TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF HAITI CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

The United States of America and the Republic of Haiti (each hereinafter referred to as a "Party"),

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of both Parties,

Agreeing that discrimination on the basis of nationality by either Party against investment in its territory by nationals or companies of the other Party is not consistent with either a stable framework for investment or a maximum effective utilization of economic resources;

Having resolved to conclude a treaty concerning the encouragement and reciprocal protection of investment, and

Have agreed as follows:

Article I. Definitions

For the purposes of this Treaty,

a. "Company" means any kind of juridical entity, including any corporation, company, association, or other organization, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is organized for pecuniary gain, privately or governmentally owned, or organized with limited or unlimited liability.

b. "Company of a Party" means a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof in which

i. Natural persons who are nationals of such Party, or

ii. Such Party or a political subdivision thereof or their agencies or instrumentalities have a substantial interest as determined by such Party.

The juridical status of a company of a Party shall be recognized by the other Party and its political subdivisions.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, except with respect to recognition of juridical status and access to courts, if nationals of any third country control such company, provided that whenever one Party concludes, that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution to this matter.

c. "Investment" means every kind of investment, owned or controlled directly or indirectly, including 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 investments;

iv. Intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs trade secrets and know-how, and goodwill;

v. Licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;

vi. Any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products; and

vii. Returns which are reinvented. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

d. "Own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

e. "National" of a Party means a natural person who is a national of a Party under its applicable law.

f. "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 returns in kind.

Article II. Treatment of Investment

1. Each Party shall endeavor to maintain a favorable environment for investments in its territory by nationals and companies of the other Party and shall permit such investments to be established and acquired on terms and conditions that accord treatment no less favorable than the treatment it accords in like situations to investments of its own nationals or companies or to nationals and companies of any third country, whichever is the most favorable.

2. Each Party shall accord existing or new investments, and associated activities, in its territory, of nationals or companies of the other Party, treatment no less favorable than that which it accords in like situations to investments, and associated activities, of its own nationals or companies or of nationals or companies of any third country, whichever is the most favorable.

3.

a. Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of treatment otherwise required if such exceptions fall within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party of all such exceptions at the time this Treaty enters into force. Moreover, each Party agrees to notify the other Party of any future exceptions falling within the sectors or matters listed the Annex, and to maintain the number of such exceptions at a minimum. Other than with respect to ownership of real property, the treatment accorded pursuant to this subparagraph shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country. However, either Party may require that rights to engage in mining on the public domain shall be dependent on reciprocity.

b. No exception introduced after the date of entry into force of this treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

4. Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws, and shall in no case be less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party.

5.

a. 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, directing, administering or advising on the operation of an investment to which they, or 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.

b. Nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional, technical and managerial personnel of their choice, regardless of nationality, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments. Companies which are incorporated, constituted, or otherwise organized under the applicable laws or regulations of one Party, and which are owned or controlled by nationals or companies of the other Party, shall be permitted to engage, within the territory of the first Party, top managerial personnel of their choice regardless of nationality.

6. Each Party agrees to provide fair and equitable treatment and, in particular, the treatment provided for in paragraphs 1 and 2 of this Article, to privately owned or controlled investment of nationals or companies of the other Party, where, such investment is in competition, within the territory of the first Party, with investment owned or controlled by the first Party or its agencies or instrumentalities. In no case shall such treatment be less favorable than that provided to any privately owned or controlled investment of nationals or companies of the first Party which is also in competition with investment owned or controlled by the Party or its agencies or instrumentalities.

7. In order to maintain a climate favorable to investment, each Party shall seek to avoid interventions which would impose performance requirements upon the investment of nationals and companies of the other Party.

8. In order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable than those which it grants in like situations to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice who otherwise qualify under applicable laws and regulations of the forum regardless of nationality, for the purpose of assorting claims, and enforcing rights, with respect to their investments.

9. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments in its territory of nationals or companies of the other Party.

10. The treatment accorded by a Party to nationals or companies of the other Party under the provisions of Paragraphs 1 and 2 of this Article shall, in any State, Territory or possession of the Party, be the treatment accorded therein to companies incorporated, constituted or otherwise, duly organized in other States, Territories or possessions of the Party.

11. Except for the obligations specified in this Treaty, neither Party in obliged to provide to the investments of the other Party treatment more favorable than that granted to the investments of its own nationals and companies or to investments of nationals and companies of any third Party.

12. The most favored nation provisions of Article II, paragraph 3, shall not apply to advantages accorded by either Party to nationals or companies of a third country by virtue of that Party's binding obligations that derive from full membership in regional customs unions.

