

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF MOROCCO CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

Signed July 22, 1985; Entered into Force May 29, 1991

PREAMBLE

The United States of America and the Kingdom of Morocco (each 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;

Convinced that the development of economic relations between the two countries tends to create favorable conditions for investors from each of the Contracting Parties in the territory of the other Party;

Recalling that the two Parties have already concluded an agreement in the form of an exchange of notes dated March 31, 1961, amended by an exchange of notes signed October 2, 1963, concerning investment guaranties that might be granted by the United States Government for certain investment projects, said agreement still being in force,

Have resolved to conclude a treaty concerning the reciprocal encouragement and protection of investment; and

Have agreed as follows:

ARTICLE I

For the purposes of this treaty,

1. Parties means the Kingdom of Morocco, and the United States of America.
2. 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.
3. Company of a Party means:

(a) In the case of the Kingdom of Morocco, a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of Morocco in which

- (i) natural persons who are nationals of Morocco, or
- (ii) Morocco or its agencies or instrumentalities have a substantial interest.

(b) In the case of the United States, a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of the United States or its political subdivisions in which:

- (i) natural persons who are nationals of the United States
- (ii) the United States, or its political subdivisions, or its agencies or instrumentalities. have a substantial interest.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of the 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 of this matter.

4. 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) 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) reinvestment of returns and of principal and interest payments arising under load agreements

(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; and payment in kind.

(g) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities

for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property rights; the borrowing of funds; the purchase, issuance, and sale of equity shares and other securities; and the purchase of foreign exchange for imports;

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 investment.

ARTICLE II

1. Each Party shall permit in its territory investments, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investments of nationals or companies of any third country, and within the framework of its laws and regulations, no less favorable than that accorded in like situations to investments of its own nationals and companies.

2. Each Party shall accord to these investments, once established, and associated activities, treatment no less favorable than that accorded in like situations to investments of its own nationals and companies or to investments of nationals and companies of any third country, whichever is most favorable.

3. 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. Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purposes of dispute resolution under Article 3 VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a Party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party. Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that, employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments of nationals or companies of other Party,

shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

6. The Parties recognize that, consistent with paragraphs 1 and 2 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.

7. Each Party shall seek to avoid performance requirements as 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.

8. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations.

9. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

10. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article shall in any State, Territory or possession of the United States of America be the treatment accorded therein to companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization (expropriation) except: for 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).

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known. Compensation shall be paid without delay; be fully realizable; and be freely transferable. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favorable than the position in which he would have been, had the compensation been paid immediately on the date of expropriation.

3. 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, conforms to the principles of international law.

4. 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. Transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

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.

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 due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of such information.

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 consultations and negotiations in good faith. If such consultations and negotiations are unsuccessful, the dispute may be settled through the use of a non-binding third party procedures upon which such national or company and the Party mutually agree. If the dispute cannot be resolved through the foregoing procedures, the dispute shall be submitted for settlement in accordance with any previously agreed, applicable dispute settlement procedures.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Center for the Settlement of Investment Disputes ("Centre") for settlement by arbitration, at any time after one year 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 the 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.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement of arbitration.

(c) A 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 and the "Arbitration Rules" of the Centre.

4. Any dispute settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

5. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right or set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

6. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party with concurrence 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.

ARTICLE VII

1. The Parties shall seek in good faith and in the spirit of cooperation a rapid and equitable solution to any disputes between them concerning the interpretation or application of this treaty. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If such negotiations are

unsuccessful, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law.

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. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. The Tribunal shall have three months from the date of the selection of the Chairman in which to agree upon rules of procedure consistent with the other provisions of this Treaty. In the absence of such agreement, the Tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

4. Upon a determination that the Party requesting arbitration has attempted to resolve the dispute through direct and meaningful negotiation, the Tribunal shall proceed to arbitrate the merits of the dispute.

5. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of 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.

6. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the parties, unless the Tribunal decides otherwise.

ARTICLE VIII

1. 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.

This Treaty shall not supersede or cancel any other agreement between the two Parties that is in force on the date upon which this Treaty enters into force.

