

[lick here for the Trade Guide](#)

Jamaica Bilateral Investment Treaty

Signed February 4, 1994; Entered into Force March 7, 1997

103rd CONGRESS 2nd Session

SENATE TREATY Doc. 103-35

TREATY BETWEEN THE UNITED STATES OF AMERICA AND JAMAICA CONCERNING THE RECIPROCAL J
ENCOURAGEMENT AND PROTECTION OF INVESTMENT, WITH ANNEX AND PROTOCOL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE UNITED STATES OF AMERICA AND JAMAICA CONCERNING THE RECIPROCAL
ENCOURAGEMENT AND PROTECTION OF INVESTMENT, WITH ANNEX AND PROTOCOL, SIGNED AT WASHINGTON
ON FEBRUARY 4, 1994

September 21, 1994.-Convention 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 J

U.S. GOVERNMENT PRINTING OFFICE

79-118 WASHINGTON : 1994

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 21, 1994.*

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 Jamaica Concerning the Reciprocal Encouragement and Protection of
Investment, with Annex and Protocol, signed at Washington on February 4, 1994. Also transmitted for the
information of the Senate is the report of the Department of State with respect to this Treaty.

This bilateral investment Treaty with Jamaica is the second such Treaty between the United States and a member
of the Caribbean Community (CARICOM). This Treaty will protect U.S. investors and assist Jamaica in its efforts to
develop its economy by creating conditions more favorable for U.S. private investment and thus strengthening
the development of the private sector.

The Treaty is fully consistent with U.S. policy toward international and domestic investment. a specific tenet of
U.S policy, reflected in this Treaty, is that U.S. investment abroad and foreign investment in the United States
should receive national treatment. Under this Treaty, the Parties also agree to international law standards for
expropriation and compensation for expropriation; free transfer of funds associated with investments; freedom of
investments from performance requirements; fair, equitable and most-favored-nation treatment; and the investor
or investment's freedom to choose to resolve disputes with the host government through international arbitration. J

I recommend the entire text be considered as the only possible, and give its vice and consent or
ratification of the Treaty, with Annex and Protocol, and rely on it.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, September 7, 1994.

THE PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty Between the United States of America and Jamaica
Concerning the Reciprocal Encouragement and Protection of Investments, with Protocol, signed Washington on
February 4, 1994. I recommend that the Treaty, with Protocol, be recommended to the entire Executive
consent or ratification.

The bilateral investment treaty (BIT) with Jamaica is the second such treaty between the United States and
member of the Caribbean Community (CARICOM). The Treaty is based on the view that an open investment
policy contributes to economic growth. The Treaty will assist Jamaica in its efforts to further develop its economy
by creating conditions more favorable for U.S. private investment and strengthening the development of the
private sector. It is U.S. policy, however, to advise potential ratifiers regarding BIT negotiations
conclusion of BIT does not necessarily result in immediate increases in private U.S. investment flows.

To date, nine BITs are in force for the United States--with Belgium, Bulgaria, Cameroon, the Congo, the
Czech Republic, Egypt, Grenada, Kazakhstan, Kyrgyzstan, Morocco, Panama, Poland, Romania, Slovakia, the
Sri Lanka, Tunisia, Turkey, and Zimbabwe. In addition to the Treaty with Jamaica, the United States has signed, but
not yet brought into force, BITs with Argentina, Armenia, Belarus, Ecuador, Estonia, Haiti, Jamaica, Latvia,
Russia, and Ukraine.

The Office of the United States Trade Representative and the Department of State jointly lead the BIT negotiations,
with assistance from the Department of Commerce and Treasury.

THE UNITED STATES-JAMAICA TREATY

The Treaty with Jamaica is based on the 1990 and 1991 U.S. prototype BITs. The Treaty contains in substance the
provisions and obligations set forth in the U.S. BITs and covers all of the prototype's objectives,
which are:

-All forms of U.S. investment in the territory of Jamaica are covered.

