

[Click here for the Trade Guide](#)

Bangladesh Bilateral Investment Treaty

Signed March 12, 1986; Entered into Force July 25, 1989

G L

99TH SENATE 1st Session

{Treaty Doc.99-23 Congress}

INVESTMENT TREATY WITH BANGLADESH

G L

THE PRESIDENT OF THE UNITED STATES

G N

Transmitting

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT, SIGNED AT WASHINGTON ON MARCH 12, 1986

June 2, 1986.-Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

NOV WASHINGTON : 1986

LETTER OF TRANSMITTAL

THE WHITE HOUSE, May 30, 1986.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and the People's Republic of Bangladesh Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and related exchange of letters, signed at Washington on March 12, 1986. I transmit also, for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Bilateral Investment Treaty (BIT) program; initiated in 1981, is designated to encourage and protect U.S. investment in developing countries. This Treaty is an integral part to encourage Bangladesh and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and non-discriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this Treaty as soon as possible, and give its advice and consent to ratification of the Treaty, with Protocol and related exchange of letters, at an early date.

RONALD REAGAN

ME

LETTER OF M A T T L
DEP RT NT OF ST TE,
Washington, y 9, 1986
The PRES DENT,
The White House

THE PRES DENT: have the honor to submit to you the Treaty etween the nited States of merica and the People's Republic of angladesh Concerning the Reciprocal Encouragement and Protection of nvestment, with Protocol and a related exchange of letters, signed at Washington on rch 12, 1986 This treaty was negotiated under the bilateral investment treaty (T) program which you initiated in 1981 Development of the T program and the negotiation of the individual treaties have been pursued by the Office of the nited States Trade Representative and the Department of State with the active participation of the Departments of Commerce and Treasury, in conjunction with other interested S Government agencies On rch 25 this year, the first six Ts-with Haiti, rocco, Panama, Senegal, Turkey, and Zaire-were submitted to the Senate for its advice and consent to ratification dditional Ts with Cameroon and Egypt, are being prepared for submission to the Senate ecommend that this treaty, with protocol and related exchange of letters, be transmitted to the Senate for its advice and consent to ratification

n 1981 you initiated the global bilateral investment treaty (T) program to encourage and protect S investment in developing countries y providing certain mutual guarantees and protections, a T creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area The T's which have been signed as well as others under negotiation are an integral part of S efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment

Our experience to date has shown that interested countries are willing to provide S investors with significant investment guarantees and assurances as a way of inducing additional foreign investment t is S policy to advise potential treaty partners that conclusion of a T with the nited States is an important and favorable factor in the investment relationship, but does not in of itself result in immediate increases in S investment flows

Congressional support for the T program is reflected in Section 601(a) and (b) of the Foreign ssistance ct, as amended, in particular at Section 601(b) which provides:

n order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this ct, the President shall (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this ct

T's are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the nited States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960's They continue the S policy of securing by agreement standards of equitable treatment and protection of S citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area .

The BIT was entered into to protect investment not only by treaty but also by reinforced bilateral trade agreements. The BIT is a principle and practice rather than a direct private investment. In pursuit of the objective, the model BIT adopted the FCN law as a concept. Trade agreements provide a right which are important to the typical US investor were eliminated and replaced with more specific law as a concept of investment protection. Perhaps most significantly, the BIT goes beyond the trade agreements to provide investor-host country arbitration where a dispute arises.

Our BIT approach follows similar programs that have been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our bilateralized partner areas have already two hundred BIT force, primarily with developed countries. Our treaties, which draw upon the law of the US FCN treaties as well as European country partners, are more comprehensive and far-reaching than European BITs.

THE US-BANGLADESH TREATY

The Treaty with Bangladesh was negotiated by a bilateral team led by officials from the Office of the United States Trade Representative and the Department of State. The Treaty reflects all four major BIT objectives:

-foreign investors are to be accorded treatment according to the law and are to be treated no less favorably than investors of the host country or no less favorably than investors of the country, whichever the most favorable treatment ("national or most-favored-nation" treatment) subject to certain specific exemptions;

-national laws shall apply to the expropriation of investment and to the payment of compensation for expropriation;

-free transfer shall be afforded to fulfill obligations with investment to and out of the host country;

-procedures are to be established which allow a investor to take a dispute with a Party directly to bilateral arbitration.