ARTICLE IX

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE X

1. This Treaty shall be ratified by each Party in conformity with its constitutional procedures.

2. This Treaty shall enter into force thirty (30) days after the date of exchange of ratifications. It shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with Paragraph 3 of this Article.

3. Either Party may, by giving one (1) 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. In the event of termination, this Treaty shall continue to apply to investments covered by this Treaty for a further period of ten (10) years from such date of termination.

5. This Treaty, after a preliminary exchange of diplomatic notes, may be amended by mutual agreement.

Such amendment shall enter into force for the two Parties on the same constitutional conditions as this Treaty

PROTOCOL

1. This Treaty shall apply to the political subdivision of the United States.

2. (a)With respect to Article II(1) and (2), the Kingdom of Morocco reserves the right to:

(i) extend government grants, assistance, loans, or insurance exclusively to its own nationals or companies within the framework of national development activities and programs; and

(ii) extent to nationals or companies of a third country advantages required by virtue of its participation or association with a common market, regional customs union or free trade association.

(b) With respect to Article II(1) and (2), the United States reserves the right to limit the extent to which nationals or companies of Morocco or their investments may within

U.S. territory establish, acquire interests in, or carry on investments engages in air transportation; ocean and coastal shipping; banking; insurance; energy and power production; use of land and natural resources; ownership in real estate; radio and television broadcasting; telephone and telegraph services; the provision of submarine cable services and satellite communications. The United States also reserves the right to limit the extent to which nationals or companies of Morocco or their investments may be eligible for government grants, insurance or loan programs. Other than with respect to ownership of real estate, the treatment accorded by the United States to investments of nationals or companies of Morocco shall be no less favorable than that accorded in like situations to investments of nationals or companies of any third country. Rights to engage in mining on the U.S. public domain shall be dependent on reciprocal rights being granted to investments of U.S. nationals or companies within the territory of Morocco

(c) Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty or any laws, regulations and policies limiting the extent to which investment of nationals or companies of the other Party may within its territory establish, acquire interests in or carry on investments.

The treatment accorded by the United States to nationals or companies of the Kingdom of Morocco under the provisions of Paragraphs 1 and 2 of Article II shall in any state, territory, possession, or political or administrative subdivision of the United States be the treatment accorded therein to companies incorporated, constituted to companies incorporated, constituted or otherwise duly organized in other states, territories, possessions, or political or administrative subdivisions of the United States.

For purposes of Article III(3) , the full value shall not be affected by prior notice or public announcement by the government of the expropriatory action. The compensation shall include, as appropriate, an amount to compensate for any delay in payment that may occur from the date of expropriation. Prompt transfer of the compensation at the rate of exchange used for commercial purposes shall be guaranteed in order to maintain the value of the compensation.

With regard to Article IV, investments in Morocco of the type described in Article I(4)(a) or the Treaty, which are financed by contribution in the form of foreign exchange or reinvested profits, may be made freely. However, a report of these investments should be sent promptly to the Moroccan authority in charge of exchange control If the reinvested profits are turned over to a U.S. national residing in Morocco, the investor must obtain the approval specified below. For investments described in Article I(4)(b), financed by any other contributions, financial or in kind; rendering of services and technical assistance in general, as described in Article I(4) c and (d); and the transactions described in Article I(4)(e), the investor must obtain approval from the Moroccan authority in charge of exchange control.

The transfers related to the above mentioned types of investments shall be permitted if the procedures required by the Moroccan authority in charge of exchange control have been fulfilled.

Transfers relating to an investment of nationals of the United States resident in Morocco shall be carried out in accordance with the existing Moroccan laws and regulations.

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.

On issues of taxation arising under Article II or involving the provision of tax information under Article V, the provisions of the Convention between the Government of the United States of America and the Kingdom of Morocco for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed August 1, 1977, shall prevail.

Consistent with the provisions of Article II(3), this treaty shall apply to investments existing at the time of entry into force of the Treaty provided such application conforms with the specific provisions of agreements or contracts approved at the time the investment was made.

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

DONE in duplicate at Washington, on the twenty-second day of July, 1985 in the English, Arabic and French languages, the three texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE KINGDOM OF MOROCCO:

CLAYTON YEUTTER
MOULAY ZINE ZAHIDI