-Investments receive the better of national treatment or most favored nation treatment (DUN) treatment based on
establishment and operation, subject to certain specific exceptions.

-Performance requirements may not be imposed upon or enforced against investments.

-Expropriation can occur only in accordance with international law and is, for public purpose; in
non-discriminatory manner; in accordance with due process of law; and upon payment of prompt, equitable,
and effective compensation.

-The unrestricted transfer, in freely usable currency, of funds relating to investment is guaranteed.

-Investment disputes with the host government may be brought by investors, or by their subsidiaries, to binding
arbitration in international commercial courts.

These elements, and no other variations in the body of the text, are further described below.

The following is a article-by-article analysis of the provisions of the Treaty: M

Preamble

The Preamble sets the goal of the Treaty. The Treaty is premised on the view that an open investment policy leads to economic growth. The goal includes economic cooperation, increased flow of capital, a stable framework for investment, and development of respect for internationally-recognized worker rights. While the Preamble does not impose binding obligations, its statement of goal may serve as a guide in the interpretation of the Treaty.

Article (Definition)

Article sets out the definition for terms used throughout the Treaty. As a general matter, they are defined to be broad and inclusive in nature.

Investment

The Treaty's definition of investment is broad, recognizing that investment can take a wide variety of forms. Covered investments are owned or controlled by a national or company of one of the Treaty partners in the territory of the other. Investments can be made either directly or indirectly through one or more subsidiaries, including those of third countries. Control is not specifically defined in the Treaty. Ownership of over 50 percent of the voting stock of a company would normally convey control, but in many cases the requirements could be satisfied by less than a proportion.

The definition provides a non-exclusive list of a fee, claims and rights in connection with investment. These include both tangible and intangible property, inhere in a company or industry, "a claim of money or performance having economic value, and a social welfare investment," intellectual property rights, and any rights conferred by law or contract (such as government-issued licenses and permits). The Jamaica-BT varies from the prototype by using "patentable invention" and deleting "know-how" in the illustrative list. The requirements for a "claim of money" be a social welfare investment exclude claims arising solely from trade transactions, such as a transaction involving only a cross-border sale of goods, from being considered investments covered by the Treaty.

Under paragraph 2 of Article 1, either country may deny the benefits of the Treaty to investments by companies established in the other that are owned or controlled by a national of a third country if (1) the company is a mere shell, without substantial business activities in the home country, or (2) the third country is one with which the denying Party does not maintain normal economic relations. For example, a subsidiary of the United States does not maintain normal economic relations with, in addition, Cuba or Libya.

Paragraph 3 confirms that any alteration in the form in which an asset is invested or reinvested will not affect its character as investment. For example, a change in the corporate form of an investment will not deprive it of protection under the Treaty.

Company

The definition of "company" is broad in order to cover virtually any type of legal entity, including any corporation, company, association, or other entity organized under the laws and regulation of a Party. The definition also ensures that companies of a Party are eligible investments in the territory of the other Party wherever investments covered by the Treaty, even if the parent company is ultimately owned by non-Party nationals, although the other Party may deny the benefits of the Treaty in the limited circumstances set forth in Article 1, paragraph 2. Likewise, a company of a third country that is owned or controlled by a national or company of a Party will also be covered. The definition also covers charitable and non-profit entities, as well as entities that are owned or controlled by the state.

National

The Treaty defines "national" as a natural person who is a national of a Party under its own laws. Under U.S. law, the term "national" is broader than the term "citizen;" for example, a native of American Samoa is a national of the United States, but not a citizen.

Return

"Return" means "in mount or otherwise with investment," in the Treaty provide non-exclusive to example, including: profit; value; interest; copyright; royalty payment; management, technical assistance or otherwise; and return in kind. The scope of these provisions is set forth in the Treaty's annex provisions in Article IV.