The provisions of the investment arbitration, a particular Bangladesh' acceptance of national law and the overall law, mark an important achievement for the BIT program and our investment arbitration policies.

A technical memorandum explains that the provisions of the treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Bangladesh.

Some provisions of the treaty with Bangladesh differ in more respect from the US model text. In general, however, the treaty closely follows the law as contained in the US model text, the most significant provisions of which are as follows.

The model BIT's definition of certain terms such as "company of a Party" and "investment"; The BIT concept of "investment" broadened to be flexible; although numerous types of economic interests are enumerated, the text includes all legitimate interests in the territory of either Party, whether directly or indirectly controlled by national of the other, having economic value or "attach" with a investment. Protected "company of a Party" are those corporate or otherwise organized under the law of a Party which national of that Party have a substantial interest.

The model BIT accord the better of national or most-favored-nation (MFN) treatment of foreign investment, subject to each Party's exceptions which are listed in separate Annex. The exceptions are entered to protect regulatory interests for the United States to accommodate the derogation from national treatment under federal law relating to such areas as air transport, health, banking, telecommunications, energy and power production, agriculture, and from national MFN treatment the case of ownership of real property. A bilateral restriction or limitation which a Party may agree with the

respect to those matters or sectors excepted from the test, shall not affect existing investments. The BIT also includes general treaty protections designed to be given to interpretation in application of the treaty. Thus, the Parties agree to accord investments "firm and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants provisions of Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The S.M.O. also provides that companies legally constitute an enterprise of the other Party (i.e., subsidiaries of companies of Party) with investments in that country shall be permitted to engage "top management personnel of their choice, regardless of nationality."

The BIT also confers protection from unlawful interference with property interests and ensures consistency in accordance with international law standards. It provides that any direct or indirect taking shall be for public purpose; non-discriminatory; carried out by a public authority, equitable and effective compensation; and in accordance with due process of law. The general standards of treatment discussed above. The BIT's definition of "expropriation" is broad and flexible; essentially "any measure, regardless of form, which has the effect of depriving an investor of his investment, control or economic value in whole or in part, constitute expropriation requiring compensation to the "firm market value." Such compensation, which shall not reflect any reduction in the firm market value due to... the expropriation, shall be "without delay," "effectively reimbursable," "freely transferable" and "be a current interest free of the expropriation..." The BIT grants the right to "prior review" by the relevant judicial or administrative authorities in order to determine whether the expropriation offers consistent with these principles. It also extends the MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, specific valuation methods for compensating such losses.

The BIT provides for free transfers "related to investment", specifically of returns, compensation for expropriation, contractual payments, proceeds from sales, and contributions to capital for maintenance or development of investment. Such transfers shall be in "freely convertible currency" at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in that currency to be transferred. The BIT also recognizes that notwithstanding its guarantee, Parties cannot in certain laws and regulations regarding transfers provide these principles in non-discriminatory fashion. In particular, the BIT provides that Parties cannot require reports of currency transfers and impose income taxes by such means without regard to investments. The BIT also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in judicial proceedings.

The BIT provides that where certain investment disputes arise between Parties in connection with or concerning the other party, including disputes as to the interpretation of investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the parties in connection with the host country have previously agreed. Unless the parties in connection with or concerning the dispute to previously agreed dispute settlement procedures or to jurisdiction by judicial courts or other tribunals of the host country, the parties in connection with or concerning the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") for binding arbitration. Establishment of local remedies is not required. In separate provision, the BIT Parties also agree to grant provisions in connection with the other Party access to their judicial courts in order to assert claims and enforce rights with respect to investment.

The BIT provides for state-to-state arbitration between the Parties in case of dispute regarding the interpretation or application of the treaty. In the absence of an agreement to other rules of procedure, the BIT refers the Parties to specific procedural rules which shall govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel. The BIT also obliges Parties to apply their policies fairly and equitably. Because the specific provisions of the BIT apply to the Parties, the BIT generally includes such matters. Another BIT provision extends disputes arising under E-Port-1 or Bank program, or other credit guarantee or insurance arrangements providing for alternative dispute settlement. U

arrangements or most standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. The area either Party may terminate the treaty subject to a 90-day written notice.

