Treaty Between the Government of the United States of America and the Government of the Republic of Panama Concerning the Treatment and Protection of Investments

The United States of America and the Republic of Panama,

Desiring to promote economic cooperation between them by creating favorable conditions for investment by nationals and companies of one Party in the territory of the other Party,

Recognizing that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty:

(a) "national of a Party" means a natural person who is a national or citizen of that Party under its laws;

(b) "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 publicly owned, or organized with limited or unlimited liability;

(c) "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 political subdivision thereof or their agencies or instrumentalities have a substantial interest as determined by such Party.

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

Each Party reserves the right to deny any of its own companies or to a company of the other Party the advantages of this Treaty, except with respect to recognition of juridical status and access to courts, if nationals of any third country own or 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 consult with the other Party to seek a mutually satisfactory resolution to this matter;

(d) "investment" means every kind of investment, owned or controlled directly or indirectly, including equity, debt, and service and investment contracts, and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value and associated with an investment;

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

(v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;

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

(vii) returns which are reinvested.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment;

(e) "own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located; and

(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 return in kind.

ARTICLE II

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 associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable, subject to the right of each Party to make or to maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty, or resulting from laws and regulations in effect on the date that this Treaty enters into force. 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. 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 maintain the number of such exceptions to a minimum. Any exception, other than with respect to ownership of real property, shall be on a basis according treatment no less favorable than that accorded in like situations to investment, or associated activities, of nationals or companies of any third country. Moreover, any future

exception by either Party shall not apply to investment of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

2. 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 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.

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

4. Neither Party shall impose performance requirements as a condition for the establishment of investment owned by nationals or companies of the other Party, which require or enforce commitments to export good produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

ARTICLE III

1. 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.

2. 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, regardless of nationality. Moreover, subject to the employment laws of each Party, nationals and companies of either Party shall be permitted to engage, within the territory the of the other Party, professional, technical and managerial personnel of their choice, regardless of nationality, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of their investment.

ARTICLE IV

1. Investment of a national or a company of either Party shall not be expropriated, nationalized, or subjected to any other direct or indirect measure having an effect equivalent to expropriation or nationalization ("expropriation") in the territory of the other Party, except for a public or social purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process and the general

principles of treatment laid down in Article II(2). Such compensation shall amount to the full value of the expropriated investment immediately before the expropriatory action became known; include interest at a commercially reasonable rate; be paid without delay; be effectively realizable; and be freely transferable.

2. Consistent with Article I(d), 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.

ARTICLE V

In the event that a national or a company of one of the Parties suffers a loss in its investment in the territory of the other Party because of war or other type of armed conflict, insurrection, state of national emergency, riot or terrorism, it shall not be treated less favorably, with regard to restitution, adjustments, indemnifications or other payments for such loss, in accordance with the laws of such other Party, than nationals or companies of such other Party, or nationals or companies of any third country, whichever are treated most favorably.

ARTICLE VI

Each Party agrees, with respect to investments made within its territory by nationals or companies of the other Party, that current and capital transactions shall remain unrestricted and that payments and other transfers with respect to such transactions shall continue to be free.

ARTICLE VII

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 the first Party, the parties to the dispute shall initially seek to resolve it 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 ("Additional 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. Such procedures may provide for recourse to international arbitration using a forum such as the Inter-American Commercial Arbitration Commission. With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall

remain binding and shall be enforceable, in accordance with, inter alia, the terms of the investment agreement, relevant provisions of the domestic laws of such Party, and Treaties and other international agreements regarding enforcement of arbitral awards to which such Party has adhered.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the Additional Facility for settlement, either by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Additional Facility, provided the dispute has not, for any reason, been submitted for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute, and the national or company concerned has not brought the dispute before the courts of justice, administrative tribunals or agencies of competent jurisdiction of either Party.

(b) Each Party hereby consents to the submission of an investment dispute to the Additional Facility for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such dispute shall be done in accordance with the provisions of the Regulations and Rules of the Additional Facility.

(d) Each Party shall provide for the enforcement within its territory of Additional Facility arbitral awards.

4. In any proceeding, judicial, arbitral or otherwise, concerning an investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counter claim, right of set off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whatsoever, whether public or private, including such other Party and its political subdivisions, agencies and instrumentalities.