Article IV

The Treaty recognizes that the operations of investment require protection extending beyond the investment to numerous related activities. These provisions provide for such investment activities, including operating under contract, borrowing money, possession of property, using stock in purchasing foreign exchange or import. These activities are covered by Article II, paragraph 1, which guarantees the treatment of MFN treatment or investment in such activities. While the working of the Jamaica BIT varies slightly from that of the prototype, the use of "in other investment" ensures that it is illustrative.

Article II (Treatment)

Article II contains the Treaty's major obligation with respect to the treatment of investment. Article II of the Jamaica Treaty rearranges the text of the prototype but contains all of its elements in its obligation. By inserting the terms "national treatment" and "most favored nation treatment" after the description of the obligation in the text, the Jamaica Treaty makes these the essential terms.

Article II, paragraph 1, was reorganized, without substantive effect, or greater clarity. The paragraph generally ensures the treatment of MFN or national treatment in both the entry and post-entry phases of investment. It thus prohibits both the creation of separate foreign investment on the national industry discriminatory measures once the investment has been made, and subject to specific exceptions provided for in separate Annex. The United States Jamaica have other relevant provisions in the Annex to the Treaty, the provisions of which are set out in the section entitled "Annex."

Paragraph 2 guarantees that investment shall enjoy "national treatment." It prohibits discrimination, through unfair or discriminatory means, in the management, operation, maintenance, use, enjoyment, acquisition, expansion or improvement. Rather than using the phrase "national treatment," the phrase "national treatment" was replaced by "unfair or discriminatory." The paragraph sets out minimum standards of treatment in customary international law.

In paragraph 2(c), each Party pledges to respect any obligation that may have entered into with respect to investment. Thus, in dispute settlement under Article VI or VII, a Party would be precluded from arguing, on the basis of sovereignty, that it may unilaterally ignore its obligations to such investment.

Paragraph 3 allows, subject to each Party's immigration and employment laws and regulations, the entry of each Party's nationals into the territory of the other for purposes linked to investment in involving the commitment of "substantial investment." The paragraph serves to render national BIT partners eligible for the investment visa under U.S. immigration law and guarantees national treatment or U.S. investor. The reference to employment laws was added, as Jamaica currently regulates the entry of aliens through such laws (rather than only through immigration).

Paragraph 4 allows compliance with the right to engage top management personnel of the choice, regardless of nationality. The Jamaica BIT varies from the prototype in that the right made subject to each Party's immigration and employment laws and regulations.

Under paragraph 5, neither Party may impose performance requirements such as those concerning investment on the export of goods or the local purchase of goods or services. Such requirements are major concerns of investors. The Jamaica BIT provides to the BIT prototype clarifying what is implicit in the paragraph that the agreement does not preclude such measures concerning investment or receipt of investment.

Paragraph 6 provides that each Party must provide effective means of redress with respect to investment, investment agreement in any investment authorization. The Jamaica BIT refers to the prototype language that clarifies that "investment authorization" refers to those granted by a Party's foreign investment board.

authority under paragraph 7, each Party must make publicly available all laws, regulations, administrative practices and procedures and a judicially decisions pertaining to or affecting investments

Paragraph 8 recognizes that under the federal system, states of the states may, in some instances, treat out-of-state residents as corporations in a different manner than they treat in-state residents as corporations. The Treaty provides that the national treatment commitment, with respect to the states, means treatment no less favorable than that provided to out-of-state residents as corporations

Paragraph 9 limits the Article's MFN obligation by providing that it will not apply to advantages accorded by either Party to third countries by virtue of a Party's membership in a free trade area or customs union or a multilateral agreement under the auspices of the General Agreement on Tariffs and Trade (GATT)

Article III (Expropriation)

Article III incorporates into the Treaty the international law standards for expropriation and compensation

