

# TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

The Government of the United States of America and the People's Republic of Bangladesh (hereinafter referred to as a "Party");

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; and

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 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

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. 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, if nationals or 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.

In any event, the juridical status of a company of a Party shall be recognized by the other Party and its political subdivisions

(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, 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, including rights with respect copyrights and related patents, trade marks and 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 reinvested.

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" or 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; and payment in kind.

## **Article II. Treatment of Investment**

1. Each Party shall maintain favorable conditions for investment in its territory by nationals and companies of the other Party. Each Party shall permit and treat such investment, and activities related therewith, on a basis no less favorable than accorded in like situations to investment or related activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable.

2.

(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 in 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.

3. 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. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.

4.

(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 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.

(b) Nationals and companies of either Party, and companies which they own or control, shall be permitted to engage, within the territory of the other Party, top managerial personnel of their choice. Further, subject to laws and administrative regulations concerning the employment of foreign nationals, nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional and technical personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of their investment.

5. The Parties recognize that, consistent with paragraph 1 of this Article, conditions of competitive equality should be maintained where investments owned or controlled by a Party or its agencies or instrumentalities are in competition, within the territory of such Party, with privately owned or controlled investments of nationals or companies of the other Party. In such situations, the privately owned or controlled investments shall receive treatment which is equivalent with regard to any special economic advantage accorded the governmentally owned or controlled investments. paragraph 1 of this Article,

conditions of competitive equality should be maintained where investments owned or controlled by a Party or its agencies or instrumentalities are in competition, within the territory of such Party, with privately owned or controlled investments of nationals or companies of the other Party. In such situations, the privately owned or controlled investments shall receive treatment which is equivalent with regard to any special economic advantage accorded the governmentally owned or controlled investments.

6. In the context of its national economic policies and objectives, each Party shall seek to avoid the imposition of performance requirements on the investments of nationals and companies of the other Party.

7. 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 asserting claims, and enforcing rights, with respect to their investments.

8. 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.

9. The treatment accorded by a Party to nationals or companies of the other Party under the provisions of paragraph 1 of this Article shall in any State, Territory, possession, or political or administrative subdivision of the Party be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories, possessions, or political or administrative subdivisions of the Party. paragraph 1 of this Article shall in any State, Territory, possession, or political or administrative subdivision of the Party be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories, possessions, or political or administrative subdivisions of the Party.

### **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 shall be equivalent to the fair market value of the investment. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall be paid promptly, shall be effectively realizable, shall bear current interest from the date of the expropriation at a rate equivalent to current international rates, and shall be freely transferable, in accordance with the provisions of Article V, at the prevailing 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, so, whether such expropriation, and any compensation therefore, 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, riot or act of terrorism 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. Article III.

3. The payment of any indemnification, compensation or other appropriate settlement pursuant to this Article shall be freely transferable, in accordance with the provisions of Article V.

## **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; 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 licensed franchises or other grants of rights or from administrative or technical assistance agreements, including management fees; proceeds from the sale of all or 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 judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law

## **Article VI. Consultations and Exchange of Information**

1. 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, adjudicatory decisions, or policies of one Party that pertain or affect investments of the other Party.

2. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

## **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 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 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 and as a part of their consultation and negotiation, agree to rely upon non-binding, third-party procedures, such as the fact-finding facility available under the Rules of the "Additional Facility" ("Facility") of the International Centre for the Settlement of Investment Disputes ("Centre"). If the dispute cannot be resolved through consultation and negotiation, 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, and 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 the Centre or the Additional Facility, 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 by the national or company 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 party to the dispute.

Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre or the Additional Facility. 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 Centre 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 Convention on the Settlement of Investment Disputes Between States and Nationals of other States ("Convention") and the Regulations and Rules of the Centre, or, if the Convention should, for any reason, be inapplicable, the Rules of the Additional Facility.

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 purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or 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. This Article shall not apply to an investment dispute between a Party and a national of that Party.

6. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the United States or (b) under other of insurance agreements 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 arising out of or in connection with the interpretation or application of this Treaty should, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot thus be settled it shall upon, the request of either Party be submitted to an arbitral tribunal.

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 is 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 within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointment. If the President is a national of either Party or he is unable to discharge the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or if he too is unable to discharge the said function, 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 necessary 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. The arbitral tribunal shall reach its decision in accordance with international law by a majority of votes. Such decision shall be binding on both Parties. Each Party shall bear the cost of its representation in the arbitral proceedings; the cost of the arbitrator and the remaining costs shall be borne in equal parts by the Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties. The Tribunal shall determine its own procedure to the extent the Parties have been unable to agree upon applicable principles. The Tribunal shall arrange for submissions from the Parties, any necessary hearings, and a final decision on the dispute within one year from the date of the formation of the Tribunal.