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

6. The provisions of this Article shall not apply to a dispute arising (a) under the 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 VIII

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

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

3. The Tribunal shall be established for each case as follows. Within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator. The two arbitrators so appointed shall select a third arbitrator as Chairman, who 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 the required appointments have not been made within the time specified in paragraph 3 of this Article, either of the Parties may, in the absence of any other agreement, request that the President of the International Court of Justice make the required appointments. If the President is a national of one of the Parties or if he cannot otherwise perform said duties, the Vice President shall be asked to make the required appointments. If the Vice President is a national of one of the Parties or if he cannot otherwise perform said duties, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties shall be asked to make the required appointments.

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

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

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

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

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

10. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

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 thereinafter, 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.

2. This Treaty shall not derogate from or terminate any other agreement entered into by the two Parties and in force as between the two Parties, on the date on which this Treaty enters into force.

ARTICLE X

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 and security, or the production 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

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, this Treaty shall apply to matters of taxation only with respect to the following:

(a) expropriation, pursuant to Article IV;

(b) transfers, pursuant to Article VI; or

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

ARTICLE XII

This Treaty shall apply to political subdivisions of the Parties.

ARTICLE XIII

1. This Treaty shall be ratified by the Parties, and the instruments of ratification 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 any investment existing at the time of its entry into force as well as to any investment made or acquired thereafter. However, this Treaty shall not apply to any dispute, claim or suit predating the date of ratification of this Treaty, unless such dispute comes within the terms of Article IV and does not predate ratification by more than three years.

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 any investment existing at the time this Treaty enters into force, and to any investment 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 continue to be effective for a further period of ten years from such date of termination.

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

DONE at Washington this twenty-seventh day of October, 1982 in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF	FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:	THE REPUBLIC OF PANAMA:
/William E. Brock, Jr./	/Aquilino E. Boyd/

ANNEX

Consistent with the provisions of Article II (1), each Party reserves the right to make or to maintain limited exeptions within each of the sectors or matters listed 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; use of lands and natural resources; custom house brokers; ownership of real estate; radio and television

broadcasting; telephone and telegraph services; submarine cable services; satellite communications.

The Republic of Panama

Communications; representation of foreign firms; distribution and sale of imported products; retail trade; insurance; state companies; private utility companies; energy production; practice of liberal professions; custom house brokers; banking; rights to the exploitation of natural resources including fisheries and hydroelectric power production; and ownership of land located within 10 kilometers of the Panamanian border.

Each party will notify the other of the details of the exceptions mentioned above.

AGREED MINUTES

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

1. With respect to Article II(1), the Parties agree that associated activities include:

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

(b) the employment of professional, technical and managerial personnel of their choice, regardless of nationality, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of an investment;

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

(d) the making, performance and enforcement of contracts;

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

(f) the leasing of real property appropriate for the conduct of business;

(g) 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;

(h) the borrowing of funds from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets;

(i) the use of means of communication, transport and public utilities; and

(j) access to courts of justice, administrative tribunals and agencies, and the right of employment of persons by nationals or companies of the other Party, who otherwise qualify under applicable laws and regulations of the forum, regardless of nationality, for the purpose of asserting claims and enforcing rights, including those arising under the provisions of this Treaty, with respect to their investment and associated activities.

2. With respect to the treatment of investment as set forth in Article II, the Republic of Panama has incentive laws granting benefits to duly constituted companies which sign contracts with the government in which they agree to meet the requirements established therein.

3. In referring to employment laws in Article III(2), the Parties mean all laws regulating the terms and conditions of employment, including equal employment opportunity laws, preferential hiring laws, and anti-discrimination laws as well as laws relating to the training of local employees in order to qualify them for all professional, technical, and managerial positions. Each Party recognizes the right of the other Party to maintain such laws and also agrees to apply its own such laws on a non-discriminatory basis with respect to investment by nationals or companies of the other Party, consistent with the provisions of Article II(1). As for laws requiring employment of its 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 Party, Party agrees to administer such laws flexibly, taking into account, inter alia, the nature of the investment, the requirement of positions in question, and the availability of qualified nationals.

4. With respect to Article IV (1), both Parties understand that the estimate of the full value of expropriated investment can be made using several methods of calculation depending on the circumstances thereof.

5. The Parties agree that Article VI does not preclude: a) the United States from maintaining laws and regulations requiring reporting of currency transfers into or out of the United States; or b) either Party from maintaining laws and regulations 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 litigants, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, non-discriminatory and good faith application of its laws. 6. In amplification of Article XII, with respect to the United States of America, references to a Party and to applicable laws and regulations in this Treaty shall include wherever relevant the States, Territories and possessions of the United States, and their laws and regulations respectively.

National treatment accorded under the provisions of this Treaty to companies of Panama shall, in any State, Territory of possession of the United States of America, be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories or possessions of the United States.