Paragraph 1 describes the general rights of investors and obligations of the Parties with respect to expropriation and nationalization. These rights also apply to direct or indirect state measures "tantamount to expropriation or nationalization," and thus apply to "creeping expropriations" that result in a substantial deprivation of the benefit of an investment without taking of the title to the investment. The Jamaica Treaty assesses the prototype language stating that the determination of fair market value should not reflect any change in the value of the investment attributable to the expropriation itself

Paragraph 1 further bars all expropriations or nationalizations, except those that are for a public purpose; carried out in a non-discriminatory manner, subject to "prompt, adequate, and effective compensation"; subject to due process; and accord the treatment provided in the standards of Article II (2) (These standards guarantee fair and equitable treatment and prohibit the arbitrary and discriminatory impairment of investments in its broadest sense)

The second sentence of paragraph 1 clarifies the meaning of "prompt, adequate, and effective compensation." Compensation must be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known (whichever is earlier); be paid without delay, including interest at a commercially reasonable rate from the date of expropriation; be fully realizable; be freely transferable; and be calculated in a freely usable currency on the basis of the prevailing market rate of exchange

Paragraph 2 entitles a investor claiming that an expropriation has occurred to prompt judicial or administrative review of the claim in the host country, including a determination of whether the expropriation is a compensation conform to the provisions of the Treaty

Paragraph 3 entitles investors to the better of national or MFN treatment with respect to losses related to war or civil disturbances, but, unlike paragraph 1, does not specify an absolute obligation to pay compensation for such losses

Article IV (Transfers)

Article IV protects investors from certain government exchange controls limiting current account capital account transfers

In paragraph 1, the Parties agree to permit "transfers related to an investment to be made freely and without delay into and out of its territory. Paragraph 1 also provides an open-ended list of transfers that must be allowed, including returns (as defined in Article I); payments made in compensation for expropriation (as defined in Article III); payments arising out of an investment dispute; payments made under a contract, including the amortization of principal and interest payments on a loan; proceeds from the liquidation or sale of all or part of an investment; and a substantial contribution to capital for the maintenance or development of an investment

Paragraph 2 provides that transfers are to be paid 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. "Freely S

usable is a standard of the ILC on the Allocation of Responsibility for State Responsibility; a principle of the law of state responsibility such as "fairly usable" conditions: the U.S., Italy, Japan, Germany, Greece, France, Belgium.

Paragraph 3 explains that with the passage of time, Parties may also be bound by laws of the host state which are applicable to the investment. It provides that the Parties may also be bound by laws of the host state which are applicable to the investment. It also explains that the Parties may also be bound by laws of the host state which are applicable to the investment. It also explains that the Parties may also be bound by laws of the host state which are applicable to the investment.

Article V (Standard of Treatment)

Article V provides that the Parties, as well as the Parties' representatives, may also be bound by laws of the host state which are applicable to the investment.

Article VI (Standard of Treatment - Dispute Resolution)

Article VI, concerning the 1990 and 1992 types, sets forth several measures by which disputes between investors and the host country may be settled.

Article VI provides that the "investor dispute" and the "which covers a dispute arising from the investment" are subject to arbitration, and the agreement between the investor and the host government is binding on the investor.

When an investor invokes Article VI, paragraph 2, it may also have the right to seek relief from the investor by concluding a separate agreement, which may include binding arbitration. Such a conclusion may fail, paragraph 2 and 3 set forth the investor's obligations. Paragraph 2 provides that the investor may make an exclusive arbitration agreement: (1) only if the investor has agreed to arbitrate; (2) subject to the investor's previous agreement, by the investor and the host country; (3) subject to the investor's agreement, by the investor and the host country.

Under paragraph 3, if the investor has submitted the dispute to paragraph 2 and six months have elapsed from the date of the investor's submission of the dispute for arbitration, the investor may also submit the dispute to the International Centre for Settlement of Investment Disputes (ICSID) or to a bilateral investment agreement. The investor may also submit the dispute to the International Centre for Settlement of Investment Disputes (ICSID) or to a bilateral investment agreement. The investor may also submit the dispute to the International Centre for Settlement of Investment Disputes (ICSID) or to a bilateral investment agreement.