Each of these model provisions was developed after lengthy and extensive consultations with the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty with the U.S. Government retains the flexibility to adopt modifications as necessary and in light of its experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained. Some of the provisions of the U.S.-Bangladesh treaty differ in minor respects from the U.S. negotiating text although the differences represent substantive departures from U.S. objectives. The more significant modifications are as follows:

Transfers (Article V): This treaty's transfers provisions consistent with the model text generally provide an investor with the right to transfer freely funds associated with an investment in freely convertible currency without delay at prevailing market exchange rates.

However, Paragraph 4 of the Protocol accompanying this treaty allows Bangladesh to restrict transfers in "reign exchange reserves [are] at a very low level." In such case 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 of investments to 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 more than five years during each year which an amount not 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.

During negotiations Bangladesh officials were particularly concerned with the effect that the liquidation of a substantial investment could have on the country's reign exchange reserves. Transfer provisions have been qualified in similar respects in the treaties with Egypt, Morocco, Turkey and Zaire.

(2) State-to-State Arbitration (Article VIII): Like the model text, the treaty with Bangladesh provides for state-to-state arbitration between the parties in case of a dispute regarding the interpretation or application of the treaty. The model text requires that all hearing and submissions must be completed within six months of the formation of the tribunal and a final decision must be rendered within two months of the date of final submissions. The following hearings which ever is later. The treaty with Bangladesh requires that an arbitral tribunal for state-to-state arbitration must render a final decision within one year of the formation of the tribunal; no time limitations for hearings or submissions, evidence are specified. This change resulted from the United States accepting in the spirit of compromise Bangladesh's text, which is provision since it was essentially similar to the model text.

In addition, the treaty with Bangladesh does not include a reference to the United Nations International Law Commission's Model Rules on Arbitral Procedure to be used in the absence of an agreement between the Parties. In such instances, the United States and Bangladesh have agreed that the arbitral tribunal shall determine its own rules of procedure.

(3) Customs Union Exemption (Protocol Paragraph 2): Paragraph 2 of the Protocol exempts from MFN treatment advantages extended to other countries by virtue of membership in a regional customs union or free trade area. While the model text contains no similar provision, a "customs union exemption" has been included in U.S. BITs with Egypt, Haiti and Morocco.

(4) Employment (Article II (4)(b)) The treaty with Bangladesh gives investors the right to hire and to employ managerial personnel of their choice; and allows them to engage technical and professional personnel of their choice subject to local employment laws. This provision is similar to the model text, which differs in two minor respects: j

(a) The motive provisions have the effect of empowering the Government to "regulate foreign investment." The intent of the qualification is to assure compliance with U.S. anti-discrimination laws. Although the treaty with Bangladesh does not contain this qualification, the parties have exchanged letters which clarify that investors may choose employees "on the basis of nationality." These letters were signed and exchanged at the time the treaty was signed in Washington on March 12, 1986. It is understood that the phrase "on the basis of nationality" serves the same function. The Bangladesh negotiators would not accept "regulate foreign investment" since there are certain nationalities ineligible for entry into Bangladesh.

(b) The treaty's employment provisions are set forth in Article 3 of the Protocol. The paragraph: (1) subjects the right of national service companies to employ persons under Article X, which provides that Parties are not precluded from, in emergency, adopting measures necessary to maintain public order, protecting essential security interests, or prescribing special measures for the establishment of investments; and (2) recognizes that laws exist which require employment of nationals, but the Parties agree to minimize such requirements, taking into account the nature of the investment, the requirements of the provisions in question, and the availability of qualified nationals.

The first qualification was a treaty implicit in the motive. The second was included because forcing Bangladesh into service has not been the principal benefit of foreign investment since even persons of employment skills.

(5) Performance Requirements (Article II (6)): Unlike the motive, which states that "neither Party shall impose" performance requirements on the treaty with Bangladesh uses the highly language "shall seek to avoid." This language was adopted because Bangladesh strongly supports the principle that the main purposes of a reciprocal investment agreement are general foreign investment and utilize resources. Similar language concerning performance requirements is found in U.S. BITs with Haiti, Morocco, Senegal and Turkey.

(6) Losses Concerning War Damage (Article IV): Paragraph 5 of the Protocol states that "the provisions of this treaty are not intended to apply any claims concerning losses incurred prior to the entry into force of this treaty by nationals of either Party." The Bangladesh negotiators requested this provision to exclude claims for damage sustained by investors in the 1971 war against Bangladesh in open areas, and to exclude civil disturbances.

Submission of this treaty makes a significant investment in international investment policy. It is with the United States Trade Representative and other U.S. Government agencies in supporting the treaty and favorable transmission to the Senate and early ratification.

