

PART 6: INVESTMENT

Article 26

Scope and Coverage

- 1 This Part shall apply to all investments in goods and services.
- 2 Articles 28, 29 and 30 shall not apply to any measures affecting investments adopted or maintained pursuant to Part 5 to the extent that they relate to the supply of any specific service through commercial presence as defined in Article 16(n), whether or not they are covered by Annex 2.

Article 27

Definitions

For the purposes of this Agreement :

- 1 "Investments" include but are not limited to the following:
 - a) movable and immovable property and other property rights such as mortgages, liens or pledges;
 - b) shares, stocks, debentures, bank bills, deposits, securities, and similar interests in companies or enterprises (whether incorporated or unincorporated);
 - c) claims to money or to any performance under contract having an economic value;
 - d) intellectual property rights and goodwill;
 - e) business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources;
 - f) derivative instruments.
- 2 "Proceeds from investment" include but are not limited to the following:
 - a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment;
 - b) the proceeds from the liquidation of an investment;
 - c) loan payments in connection with an investment;

- d) royalties, license fees, payments in respect of technical assistance, service and management fees;
- e) payments in connection with contracts involving the presence of an investor's property in the territory of the other Party and payment in connection with contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- f) earnings of investors of a Party who work in connection with an investment in the territory of the other Party.

3 "Investor" means:

- a) a natural person who resides in the territory of the other Party or elsewhere and who under the law of that other Party:
 - (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting investments, provided that that Party is not obligated to accord to such permanent residents more favourable treatment than would be accorded by the other Party to such permanent residents;
- or
- b) any company, firm, association or body, with or without legal personality, whether or not incorporated, established or registered under the applicable laws in force in a Party;

making or having made an investment in the other Party's territory.

Article 28

Most Favoured Nation Status

Except as otherwise provided for in this Agreement, each Party shall accord to investors and investments of the other Party, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to investors and investments from any other State or separate customs territory which is not party to this Agreement.

Article 29

National Treatment

Except as otherwise provided for in this Agreement, each Party shall accord to investors and investments of the other Party in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to its own investors and investments.

Article 30

Standard of Treatment

Each Party shall accord to investors and investments of the other Party the better of the treatment required by Articles 28 and 29.

Article 31

Repatriation and Convertibility

1 Each Party shall allow investors of the other Party, on a non-discriminatory basis, to transfer and repatriate freely and without undue delay their investments and proceeds from investment. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

2 Notwithstanding paragraph 1, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) issuing, trading or dealing in securities;
- c) criminal or penal offences, and the recovery of proceeds of crime;
- d) reports of transfers of currency or other monetary instruments; or
- e) ensuring the satisfaction of judgments in adjudicatory proceedings.

Article 32

Limitations

- 1 Articles 28, 29 and 30 shall not apply to:
- a) any limitation that is listed by a Party in Annex 3;
 - b) an amendment to a limitation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the limitation with Articles 28, 29 and 30;
 - c) any new limitation adopted by a Party, and incorporated into Annex 3, which does not affect the overall level of commitments of that Party under this Part;

to the extent that such limitations are inconsistent with those Articles.

2 As part of the reviews of this Agreement provided for in Article 68, the Parties undertake to review at least every two years the status of the limitations set out in Annex 3 with a view to reducing the limitations or removing them.

3 A Party may, at any time, either upon the request of the other Party or unilaterally, remove in whole or in part limitations set out in Annex 3 by written notification to the other Party.

4 A Party may, at any time, incorporate a new limitation into Annex 3 in accordance with paragraph 1(c) of this Article by written notification to the other Party. On receiving such written notification, the other Party may request consultations regarding the limitation. On receiving the request for consultations, the Party incorporating the new limitation shall enter into consultations with the other Party.

Article 33

Subrogation

1 In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Part, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of such investors.

2 Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make their claims against the other Party in accordance with Article 34, in cases where the former Party elects not to exercise its subrogated rights or claims.

Article 34

Investment Disputes

1 Any legal dispute between an investor of one Party and the other Party arising directly out of an investment by that investor in the territory of that other Party shall, as far as possible, be settled amicably through negotiations between the investor and that other Party.

2 If the dispute cannot be resolved as provided for in paragraph 1 within 6 months from the date of request for negotiations then, unless the parties to the dispute agree otherwise, it shall, upon the request of either such party, be submitted to conciliation or arbitration by the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States done at Washington on 18 March, 1965, provided that the other party does not withhold its consent under Article 25 of that Convention.