Paragraph 4 contains the provisions of the United States and Jamaica regarding the submission of investor disputes to arbitration.

Paragraph 5 includes a separate provision by each Party to the bilateral investment agreement. Article VI provides.

Paragraph 6 provides that the investor's dispute may be referred to arbitration, and the Parties may also be bound by laws of the host state which are applicable to the investment. It also explains that the Parties may also be bound by laws of the host state which are applicable to the investment.

Paragraph 7 is included in the Treaty and the ICSID arbitration will be available for investors' claims. It provides that the investor's dispute may be referred to arbitration, and the Parties may also be bound by laws of the host state which are applicable to the investment.

Paragraph 8, further provides, explicitly, that the provisions of paragraph 2 of Article 27 of the ICSID Convention, paragraph 6 of the ICSID Convention, and paragraph 6 of the ICSID Convention, (unless the Parties have failed to agree by contract with the awarding of the investor's dispute). The article also makes clear, however, that the provisions of paragraph 8 of the ICSID Convention are not applicable to the investor's dispute.

Article (Article 10 - Arbitration)

Article 10 provides for binding arbitration of disputes between the United States and Jamaica that are not resolved through consultations or other diplomatic channels. The article constitutes each Party's prior consent to arbitration.

Article 11 (Exclusions from Dispute Settlement)

Article 11 excludes from the dispute settlement provisions of the BIT those disputes arising under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States, as well as those arising under any other such official programs pursuant to which the Parties agreed to other means of settling disputes.

Article X (Preservation of Rights)

Article X clarifies that the treaty is meant only to establish a floor for the treatment of foreign investment. An investor may be entitled to more favorable treatment through domestic legislation, other international legislation, or specific obligations assumed by a Party with respect to that investor. This provision ensures that the treaty will not be interpreted to derogate from any entitlement to such more favorable treatment.

Article X (Measures Not Precluded)

The first paragraph of Article X reserves the right of a Party to take measures for the maintenance of public order, the fulfillment of its international obligations with respect to international peace and security, or those measures it regards as necessary for protection and security, or those measures it regards as necessary for the protection of its own essential security interests. These provisions are common in international investment agreements.

The maintenance of public order would include measures taken pursuant to a Party's police powers to ensure public health and safety. International obligations with respect to peace and security would include, for example, obligations arising out of Chapter VII of the United Nations Charter. The Jamaica BIT differs from the prototype in its explicit reference to the U.N. Charter. Measures permitted by the provision on the protection of a Party's essential security interests would include security-related actions taken in time of war or national emergency, actions not arising from state of war or national emergency must have a clear and direct relationship to the essential security interest of the Party involved.

The second paragraph allows a Party to promulgate special formalities in connection with the establishment of investment, provided that the formalities do not impair the substance of any treaty rights. Such formalities would include, for example, U.S. reporting requirements for certain inward investment.

Article X (Investor Policies)

The treaty exhorts both countries to provide fair and equitable treatment to investors with respect to tax policies. However, tax matters are generally excluded from the coverage of the prototype BIT, based on the assumption that tax matters are properly covered in bilateral treaties.

The treaty, and particularly the dispute settlement provisions, do apply to tax matters in three respects, to the extent they are not subject to the dispute settlement provisions of a treaty, or, if so subject, have been resolved under a treaty's dispute settlement procedures and are not resolved in a reasonable period of time.

The three respects where the treaty could apply to tax matters are expropriation (Article 10), transfers (Article 11) and the observance and enforcement of terms of an investment agreement or authorization (Article 11) or b)). These three respects are important for investors, and two of the three--expropriation and tax provisions contained in an investment agreement or authorization--are not typically addressed in treaties.