7. The provisions of this article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the United States, or (b) under other or insurance arrangements pursuant 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 the 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: 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 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)

Matters covered by item 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.

Done in duplicate at Washington on the 12th day of March 1986 in the English and Bangla languages, both texts being equally authentic.

For the Government of the United States of America:

CLAYTON YEUTTER.

For the Government of the People's Republic of Bangladesh:

KHORSHEED ALAM.

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 earner 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 PEOPLE'S REPUBLIC OF BANGLADESH

Arms and ammunition and allied defense equipment; atomic energy; air transport; telecommunication (common carrier services); generation (excluding stand-by generation) and distribution of electricity; forest extraction (mechanised); sea

trawling, commercial trading; insurance; indenting; public utilities; shipping-, oil and gas (except for hydrocarbon exploration through production contract/joint venture); oil refining and products marketing (except under joint venture); communication satellite; housing and ownership of real estate.

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

1. Each Party shall accord, under its laws and regulations, to 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 related activities of its own nationals or companies or of nationals or companies of any third country, whichever is the most favorable. Application of laws and regulations shall not impair the substance of rights guaranteed by this Treaty.

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 time 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 age, 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.

2. The most favored nation provisions of Article II, paragraph 2, 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.

3. The provisions of Article II, paragraph 4(b), concerning the right of nationals and companies to employ personnel of their choice, shall be subject to the provision of Article X. Furthermore, as for any laws concerning the employment of foreign nationals which require the employment of a Party's own nationals in certain positions or the employment of a certain percentage of its own nationals in positions in connection with investment made in its territory by nationals or companies of the other Part, each Party agrees to administer such laws flexibly, taking into account inter alia, the nature of the investment, the requirements of the positions in question, and the availability of qualified nationals.

4. The parties recognize that restrictions on transfers abroad of sales or liquidation proceeds of an investment will adversely affect future, capital inflows, contrary to the spirit of this Treaty and the interests of the Party imposing those restrictions. Nevertheless, the Parties recognize that Bangladesh may find its foreign exchange reserves at a very low level. In these circumstances, the Government of Bangladesh may temporarily delay transfers of sales or liquidation proceeds, but only (i) in a manner not less favorable than that accorded to comparable transfers to investors of third countries, (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for a period of more than five years, during each year of which an amount of no less than 20% of the value of the proceeds shall be permitted to be transferred; and (iii) after providing the investor an opportunity to invest the sales or liquidation proceeds in a manner which will preserve its value until transfer occurs.

5. The provisions of this Treaty are not intended to apply to any claims concerning losses incurred prior to the entry into force of this Treaty by nationals or companies of either Party.

U.S. TRADE REPRESENTATIVE, Washington, March 12, 1986.

His Excellency KHORSHED ALAM, Secretary, Ministry of Industries, The People's Republic of Bangladesh.

YOUR EXCELLENCY: I have the honor to refer to the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, and wish to inform that as per discussions during the course of negotiations on the question of employment under Article II, paragraph 4(b), our intent is



that with respect to the United States and Bangladesh this paragraph accords nationals and companies of either Contracting State the right to engage top managerial personnel of their choice on the basis of nationality and to engage professional and technical personnel of their choice subject to the employment laws and regulations of each Contracting State. I would appreciate confirmation that your Government shares this understanding. With compliments of my highest esteem.

Sincerely, CLAYTON YEUTTER, For and on behalf of the Government of the United States of America.

[Translation] DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES, March 12, 1986.

His Excellency CLAYTON YEUTTER, US- Trade Representative, Government of the United States of America.

EXCELLENCY: I have the honor to acknowledge receipt of your letter which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, and wish to inform that as per discussions during the course of negotiations on the question of employment under Article II, paragraph 4(b), our intent is that with respect to the United States and Bangladesh this paragraph accords nationals and companies of either Contracting State the right to engage top managerial personnel of their choice on the basis of nationality and to engage professional and technical personnel their choice subject to the employment laws and regulations of each Contracting State. I would appreciate confirmation that your Government shares this understanding.

I confirm the above understanding between the two parties.

With compliments of my highest esteem. Yours sincerely, (Signed) KHORSHED ALAM, For and on behalf of the Government of the People's Republic of Bangladesh.