Respectfully submitted.

MICHAEL H. ARMACOST.

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 "Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the terms of such investment will simulate the flow of private capital and economic development of the Parties;

Agreeing to discriminate on the basis of nationality by either Party against investment in its territory by nationals of the other Party in accordance with the established framework for investment in a mutual effective utilization of economic resources, -

(f) "ret r " t derived fro or oci ted with i ve t t, i cl di g profit; divide d; i tere t; c pit l g i ; roy lty p y t; ge t, tech ic l i t ce or other fee; d p y ti ki d.

ART CLE - TREATMENT OF INVESTMENT

1. E ch P rty h ll i t i f vor ble co ditio for i ve t t i t territory by tio l d co ie of the other P rty. E ch P rty h ll per t d tre t ch i i ve t t, d ctivite rel ted therewith, o b t i o le f vor ble th c corded i like it tio to i ve t t or rel ted ctivite of it ow tio l or co ie , or of tio l or co ie of y third co try, whichever i the re f vor ble.

2. () Notwith t d m g the precedi g provi io of thi Article, e ch P rty re erve the right to i t i li ted exceptio to the t d rd of tre t t otherwi e req ired if ch exceptio f ll with i o e of the ector or tter li ted i the A ex to thi Tre ty. E ch P rty gree to otify the other P rty of ll ch exceptio t the ti thi Tre ty e ter i to force. Moreover, e ch P rty gree to otify the other P rty of y f t re exceptio f lli g with the ector or tter li ted i the A ex, d to i t i the er of ch exceptio t i Other th with re pect to ow er hip) of re l property, the tre t t c corded p r t to thi bp r gr ph h ll ot be le f vor ble th th t c corded i like it tio to i ve t e t d m p oci ted ctivite of tio l or co ie of y third co try. However, e ch P rty y req ire th t right to e g ge i i go the p blic do i h ll be depe de to reciprocity.

(b) No exceptio i trod ced fter the d te of e try i to force of thi Tre ty h ll pply to i ve t t of tio l or co ie of the other P rty exi ti g i th t ector t the ti the exceptio beco me effective.

3. I ve t t of tio l d co ie of either P rty h ll t ll ti be c corded f ir d eq it ble tre t t d m e ll e joy f ll protectio e d ec rity i the territory of the other P rty. The tre t t, protectio d ec rity of i ve t t h ll be i c cord ce with p plic ble. tio ll w , d h lli o c e be le th th t req ired by i ter tio ll w. Neither P rty h lli y w y i ir by r btr ry d di cri i tory re the ge t, oper tio , i te ce, e, e joy t, cq i itio , exp io , or di po l of i ve t t de by tio l or co ie of the other P rty. E ch P rty h ll ob erve y oblig tio it y h ve e tered i to with reg rd to i ve t t of tio l or co ie of the other P rty.

4. () S bject to the l w rel ti o to the e try d o j o r of lie , e tio l of either P rty h ll be per tted to e ter d to re i i the territory of the other P rty for the p rpo e of e t bli hi g, developi g, directi g, d i teri g or dvi i go the oper tio of i ve t t to which they, or co y of the fir t P rty th t e loy the h ve co tted or re i the proce of co tti g b t ti l t of c pit l or other re o rce .

(b) () tio l d co ie of either P rty, d co ie which they ow or co trol, h ll be per tted to e g ge, with the territory of the other P rty, top geri l per o el of their choice. F rther, s bject to l w d d i t r tive reg l tio co cer i g the e loy t of foreig tio l , tio l d co ie of either P rty h ll be per tted to e g ge, with the territory of the other P rty, profe lio l d tech ic l per o el of their choice, for the p rtic l r p rpo e of re deri g profe io l, tech ic l d geri l i t ce ece ry for the pl i g d oper tio of their i ve t t.

5. The P rtie recog ize th t, co i te t with p r gr ph l of thi Article, co ditio of co etitive eq m ty ho ld be i t i t e d where i ve t t ow ed or co trolled by P rty or m lege cie or i t r t l i t i e re i co etitio , with the territory of ch P rty, with priv tely ow ed or co trolled i ve t t of tio l or co ie of the other P rty. I ch it tio , the priv tely ow ed or co trolled i ve t t h ll receive tre t t which i eq i v l e t with reg rd to y peci l eco o c dy t ge c corded the gover p t lly ow ed or co trolled i ve t t .