Article X (Application to Political Subdivisions)

Article X makes clear that the obligations of the treaty are applicable to all political subdivisions of the Parties, such as provincial, state and local governments.

Article X (Entry into Force, Duration and Termination) T

The Treaty enters into force thirty days after the exchange of ratifications and shall remain in force for a period of ten years. From the date of its entry into force, the Treaty shall apply to the extent of its future effectiveness. After the ten-year term, the Treaty will continue to be in force unless terminated by either Party upon one year's notice. If the Treaty is terminated, all existing investments would continue to be protected under the Treaty for ten years thereafter.

Article

U.S. bilateral investment treaties shall not be less favorable than the MFN treatment. The U.S. exceptions are designed to protect governmental regulatory interests and do not accommodate the derogation from national treatment, domestic law, MFN treatment, or existing federal law.

The U.S. prohibits the application of discriminatory measures which, in violation of legal and contractual obligations, the federal government or the State may not discriminatorily treat investments at national or comparable levels. The U.S. exceptions are: air transportation; sea, air, and cable communications; banking; insurance; government contracts; government contracts for goods and services; energy and power production; customs and duties; ownership of real property; ownership of patents, trademarks, copyrights, and television and radio broadcasting rights; ownership of shares in companies; satellite communications; the provision of communication services; telegraph and telecommunication services; the provision of submarine cable services; utility and natural resources; mining; the public domain; maritime and maritime-related services; and primary dealer holdings of U.S. government securities.

Ownership of real property, mining, the public domain, maritime and maritime-related services, and primary dealer holdings of U.S. government securities are excluded from MFN as well as national treatment commitments. The latter three sectors are exempted by the United States from MFN treatment obligations because U.S. laws that require reciprocity. Exemption reciprocity provisions could deny benefits at national and MFN treatment.

The investment agreement is discriminatory only if that domestic law has effectively reserved the national. Future restrictions or limitations on foreign investments are only permitted if they are not discriminatory; must be made on a MFN basis, unless otherwise specified in the Annex; and must be applied retroactively. A new additional restriction or limitation which a Party may adopt with respect to limited sectors may take effect during the investment.

Jamaica's exceptions to national treatment are: civil aviation; real estate; banking; insurance; communication (including postal and telegraph services and broadcasting); mining and natural resources; government contracts and other activities; small-scale enterprises with total assets of U.S. \$50,000 or less; customs brokerage; carriage; real estate agencies; travel agencies; and gaming, betting, and lotteries. Jamaica has reserved the right to make reasonable limited exceptions to MFN treatment for banking.

Article

Article 1(c) specifies that the Jamaica Treaty, the two deals from the United States that the term "regulation" in Article 1(b) includes, where appropriate, the provision of a treaty to which the Parties have adhered. The two deals confirm that either Party shall use its laws and regulations that require that national be employed as a primary managerial personnel by a "investment" (as defined by the Treaty). Finally, with respect to transfers, the Protocol confirms that Jamaica's regulatory exchange reserves do not permit the transfer proceeds of the sale or liquidation of an investment to be provided for Article V(1)(e), Jamaica shall allow all the transfers which proceed to take place over a period that exceeds three years.

The other U.S. Government agrees which negotiated the Treaty to recommend that it be transmitted to the Senate at an early date.

Respectfully submitted.

WARREN CHR STOPHER.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND JAMAICA CONCERNING THE RECIPROCAL
ENCOURAGEMENT AND PROTECTION OF INVESTMENT

The United States of America in Jamaica (hereinafter "the Parties");

Desiring to promote greater economic cooperation between them, with respect to investment business in the respective territories of the Parties;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital in the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain and to be free from expropriation of investment in maximum effective utilization of economic resources;

Recognizing that the development of economic infrastructure contributes to the well-being of workers in both Parties in promoting respect for worker rights; and Having resolved to conclude a Treaty concerning the reciprocal encouragement and protection of investment;

