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

The United States of America and Jamaica (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 worker rights; and

Having resolved to conclude a Treaty concerning the reciprocal encouragement and 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 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,

Patentable inventions,

Industrial designs,

Semiconductor mask works,

Trade secrets and confidential business information, and

Trademarks, service marks, and trade names;

(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, pertnership, or other organization, legally constituted under 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 returns in kind;

e) "associated activities" means 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 property rights; the borrowing of funds; the purchase, issuance, and sale of equity shares and other securities; the purchase of foreign exchange for imports; and other similar activities.

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.

a) Each Party shall permit and treat investments, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investments or associated activities of its own nationals or companies ("national treatment"), or of nationals or companies of any third country ("most favored nation treatment"), whichever is the most favorable, 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. The treatment accorded investments and activities associated therewith pursuant to any exceptions to national treatment shall be that of most favored nation treatment, unless specified otherwise in the Annex.

b) 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 investments existing in that sector or matter at the time the exception becomes effective.

2.

a) Investments 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 unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments.

c) Each Party shall observe any obligation it may have entered into with regard to investments.

3. Subject to the laws of each Party relating to the entry, sojourn and employment 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. Subject to the laws of each Party relating to entry, sojourn and employment of aliens, companies which are legally constituted under the applicable laws or regulations or 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, 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, provided, however, that nothing in this paragraph shall preclude a Party from providing benefits and incentives to investments which export a proportion of the goods produced.

6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations granted by a Party's foreign investment authority.

7. Each Party shall make publicly available 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 Jamaica 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 Agreement 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 from some other relationship which satisfies the requirements for a free trade area or customs union as set forth in Article XXIV of the General Agreement on Tariffs and Trade; or

b) That Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade.

Article III.

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 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 II(2) Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or was made known by the authorities, 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. The determination of fair market value shall not reflect any change in the value of the investment attributable to the expropriatory or to public knowledge of the expropriatory action before it was taken or made known by the authorities.

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, and any compensation therefor, conforms to the provisions of this Treaty.

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 most favorable treatment, 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 III 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.

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, or prevent fraudulent transfers, 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 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 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.

A party which elects one of the three procedures mentioned in this paragraph does so to the exclusion of the others.

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) In accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or

(iii) 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 written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre).

5. 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.

6. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of setoff 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.

7. For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision hereof 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.

8. As provided for in Article 27 of the Convention, neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals or companies has consented to submit to arbitration under the Convention, unless the other Party which is party to the dispute shall have failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

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 or by the arbitrators with the consent of 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 International Centre for the Settlement of Investment Disputes.

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 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 granted by a Party's foreign investment authority,

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 under the Chapter of the United Nations 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 shall strive to accord fairness and equity in the treatment of investments of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Articles 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.

DONE in duplicate at Washington on the fourth day of February, 1994, in the English language.

FOR THE UNITED STATES OF AMERICA:

FOR JAMAICA:

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; customhouse 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 maritimerelated services; and primary dealership in United Stales 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 and maritimerelated services; and primary dealership in United States government: securities.

3. Jamaica 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:

Civil aviation; real estate; banking; shipping; communications (including postal and telegraph services, and broadcasting); mining and natural resources; government grants and other assistance to small-scale enterprises with total assets of U.S. $50,000 or less; customs brokerages; car rental; real estate agencies; travel agencies; gaming; betting and lotteries.

4. Jamaica 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:

Shipping.

1. The Parties understand that the term "regulations" in Article II(l)(b) includes, where appropriate, the provisions of a treaty to which one of the Parties has adhered.

2. With respect to Article II(4), neither Party shall apply its laws and regulations to require that its nationals be engaged as top managerial personnel by investments.

3. If the foreign exchange reserves of Jamaica do not permit the transfer of the proceeds of the sale or of the liquidation of all or part of an investment as provided for in Article IV(l)(e), Jamaica shall allow the transfer of such proceeds to take place over a period not to exceed three years from the date the transfer is requested and shall guarantee the availability of at least one-third of the necessary freely usable currency during each of the first two years of the three year period. With respect to such transfers, Jamaica shall treat nationals and companies of the United States no less favorably than it treats nationals or companies of any third country. Jamaica shall ensure that the national or company has an opportunity to invest the proceeds of sale or liquidation in a manner designed to preserve its value until the transfer occurs. Pursuant to Article V of this Treaty, and without prejudice to the procedures set forth in Article VI and VII, the two Parties agree to consult at the request of either one of them concerning the implementation of Article IV and of this paragraph.