6. I the co text of it tio l eco o c policie d objective , e ch P rty h ll eek to void the i o tto of perfor ce req ire t o the i ve t t of tio l d co ie of the other P rty. I

7. In order to maintain favorable conditions for investment in the country, the State shall ensure that the laws and regulations governing investment are fair and equitable, and shall not arbitrarily deprive investors of their investments. The State shall also ensure that the laws and regulations governing investment are transparent and predictable. The State shall also ensure that the laws and regulations governing investment are consistent with the international law of investment. The State shall also ensure that the laws and regulations governing investment are consistent with the national law of the country.

8. The State shall ensure that the laws and regulations governing investment are consistent with the international law of investment. The State shall also ensure that the laws and regulations governing investment are consistent with the national law of the country.

9. The State shall ensure that the laws and regulations governing investment are consistent with the international law of investment. The State shall also ensure that the laws and regulations governing investment are consistent with the national law of the country.

ARTICLE III - COMPENSATION FOR EXPROPRIATION

1. No investment in the country shall be expropriated or nationalized without just compensation. The compensation shall be prompt, adequate and effective. The compensation shall be paid in freely convertible currency. The compensation shall be paid without delay. The compensation shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

(a) shall be for public purposes;

(b) shall be in accordance with the law;

(c) shall not discriminate;

(d) shall be in accordance with the law and shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

(e) shall be in accordance with the law and shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

The compensation shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

2. If the State expropriates an investment in the country, it shall ensure that the compensation is prompt, adequate and effective. The compensation shall be paid in freely convertible currency. The compensation shall be paid without delay. The compensation shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

3. Subject to the provisions of the law, the State shall ensure that the compensation is prompt, adequate and effective. The compensation shall be paid in freely convertible currency. The compensation shall be paid without delay. The compensation shall be paid in full. The compensation shall be paid in a single sum. The compensation shall be paid in a lump sum.

Party to d t r h th r a y such xproprato has occur d a d, so, h th r such xproprato , a d a y co sato th r for, co for to th pr cpl s of t r ato ala as s t forth th s Art cl .

ARTICLE I - COMPENSATION FOR DAMAGES DUE TO WAR AND SIMILAR EVENTS

1. Nat^o als or co a s of th r Party hos v st ts th t r r tory of th oth r Party suff Em
(a) da g s du to ar or oth r ar d co flct b t such oth r Party a d a th rd cou try, or
(b) da o ag s du to r voluto , stat ma ato al rg cy, r volt, surr t t , r ot or act of t r rors th t r r tory of such oth r Party, shall ma accord d tr at t o l ss favorabl tha that h ch such oth r Party accords to ts o ato als or co a s or to ato als or co a s of a y th rd cou try, h ch v r s th st favorabl tr at t, h k gr st tuto , d f cato , co sato or oth r appropriat s ttl t th r sp ct to such da g s.
2. I th v t that such da g s r sult fro mb
(a) a r qu s to g of prop rty by th oth r Party's forc s or author t s, or
(b) d struct o of prop rty a th oth r Party's forc s or author t s h ch as ot caus d co at act o or as ot v gur d by th c ss ty of th s tuato , th ato al or co a y shall b accord d r st tut o or co sato co sst t th Art cl III.
3. Th pay t of a y d f cato , co sato or oth r appropriat s ttl t pursua t to th s Art cl p shall b fr ly tra sf rabl , accorda c th th prov s o s of Art cl V.