Have agreed as follows:

ARTICLE I:

1. For the purpose of this Treaty,

() "investment" means every kind of investment in the territory of the Parties whether carried out directly or indirectly by a national or company of the Parties, such as equity, debt, services investment contracts; and include with all limit therein:

(i) tangible and intangible property, including rights such as mortgage, liens and pledge;

(ii) company or shares of stock or other interests in company or estate there of;

(iii) claim to money or claim to performance having economic value, and claims with investment;

(iv) intellectual property which include, inter alia, rights relating to:

literary and artistic work, including unpublished works, patentable inventions, in utility design, emblems, marks, trade names, trade secrets, confidential information, trademarks, service marks, and trade names;

(v) any right conferred by law or contract, and any license or permit pursuant to law;

(b) "company" of a Party means any kind of corporation, partnership, association, proprietorship, or other organization, legal entity or unincorporated entity of a Party or political subdivision thereof whether or not organized for pecuniary gain, or private or government owned or controlled;

(c) "national" of a Party means a natural person who is a national of a Party under its applicable law;

() "return" means a mount derived from a claim with investment, including profit; dividends; interest; capital gain; rental payment; management, technical assistance or other fees; or return in kind;

(e) "activities" means the organization, control, performance or participation in a company, branch, office, factory or other facilities for the conduct of business; the making, performance or enforcement of contracts; the acquisition, use, protection or participation in property for profit or otherwise including intellectual property rights; the borrowing of funds; the purchase, issuance, lease or acquisition of real estate; the purchase of foreign exchange for import; and other similar activities.

2. Each Party reserves the right to enter into a company with a national of the other Party, or to enter into a business activity in the territory of the other Party or controlled by a national of that country with which the entering Party is not maintaining normal economic relations.

3. Any alteration of the form in which enterprises reinvest their capital in investment.

ARTICLE II

) Each Party shall permit and treat investments, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investments or associated activities of its own nationals or companies ("national treatment"), or foreign investors or companies of any third country ("most favored nation treatment"), whichever is the most favorable, subject to the right of each Party to make or maintain exceptions relating within the sector matters listed in the Annex to this Treaty. The treatment accorded investments and activities associated therewith pursuant to any exceptions to national treatment shall be the most favorable national treatment, unless specified otherwise in the Annex.

b) Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty if such laws and regulations of which it is aware concerning the sector matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sector matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investments existing in that sector matter at the time the exception becomes effective.

2) 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.

b) Neither Party shall in any way impair, by unreasonable or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments.

c) Each Party shall observe any obligation it may have entered into with regard to investments.

3) Subject to the laws of each Party relating to the entry, sojourn and employment 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 in the operation of an investment to which they, or jointly with the first Party, have committed or are in the process of committing substantial investment funds or other resources.

4) Subject to the laws of each Party relating to entry, sojourn and employment of aliens, companies which are legally constituted under the applicable laws or regulations of the other Party, and which are investments, shall be permitted to engage to provide personnel of their choice, regardless of nationality.

5) Neither Party shall impose performance requirements such as conditions of establishment, expansion or maintenance of investments, which require enforcement commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements, provided, however, that nothing in this paragraph shall preclude a Party from providing benefits and incentives to investments which export a proportion of the goods produced.

6) Each Party shall provide effective means for asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorization granted by a Party's foreign investment authority.

7) Each Party shall make publicly available all laws, regulations, administrative practices and procedures, and judicial or administrative decisions that pertain to or affect investments.

8) The treatment accorded by the United States of America to investments and associated activities of nationals or companies of Jamaica under the provisions of this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, that State, Territory or possession of the United States of America.

9) The most favored nation provisions of this Agreement shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of:

) that Party's binding obligations that derive from full membership in a free trade or customs union, or from some other relationship which satisfies the requirements for free trade or customs unions set forth in Article XXIV of the General Agreement on Tariffs and Trade; or

(b) that Part B binding obligation under an multilateral international agreement under the framework of the General Agreement on Tariffs and Trade.

