000 2001		
Seychelles	2000 2001			2000 2003		
Sierra Leone	2000 2001			2001*		
Singapore				2000*		
Slovakia		I ³		2000 2003	I	Y
Slovenia		I ³		2000 2004	I	Y
Solomon Islands						
Somalia	2001 2001					
South Africa	2000 2001			2000 2004		
Spain		I		2000 2002	I	Y
Sri Lanka (Ceylon)				2000*		
Sudan	2000 2000			2000*		
Suriname						
Swaziland	2001 2001			2000*		
Sweden		I		2000 2004	I	Y
Switzerland		I		2000*	I	Y

	Const itutive Act of the African Union	Inter national Coffee Agreement ¹	Inter-Govern mental Agreement on Intern ational ‘North-South’ Transport Corridor	UN Convention against Transnational Organized Crime	Intern ational Cocoa Agre ement ¹	Agreement Establishing the Terms of Reference of the International Jute Study Group
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73

Countries and Territories						
Syria			2004 [§]	2000*		
Taiwan (Republic of China/Chinese Taipei)						
Tajikistan			2003 [§]	2000 2002		
Tanzania	2000 2001	E		2000*		
Thailand		E		2000*		
Timor-Leste						
Togo	2000 2000	E		2000 2004	E	
Tonga						
Trinidad and Tobago				2001*	E	
Tunisia	2000 2001			2000 2003		
Turkey			Y ⁵	2000 2003		
Turkmenistan						
Tuvalu						
Uganda	2001 2001	E		2000 2005		
Ukraine			Y ⁵	2000 2004		
United Arab Emirates				2002*		
United Kingdom		I		2000*	I	Y
<i>Channel Islands (Crown Dep.)</i>						
<i>Bailiwick of Guernsey</i>						
<i>Bailiwick of Jersey</i>		Y ⁴				
	Constitutive Act of the African Union	International Coffee Agreement ¹	Inter-Governmental Agreement on International	UN Convention against Transnational	International Cocoa Agreement ¹	Agreement Establishing the Terms of Reference of

<i>Date</i>	2000	2001	‘North-South’ Transport Corridor	Organized Crime		the International Jute Study Group
<i>Notes on ratification and accession</i>	years of signature and ratification		2000 ratification or accession	2000 signed and ratified, or year of accession	2001	2001
Chapter No.	68	69	70	71	72	73
Countries and Territories						
<i>Isle of Man (Crown Dep.)</i>						
<i>Anguilla</i>						
<i>Bermuda</i>						
<i>British Antarctic Territory</i>						
<i>British Virgin Islands</i>						
<i>Cayman Islands</i>						
<i>Falkland Islands</i>						
<i>Gibraltar</i>						
<i>Turks and Caicos Islands</i>						
<i>Montserrat</i>						
<i>St Helena, etc.</i>		Y ⁴				
USA		I		2000*		
<i>Northern Mariana Islands</i>						

<i>(C'wealth)</i>						
<i>Puerto Rico (C'wealth)</i>						
<i>American Samoa</i>						
<i>Guam</i>						
<i>Virgin Islands</i>						
Uruguay				2000 2005		
Uzbekistan				2000 2003		
Vanuatu						
Venezuela		E		2000 2002		
<i>Date</i>	2000	2001	2000	2000	2001	2001
<i>Notes on ratification and accession</i>	years of signature and ratification		ratification or accession	signed and ratified, or year of accession		
Chapter No.	68	69	70	71	72	73
Countries and Territories						
Viet Nam		E		2000*		
Yemen				2000*		
<i>Yugoslavia (1918–92)</i>						
Zambia	2000 2001	E				
Zimbabwe	2001 2001	E		2000*		

NOTES

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E=exporting member;
I=Importing member.
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³ accession not yet complete (beginning of 2005).
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⁶ including Macao, but local legislation necessary in Hong Kong.
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The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