ARTICLE TRANSFERS

1. Each Party shall p r t all tra sf rs r lat d to a v st t ts t r r tory of a ato al or co a y of th oth r Party to b d fr ly a d thout d lay to a d out of ts t r r tory. Such tra sf rs clud th follo g: r tur s; pay ts d ars g out of a d sput co c r ga v st t; pay ts d u d r a co tract, clud ga rtzato of pr c pal a d accru d t r st pay ts d pursua t to a loa agr t; a u ts to cov r xp s s r lat g to th ag t of th v st t; royalt s a d oth r pay ts d r v d fro c s d fra ch s or oth r gra ts of r ghts or fro ad strat v o r t ch cal ass sta c agr ts, clud g ag t f s; proc ds fro th sal of all of part of a v st t a d fro th part a l or co l t lquidato of th co a y co c r ma d, clud ga y cr tal valu ; add to al co tr but o s to capital a c ssary or appropriat for th ma t a c or d v lop t of a v st t.
2. To th xt t that a ato al or co a y of m r Party has ot d a oth r arra g t th th appropriat author t s of th oth r Party hos t r r tory th v st t of such ato al or co a y s tuat d, curr cy tra sf rs d pursua t to Paragraph 1 of th s Art cl shall b p r tt d a curr cy or curr c s to b s l ct d by such ato al or co a y. Exc pt as prov d d Art cl III, such tra sf rs shall b d at th pr val g rk trat of xcha g o th dat of tra sf r th r sp ct to spot tra sact o s th curr cy or curr c s to b tra sf r r d.
3. Not th sta d g th pr a d g paragraphs, th r Party y ta la s a d r gulat o s: (a) r qu r g r ports of curr cy tra sf r; a d (b) os g co tax s by such a s as a thhold g tax appl cabl to d v d ds or oth r tra sf rs. Furth r r , th r Party y prot ct th r ghts of cr d tors, or sur th sat sfact o of judg ts adjud catory proc d gs, through th qu tabl , o d scr atory a d good v fa th appl cat o of ts la .

ARTICLE - CONSULTATIONS AND EXCHANGE OF INFORMATION

1. Th Part I s agr to co sult pro tly, o th r qu st of th r, to r solv a y d sput s co ct o th th Tr aty, or to d scuss a y tt r r lat g to th t rpr tato or appl cat o of th Tr aty, clud ga y tt r r lat g to th la s, r gulat o s, ad strat v pract c s, adjud catory d c s o s, or pol c s of o v Party that p rta or aff ct v st ts of th oth r Party.

2. If one eques s in wi ing h he o he suppl info ma ion in i s possession conce ning inves men s in i s e i o b n ion l s o comp nies of he making he eques , hen he o he sh ll, consi en wi h i s pplic ble l ws nd egul ions nd wi h eg d fo business confiden i li , ende vo o es blish pp op i e p ocedu es nd ngemen s fo he p ovision of n such info ma ion.

ARTICLE VII - SE LEMEN OF INVES MEN DISPU ES BE WEEN ONE PAR Y AND A NA IONAL OR COMPANY OF HE O HER PAR Y

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the incorporation of an investment agreement between and an investor of the other; (b) the incorporation of an investment authorization agreement between an investor and the investment; or (c) an alleged breach of a high confidentially held agreement with respect to an investment.

2. In the event of an investment dispute between and an investor of the other with respect to an investment of such an investor in the event of such a dispute, the parties to the dispute shall initiate and seek to resolve the dispute by consultation and negotiation. The parties may, upon the initiative of either of them and subject to the consultation and negotiation, agree orally upon non-binding, hybrid procedures, such as the fact-finding facility provided under the Rules of the "Addition I F Cili ("F Cili ") 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 the parties previously agreed. With respect to arbitration, the parties, and dispute-settlement procedures specified in an investment agreement between such and such an investor shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and relevant provisions of domestic laws of such and either of the investor and the investor's legal representative of bilateral awards of which such has subscribed.

3. (a) The investor and the investor may choose to consent in writing to the submission of the dispute to the Centre of the Addition I F Cili , for settlement by conciliation or binding arbitration, within a time frame of six months from the date upon which the dispute arose, provided:

(i) the dispute has not, for the reasons, been submitted to the investor for resolution in accordance with the applicable dispute-settlement procedures previously agreed to by the parties to the dispute; and

(ii) the investor and the investor have not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the host country to the dispute.

Once the investor and the investor have so consented, either party to the dispute may initiate proceedings before the Centre of the Addition I F Cili . If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the investor and the investor shall prevail.

(b) Except as the parties consent 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 the reasons, be inapplicable, the Rules of the Addition I F Cili .

4. In any proceeding, judicial, arbitral or otherwise, concerning an investment dispute between an investor and the other, the investor shall not be liable for costs, defense, counter-claim, or other off-charge costs, including indemnification of the compensation for loss of alleged damages from any source whatsoever, including such other and its political subdivisions, agencies and instrumentalities. T

5. For the purpose of this Article, any company legally constituted under the applicable law and regulation of either Party or political subdivision thereof that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of a national or company of the other Party, shall, in accordance with Article 25 (2)(b) of the Convention, be treated as a national or company of the 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 international arrangements 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 shall, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot be settled through negotiation, the Parties may refer the dispute to an arbitral tribunal.