Article III. Compensation for Expropriation

1. No investment or any part of an investment of a national or a company of either Party shall be expropriated or nationalized by the other Party or subjected to any other measure or series of measures, direct or indirect tantamount to expropriation (including the levying of taxation, the compulsory sale of all or part of an investment or the impairment or deprivation of its management, control or economic value), all such actions hereinafter referred to as "expropriation", unless the expropriation:

a. Is done for a public purpose;

b. Is accomplished under due process of law;

c. Is not discriminatory;

d. Does not violate any specific provision on contractual stability or expropriation contained in an investment agreement between the national or company concerned and the Party making the expropriation, and

e. Is accompanied by prompt, adequate and effective compensation.

Compensation will be equivalent to the fair market value of the investment, as determined according to different methods of calculation as appropriate in each specific case. The calculation of compensation shall not reflect any reduction of the fair market value by reason of previous public knowledge or announcement of the expropriation or measures resulting in an expropriation. Such compensation shall be paid promptly, shall be effectively realizable, shall bear current interest from the date of expropriation at a rate equivalent to current international rates, and shall be freely transferable at the official market rate of exchange on the date of expropriation.

2. If either Party expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such

nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

3. Subject to the dispute settlement provisions of any applicable agreement, a national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such 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 as set forth in this Article.

Article IV. Compensation for Damages Due to War and Similar Events

1. Nationals or companies of either Party whose investments in the territory of the other Party suffer

a. Damages due to war or other armed conflict between such other Party and a third country, or

b. Damages due to revolution, state of national emergency, revolt, insurrection or riot in the territory of such other Party, shall be accorded treatment no less favorable than that which such other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages.

2. In the event that such damages result from:

a. A requisitioning of property by the other Party's forces or authorities, or

b. Destruction of property by the other Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation, the national or company shall be accorded restitution or compensation consistent with Article III.

3. The payment of any indemnification, compensation or other appropriate settlement pursuant to this Article shall be freely transferable.

Article V. Transfers

1. Each Party shall permit all transfers related to an investment in its territory of a national or company of the other Party to be made freely and without delay into and out of its territory. Such transfers include the following: returns; compensation; payments made arising out of a dispute concerning an investment; payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement: amounts to cover expenses relating to the management of the investment; royalties and other payments derived from licenses, franchises or other grants of rights or from administrative or technical assistance agreements, including management fees; proceeds from the sale of all or any part of an investment and from the partial or complete liquidation of the company concerned, including any incremental value; additional contributions to capital necessary or appropriate for the maintenance or development of an investment.

2. To the extent that a national or company of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such national or company is situated, currency transfers made pursuant to Paragraph 1 of this Article shall be permitted in a currency or currencies to be selected by such national or company. Except as provided in Article III, such transfers shall be made at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency or currencies to be transferred.

3. Notwithstanding the preceding paragraphs, 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 judgements in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

Article VI. Consultations

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, including any matter relating to the laws, regulations, administrative practices or procedures, adjudicatory decisions, or policies of one Party that pertain to or affect investments of nationals or companies of the other Party.

Article VII. Settlement of Investment Disputes between One Party and a National or Company of the other Party

1. For 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) the, interpretation or application of any investment authorization granted by its investment authority 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 between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of such Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation. The parties may, upon the initiative of either of them, agree to rely upon non-binding, third-party procedures. If the dispute cannot be resolved through the above procedures, then the dispute shall be submitted for settlement in accordance with the applicable dispute-settlement procedures upon which they have previously agreed. With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and relevant Provisions of domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3.

a. The national or company concerned may choose to consent in writing to the submission of the dispute to International Chamber of Commerce ("ICC"), for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose, provided:

i. The dispute has not, for any reason, been submitted for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; 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.

Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the ICC. 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 to the ICC for settlement by conciliation or binding arbitration.

c. Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Regulations and rules of the ICC.

d. In case of arbitration between a Party and a national or company of the other Party, the ICC, consistent with its rules, shall determine the venue for arbitration. The venue for arbitration shall be in a State which is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Moreover, each Party shall provide for the enforcement within its territory of ICC arbitral awards.

4. In any proceeding, judicial, arbitral or otherwise, concerning an investment dispute between it and a national or company of the other Party, 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 contract, indemnification or other compensation for all or part of its alleged damages from any source whatsoever, including such other Party and its political subdivisions, agencies and instrumentalities.

5. For the purpose of any proceedings initiated before the ICC in accordance with this Article, any company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of either Party or a political subdivision thereof but that, before the occurrence of the event or events giving rise to the dispute, was owned or controlled by nationals or companies of the other Party, shall be treated as a national or company of such other Party.

6. The provisions of this Article shall not apply to a dispute arising (a) under the expert 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 VIII. Settlement of Disputes between the Parties Concerning Interpretation or Application of this Treaty

1. Any dispute between the Parties concerning the interpretation or application of this Treaty should, if possible, be resolved through consultations between representatives of the two Parties, and if this should fail, through other diplomatic channels.