**TABLE OF MEMBERSHIP, RATIFICATION
AND ACCESSION: 2000–**

	Multilateral Agree ment on the Libera lization of Intern ational Air Transp ortation	UN Conve ntion on the Assig nment of Recei vables in Intern ational Trade	Agreement on Interna tional Railways in the Arab Mashreq	Interna tional Conve ntion on the Protection of the Rights of All Migrant Workers	UN Conv ention against Corruption	Agree ment on the South Asian Free Trade Area
<i>Date</i>	2001	2001	2003	2003	2003	2004
<i>Notes on ratification and accession</i>	year of ratification date	year of signature		years of signature and ratification	signature and ratification, year of signature	
Chapter No.	74	76	77	79	80	81
Countries and Territories						
Afghanistan					2004	
Albania					2003	
Algeria				2005 [§]	2003 2004	
Andorra						
Angola					2003	
Antigua and Barbuda						
Argentina				2004*	2003	
Armenia						
Australia					2003	
<i>Norfolk Island</i>						
Austria					2003	
Azerbaijan				1999 [§]	2004	
Bahamas						

The						
Bahrain			Y		2005	
Bangladesh				1998*		Y
Barbados					2003	
Belarus					2004 2005	
Belgium					2003	
Belize				2001 [§]		
Benin					2003 2004	

	Multi lateral Agreement on the Libera lization of International Air Transp ortation	UN Conv ention on the Assignment of Receivables in International Trade	Agreement on Interna tional Railways in the Arab Mashreq	Interna tional Conv ention on the Protection of the Rights of All Migrant Workers	UN Conv ention against Corruption	Agre ement on the South Asian Free Trade Area
<i>Date</i>	2001	2001	2003	2003	2003	2004
<i>Notes on ratification and accession</i>	year of ratification date	year of signature		years of signature and ratification	signature and ratification, year of signature	
Chapter No.	74	76	77	79	80	81
Countries and Territories						
Bhutan						Y
Bolivia				2000 [§]	2003	
Bosnia and Herzegovina				1996 [§]		
Botswana						
Brazil					2003	
Brunei	2001				2003	
Bulgaria					2003	

Burkina Faso				2001 2003	2003	
Burundi						
Cambodia				2004*		
Cameroon					2003	
Canada					2004	
Cape Verde				1997 ^s	2003	
Central African Republic					2004	
Chad						
Chile	2002			1993 2005	2003	
China, People's Republic					2003	
<i>Hong Kong (SAR)</i>						
<i>Macao (SAR)</i>						
Colombia				1995 ^s	2003	
Comoros				2000*	2003	

	Multilateral Agreement on the Liberalization of International Air Transportation	UN Convention on the Assignment of Receivables in International Trade	Agreement on International Railways in the Arab Mashreq	International Convention on the Protection of the Rights of All Migrant Workers	UN Convention against Corruption	Agreement on the South Asian Free Trade Area
<i>Date</i>	2001	2001	2003	2003	2003	2004
<i>Notes on ratification and accession</i>	year of ratification date	year of signature		years of signature and ratification	signature and ratification, year of signature	
Chapter No.	74	76	77	79	80	81

Countries and Territories						
Congo, Democratic Republic						
Congo, Republic						
Costa Rica					2003	
Cote d'Ivoire					2003	
Croatia					2003	
Cuba						
Cyprus					2003	
Czech Republic						
<i>Czechoslovakia (1918–92)</i>						
Denmark					2003	
<i>Faeroe Islands</i>						
<i>Greenland</i>						
Djibouti					2004	
Dominica						
Dominican Republic					2003	
Ecuador				2002 [§]	2003	
Egypt			Y	1993 [§]	2003 2005	
El Salvador				2002 2003	2003 2004	
Equatorial Guinea						
Eritrea						
Estonia						