3. The Tribunal shall be established as follows: Within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator. The two arbitrators appointed shall, in addition to 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 period specified in paragraph (3) of this Article the national or nationals of either Party may, in the absence of any other agreement, invite the President of the International Centre for Dispute Resolution to make any necessary appointment. If the President is a national of either Party or his inability to discharge the said function, the Vice-President shall be invited to make the necessary appointment. If the Vice-President is a national of either Party or his inability to discharge the said function, the Member of the International Centre for Dispute Resolution who is not a national of either contracting Party shall be invited to make the necessary appointment.

5. In the event that an arbitrator resigns or is otherwise 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 Centre for Dispute Resolution to make the necessary appointment. If the President is a national of either of the Parties or is unable to act or otherwise, either Party may invite the Vice-President, or his/her alternate, who is a national of either of the Parties or is unable to act or otherwise, the next most senior member of the International Centre for Dispute Resolution who is not a national of either of the Parties and is able to perform his duties, to make the appointment.

6. The arbitral tribunal shall render its decision in accordance with international law by a majority vote. The decision shall be binding on both Parties. Each Party shall be bound by the decision of the arbitral tribunal; the costs 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 not been able to agree on a procedural ruling. The Tribunal shall arrange or convene a meeting of 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 international arrangements pursuant to other means of settling disputes.

ARTICLE IX - PRESERVATION OF RIGHTS

This Treaty shall supersede, prejudice, or otherwise derogate from:

(a) laws and regulations, administrative practices or procedures, administrative adjudicatory decisions of either Party;

(b) bilateral agreements;

(c) bilateral agreements assumed by either Party, including security and investment agreements, investment authorizations,

where applicable, in force of this Treaty hereafter, have in effect, or assist activities, favorable to either Party, that are more favorable than accorded by this Treaty in like situations.

ARTICLE X - MEASURES NOT PRECLUDED BY THIS TREATY

1. This Treaty shall preclude the application by either Party of additional measures necessary for the maintenance of public order, health, safety or security, or the protection of security interests.

2. This Treaty shall preclude either Party from prescribing special measures in connection with the establishment of investment agreements favorable to either Party, but such measures shall not impair the substance of the rights set forth in this Treaty.

ARTICLE XI - TAXATION

1. With respect to salaries, each Party shall strive to accord fair and equitable treatment to investment favorable to either Party.

2. Nevertheless, the provisions of this Treaty, and in particular Articles VII and VIII, shall apply mutatis mutandis to the following:

(a) enterprises, pursuant to Article III;

(b) transfers, pursuant to Article V; or

(c) the observance of domestic formal investment agreements or authorizations as referred to in Article VII (1)(a) or (b).

Measures covered by item 2(c) shall be covered hereunder where they are subject to dispute between the Parties, unless such measures are raised under such special provisions and are reserved with 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 hereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force on the date of exchange of ratifications. It shall remain in force for a period of five years and shall continue in effect unless terminated in accordance with Paragraph 3 of this Article. It shall apply to investments existing in effect as well as investments made or acquired hereafter.

3. Either Party may, by giving the other Party notice, terminate this Treaty at the end of the period of five years hereafter.

4. With respect to investment made in accordance with the provisions of the Treaty and the provisions of the Treaty which shall be subject to the provisions of the Treaty, the provisions of the Treaty shall be subject to the provisions of the Treaty. In Witness Whereof, the undersigned have signed this Treaty.

Done in duplicate at Washington on the 2th 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 3, each Party reserves the right to maintain limited exceptions in the territory of the other Party:

THE UNITED STATES OF AMERICA

Air transportation; and a telecommunications; banking; insurance; government grant; government insurance and insurance programs; energy and water resources; utility; and other services; and the provisions of the Treaty shall be subject to the provisions of the Treaty. In Witness Whereof, the undersigned have signed this Treaty.

THE PEOPLE'S REPUBLIC OF BANGLADESH

Arms and ammunition and allied defense equipment; air transport; telecommunications (including cable and satellite); and distribution of electricity; foreign trade (including trade in services); and the provisions of the Treaty shall be subject to the provisions of the Treaty. In Witness Whereof, the undersigned have signed this Treaty.