2. If the dispute between the Parties cannot be resolved through the aforesaid means, and unless there is agreement between the Parties to submit the dispute to the International Court of Justice, both Parties hereby agree to submit it upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

3. The Tribunal shall be established for each case as follows. Within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator. The two arbitrators so appointed shall select a third arbitrator as Chairman, who in a national of a third State. The Chairman shall be appointed within two months of the date of appointment of the other two arbitrators.

4. If the required appointments have not been made within the time specified in paragraph 3 of this Article, either of the Parties may, in the absence of any other agreement, request that the President of the International Court of Justice make the required appointments. If the President is a national of one of the Parties or if he is unable to act, the Vice President shall be asked to make the required appointments. If the Vice President is a national of one of the Parties or if he cannot otherwise perform said duties, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties shall be asked to make the required appointments.

5. In the event that an arbitrator resigns or is for any reason unable to perform his duties, a replacement shall be appointed within thirty days, utilizing the same method by which the arbitrator being replaced was appointed. If the replacement is not appointed within the time limit specified above, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice President, or if he is also a national of either of the Parties or is unable to act for any reason, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties, to make the appointment.

6. Unless otherwise agreed to by the Parties, all submissions shall be made and all hearings shall be completed within six months of the date of the selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

7. The Tribunal shall decide in all matters by majority vote. Any such decision shall be binding on both Parties. Each Party shall bear the expenses of its own representation in the arbitration proceedings. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties. Such a decision shall be binding.

8. The Parties may agree to specific arbitral procedures. In the absence of such agreement, the Model Rules on Arbitral Procedure adopted by the United Nations International Law Commission in 1958 ("Model Rules") and commended to Member States by the United Nations General Assembly in Resolution 1262 (XIII) shall govern. To the extent that procedural questions are not resolved by this Article or the Model Rules, they shall be resolved by the Tribunal.

9. This Article shall not be applicable to a dispute which has been submitted to the International Chamber of Commerce pursuant to Article VII (3). Recourse to the procedures set forth in this Article is not precluded, however, in the event an award rendered in such dispute is not honored by a Party; or on issue exists related to a dispute submitted to the ICC but not argued or decided in that proceeding.

10. The provisions of this Article 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. Preservation of Rights

This Treaty shall not supersede, prejudice, or otherwise 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, whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments, or associated activities, of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

Article X. Measures Not Precluded by this Treaty

1. This Treaty shall not preclude the application by either Party of any and all 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 this establishment of investments in its territory of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights Set forth in this Treaty.

Article XI. Taxation

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 Articles VII and VIII, shall apply to matters of taxation only with respect to the following:

a. Expropriation, pursuant to Article III;

b. Transfers, pursuant to Article VI; or

c. The observance and enforcement of terms of an investment agreement or authorization as referred to in Article VII (1) (a) or (b).

Matters covered by item by 2(c) shall not be covered to the extent they are subject to the dispute settlement provisions of a convention for the avoidance of double taxation between the two parties, unless such matters are raised under such settlement provisions and are not resolved within a reasonable period of time.

Article XII. Application of this Treaty to Political Sub-divisions of the Parties

This Treaty shall apply to political subdivisions of the Parties.

Article XIII. Entry Into Force and Duration and Termination

1. This Treaty shall be ratified by each of the Parties, and the ratifications thereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty days after the date of exchange of ratifications. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Paragraph 3 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.

3. 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.

4. 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.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington on the thirteenth day of December 1983 in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF HAITI:

Annex

Consistent with Article II paragraph 3, each Party reserves the right to maintain limited exceptions in the sectors or matters it has indicated below:

The United States of America

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 estate; 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.

The Republic of Haiti

Banking, insurance, telecommunications; government grants; energy production and trade; real estate: air, sea and land transportation; natural resources and mining exploitation; radio and television broadcast; production and distribution of basic commodities; professions; agro-industrial sector, chemical industry.

Protocol

The duly authorized Plenipotentiaries of the Parties have agreed upon the following provisions clarifying their intent in respect of certain Articles of the Treaty Concerning Treatment and Protection of Investment signed this date which shall be considered integral parts of the Treaty;

Each Party shall accord, under its laws and regulations, associated activities of existing or new investments in its territory of nationals or companies of the other Party, treatment no less favorable than that which it accords in like situations or associated activities of its own nationals or companies or of nationals or companies of any third country, whichever is the most favorable. With respect to Article II paragraph 2 and Article IX, associated activities include:

a. The establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

b. The organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

c. The making, performance and enforcement of contracts;

d. The acquisition (whether by purchase, lease or otherwise), ownership and disposition (whether by sale, testament or otherwise), of personal property of all kinds, both tangible and intangible;

e. The leasing of real property appropriate for the conduct of business;

f. The acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights; and

g. The borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.