	Multilateral Agreement on the Liberalization of International Air Transp	UN Convention on the Assignment of Receivables in	Agreement on International Railways in the Arab Mashreq	International Convention on the Protection of the Rights of All Migrant Workers	UN Convention against Corruption	Agreement on the South Asian Free Trade

	ortation	International Trade				Area
<i>Date</i>	2001	2001	2003	2003	2003	2004
<i>Notes on ratification and accession</i>	year of ratification date	year of signature		years of signature and ratification	signature and ratification, year of signature	
Chapter No.	74	76	77	79	80	81
Countries and Territories						
Ethiopia					2003	
European Community (EU)						
Fiji						
Finland					2003	
France					2003	
<i>Mayotte</i>						
<i>French Polynesia</i>						
<i>New Caledonia</i>						
Gabon				2004*	2003	
Gambia, The						
Georgia						
Germany					2003	
Ghana				2000 2000		
Greece					2003	
Grenada					2003	
Guatemala				2000 2003		
Guinea				2000 ^{\$}		
Guinea- Bissau				2000*		

Guyana						
<i>Habsburg Empire</i>						
Haiti					2003	
<i>Date</i>	Multilateral Agreement on the Libera lization of International Air Transp ortation	UN Conve ntion on the Assignment of Receivables in International Trade	Agreement on International Railways in the Arab Mashreq	Intern ational Convention on the Protection of the Rights of All Migrant Workers	UN Convention against Corruption	Agree ment on the South Asian Free Trade Area
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Holy See (or Vatican City)						
Honduras					2004	
Hungary					2003	
Iceland						
India						Y
<i>Goa</i>						
Indonesia				2004*	2003	
Iran					2003	
Iraq						
Ireland					2003	
Israel						
Italy					2003	

Jamaica						
Japan					2003	
Jordan			Y		2003 2005	
Kazakhstan						
Kenya					2003 2003	
Kiribati						
Korea, Democratic People's Republic						
Korea, Republic					2003	

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Laos					2003	
Latvia						
Lebanon			Y			

Lesotho				2004*		
Liberia				2004*		
Libya				2004 ^s	2003	
Liechtenstein					2003	
Lithuania					2003	
Luxembourg		2002			2003	
Macedonia, Former Yugoslav Republic						
Madagascar		2003			2003 2004	
Malawi					2004	
Malaysia					2003	
Maldives						Y
Mali				2003 ^s	2003	
Malta						
Marshall Islands						
Mauritania						

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Countries and						

Territories						
Mauritius					2003 2004	
Mexico				1991 1999	2003 2004	
Micronesia, Federated States						
Moldova					2004	
Monaco						
Mongolia						
Morocco				1991 1993	2003	
Mozambique					2004	
Myanmar (Burma)						
Namibia					2003 2004	
Nauru						
Nepal					2003	Y
Netherlands					2003	
<i>Aruba (Netherlands)</i>						
<i>Netherlands Antilles (Netherlands)</i>						
New Zealand	2001				2003	
<i>Cook Islands</i>						
<i>Tokelau</i>						
Nicaragua					2003	
Niger						
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Nigeria					2003 2004	
Norway					2003	
Oman						
Pakistan					2003	Y
Palau						
<i>Palestinian Authority</i>			Y			
Panama					2003	
Papua New Guinea						
Paraguay				2000*	2003	
Peru	2002§ (2003 [‡])			2004*	2003 2004	
Philippines				1993 1995	2003	
Poland					2003	
Portugal					2003	
Qatar						
Romania					2003 2004	
Russia					2003	
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Sahrawi Arab Democratic Republic						
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Samoa	2002 ^s					
San Marino						
Sao Tome and Principe				2000*		
Saudi Arabia					2004	
Senegal				1999 ^s	2003	
Serbia and Montenegro				2004*	2003	
Seychelles				1994 ^s	2004	
Sierra Leone				2000*	2003 2004	
Singapore	2001					
Slovakia					2003	

Slovenia						
Solomon Islands						
Somalia						
South Africa					2003 2004	
Spain						
Sri Lanka (Ceylon)				1996 ^s	2004 2004	Y
Sudan					2005	
Suriname						
Swaziland						

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Sweden					2003	
Switzerland					2003	
Syria			Y		2003	
Taiwan (Republic of China/Chinese						