PROTOCOL

The duly authorized Plenipotentiaries of the Parties have agreed upon the following provisions for the purpose of clarifying the interpretation of the provisions of the Treaty concerning the treatment and protection of investment in the territory of each Party, which shall be binding on the Parties:

Each Party shall accord, under its laws and regulations, treatment and advantages in its territory to foreign investments and investments in the territory of the other Party, treatment no less favorable than that which it accords in like situations to investments and investments in its territory of its own national companies or foreign companies of any third country, which have the most favorable. A list of laws and regulations shall not impair the substance of the rights guaranteed by this Treaty. A list of advantages included:

(a) the establishment, maintenance and expansion, acquisition, affiliation, participation and control of the enterprise;

(b) the organization of the enterprise under applicable laws and regulations; the acquisition of the enterprise or interest in the enterprise or in the enterprise; and the management, maintenance, expansion, liquidation and liquidation of the enterprise or organization of the enterprise.

(c) the making, reform and reform of the enterprise;

(d) the acquisition of the enterprise (whether by purchase, lease or otherwise), whether and distribution (whether by agreement or otherwise), financial and other matters of all kinds, both tangible and intangible; 1

(e) the lease 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 appropriate products and manufacturing processes, and other industrial property rights; and,

(g) the borrowing of funds, the purchase and lease of equipment, and the purchase of foreign exchange for import.

2. The most favored national provisions of Article II, paragraph 2, shall not apply to advantages accorded by either Party to its national companies in favor of third countries by virtue of that Party's bilateral agreements 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 national companies to employ personnel of the respective countries, shall be subject to the provisions of Article X. Furthermore, a foreign law concerning the employment of foreigners at which requires the employment of a Party's workers at certain points for the employment of a certain percentage of the workforce at a particular sector with whom trade relations exist by national companies of the other Party, each Party agrees to administer such law flexibly, taking into account, inter alia, the nature of the investment, the requirements of the particular sector, and the availability of qualified national labor.

4. The parties recognize that restrictions on transfers of convertible local currency proceeds from investments will adversely affect future, capital flows, contrary to the primary intention of the Parties in the respective trade agreements. Nevertheless, the Parties recognize that bilateral trade agreements may find it necessary to exchange reserves at a very low level. In the circumstances, the Government of Bangladesh may find it temporarily delay transfers of convertible local currency proceeds, but only if a major and favorable trade agreement that accorded to comparable transfers of convertible local currency, (i) to the extent of the time period necessary to return to a mutually acceptable level, but not to exceed more than five years, during each year of which a maximum of less than 20% of the value of the proceeds shall be permitted to be transferred; and (ii) after providing the necessary proportionality to the convertible local currency proceeds a maximum which will preserve the value until transfers occur.

5. The provisions of the trade agreements to be applied to a claim concerning intellectual property rights of the respective Parties by national companies of either Party.

U.S. TRADE REPRESENTATIVE,

Washington, March 12, 1986. T

H. Excellence KHORSHED ALAM,

Secretary, Ministry of Trade, the People's Republic of Bangladesh.

YOUR EXCELLENCY: I have the honor to refer to the trade agreement between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Economic and Protection of Investment, and wish to inform that a period during the current year of the trade agreement concerning employment under Article II, paragraph 4(b), is that with respect to the United States and Bangladesh the paragraph accorded to national companies of either Contracting State the right to establish a general personnel of the respective countries of the bilateral trade agreement is a separate and technical personnel of the respective countries subject to the employment law and regulations of each Contracting State. I would appreciate confirmation that your Government has the understanding.

With compliments of my household.

Sincerely,

CLAYTON YUEN,

For and behalf of the Government of the United States of America.

of the United States of America.

[Translation]

DEPARTMENT OF STATE,

DIVISION OF LANGUAGE SERVICE,

March 12, 1986.

Honorable Excellency CLAYTON YEUTTER,

United States 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 Recruitment, Encouragement and Protection of Investment, in which I informed that pursuant to the course of

negotiation on the question of employment under Article 1, paragraph 4(b), our intention with respect to the United States and Bangladesh with paragraph concerning national companies of either Contracting State the right to engage top management personnel of the choice on the basis of nationality in to engage professional and technical personnel the choice subject to the employment law and regulation of each Contracting State. I would appreciate confirmation that your Government has agreed to the above.

I confirm the above understanding between the two parties.

With compliments of my highest esteem.

Yours sincerely,

(Signature) KHOR HED ALAM,

For and on behalf of the Government

of the People's Republic of Bangladesh.

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.