Taipei)						
Tajikistan				2000 2002		
Tanzania					2003	
Thailand					2003	
Timor-Leste				2004 [§]	2003	
Togo				2001 [*]	2003	
Tonga	2003 [§]					
Trinidad and Tobago					2003	
Tunisia					2004	
Turkey				1999 2004	2003	
Turkmenistan						
Tuvalu						
Uganda				1995 [§]	2003 2004	
Ukraine					2003	
United Arab Emirates			Y			
United Kingdom					2003	
<i>Channel Islands (Crown Dep.)</i>						

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<i>Bermuda</i>						
<i>British Antarctic Territory</i>						
<i>British Virgin Islands</i>						
<i>Cayman Islands</i>						
<i>Falkland Islands</i>						
<i>Gibraltar</i>						
<i>Turks and Caicos Islands</i>						
<i>Montserrat</i>						
<i>St Helena, etc.</i>						
USA	2001	2003			2003	
<i>Northern Mariana Islands (C'wealth)</i>						
<i>Puerto Rico (C'wealth)</i>						
<i>American Samoa</i>						

Guam						
Virgin Islands						
Uruguay				2001 [§]	2003	
Uzbekistan						
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Vanuatu						
Venezuela					2003	
Viet Nam					2003	
Yemen			Y		2003	
<i>Yugoslavia (1918-92)</i>						
Zambia					2003	
Zimbabwe					2004	
NOTES ¹ E=exporting member; I=Importing	GENERAL NOTES Date is of ratification/accession or when in force, unless: *Signature (only); [†] Succession; [‡] Denunciation; [§] accession when not first a signatory. Successor states: Dates of accession often coincide with those of independence. change of jurisdiction.					

member.
² provisional
application.
³ accession
not yet
complete
(beginning
of 2005).
⁴ with the
United
Kingdom.
⁵ applicant
member.
⁶ including
Macao, but
local
legislation
necessary in
Hong Kong.
⁷ not
including
dependent
territories.

secession or succession, indicating that an earlier polity had applied the treaty to the territory in question previously.
Where possible, information on the previous party is given.
A later date for succession usually coincides with the date of deposit of the instrument of succession.
Czechoslovakia divided into the separate states of the Czech Republic and Slovakia on 1 January 1993.
Eritrea's separation from Ethiopia was recognised on 28 May 1993.
Timor-Leste, which was Portuguese-ruled (East) Timor until its formal annexation to Indonesia in 1976 and then administered by the UN from 1999, achieved independence on 20 May 2002.
The Baltic states of Estonia, Latvia and Lithuania had existed independently between the First and Second World Wars, until their forcible incorporation into the USSR in 1940. Their independence was acknowledged by the USSR on 6 September 1991 and by the UN on 17 September. They have notified the UN that treaty succession does not apply to countries freed from occupation.
The USSR dissolved in December 1991, but Russia continued its legal personality. It should be noted that Belarus and Ukraine had separate membership of the UN before their independence upon the dissolution of the USSR.
The Socialist Federal Republic of Yugoslavia (Kingdom of Serbs, Croats and Slovenes 1918–63, then the Federative People's Republic of Yugoslavia until 1963) is generally referred to as the former Yugoslavia. Its constituent republics declared independence during 1991–92: Slovenia on 25 June 1991; Macedonia (owing to Greek objections, recognized internationally as the former Yugoslav republic of Macedonia) on 17 September; Croatia on 8 October; and Bosnia and Herzegovina on 6 March 1992. The introduction of the new Constitution of the Federal Republic of Yugoslavia (FRY) on 27 April is now generally considered to mark the end of the former Yugoslavia, although the FRY claimed that it continued the legal personality of the former Yugoslavia, despite the objections of the other successor states. The FRY achieved separate UN membership on 1 November 2000, when it formally renounced such a claim. On 4 February 2003 the FRY changed its name to Serbia and Montenegro.
Hong Kong (hitherto administered by the United Kingdom) and Macau (Portugal) reverted to Chinese sovereignty in 1997 and 1999, respectively. The People's Republic of China declared that it would specify which treaty obligations it would maintain, etc. It had specified similarly when acknowledged as the legitimate Government of China in 1971, displacing the 'Republic of China' Government, in Taiwan.
The Cook Islands, a dependency of New Zealand, was recognized as being able to sign treaties in its own right in 1984.

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