ARTICLE :

1. Investment shall not be expropriated or nationalized directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; nationalization; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principle of treatment provided for in Article II(2) Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation act on which it was taken or made known by the authority, whichever is earlier; be paid without delay; include interest at a commercial rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation. The determination of fair market value shall not reflect any change in the value of the investment attributable to the expropriation or to public knowledge of the expropriation act on which it was taken or made known by the authority.

2. A national or company of the Part 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 authority of the other Part to determine whether an expropriation, and any compensation therefor, conforms to the provisions of this Treaty.

3. National or companies of the Part whose investment suffers loss in the territory of the other Part owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other internal event shall be accorded treatment by such other Part no less favorable than that accorded to its own national or companies or to national or companies of another third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE V:

1. Each Part 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) return; (b) compensation pursuant to Article III; (c) payment arising out of an investment dispute; (d) payment 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 contribution to capital for the maintenance or development of an investment.

2. Except as provided in Article III paragraph 1, transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to potential action in the currency to be transferred.

3. Notwithstanding the provisions of paragraph 1 and 2, the Part may maintain laws and regulations (a) equating export of currency transfers; and (b) imposing income taxes by which means a withholding tax applicable to dividends or other transfers. Furthermore, the Part may protect the right of creditors, or enforce the attachment of judgment in adjudicated proceedings, or prevent fraudulent transfers, though the equitable, nationalization and good faith application of the law.

ARTICLE V:

The Parties agree to consult promptly, on the request of either, to resolve any dispute in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

ARTICLE V :

1. For purposes of this Article, an investment dispute is a dispute between a Part and a national or company of the other Part arising out of or relating to (a) an investment agreement between that Part and such national or company; (b) an investment authorization granted by that Part to a foreign investment authority to such national or company; or (c) an alleged breach of an obligation created by this Treaty with respect to an investment.

2. In the event an investment dispute, the parties to the dispute should not lly seek resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national recourse may choose to submit the dispute for resolution:

a) to the courts or administrative tribunals of the Party to which the dispute is referred;

b) in accordance with any applicable pre-arbitration dispute settlement procedures; or

c) in accordance with the terms of paragraph 4. A party which elects one of the three procedures mentioned in this paragraph excludes the others.

3.) Provided that the national recourse concerned has not submitted the dispute for resolution under paragraph 2 () or (b) and that six months have elapsed from the date on which the dispute arose, the national recourse may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

() to the International Centre for the Settlement of Investment Disputes ("Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965 ("ICSID Convention"), provided that the Party is a party to such Convention; or

() in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or

() to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

b) Once the national recourse has consented, either party to the dispute may not thereafter bring an action in accordance with the choice specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national recourse under paragraph 3. Such consent, together with the written consent of the national recourse when given under paragraph 3 shall satisfy the requirement of written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre).

5. Any award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to prevent any interference with its enforcement.

6. In any proceeding in relation to an investment dispute, a Party shall not assert, as a defence, counterclaim, right of set-off or otherwise, that the national recourse concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation or reimbursement for alleged damages.

7. For purposes of arbitration held under paragraph 3 of this Article, any recourse may legally constitute under the applicable laws and regulations of either Party a plaintiff or a defendant, but that, in matters of procedure, the occurrence of the events giving rise to the dispute, was an investment in the national recourse, the other Party, shall be treated as the national recourse, such that the Party in accordance with Article 25(2)(b) of the ICSID Convention.

8. As provided in Article 27 of the Convention, neither Party shall engage in diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to the national recourse, or submit to arbitration under the Convention, unless the other Party to which the dispute is referred has been notified by the national recourse in writing of the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include normal diplomatic exchanges or the sole purpose of concluding settlement of the dispute.

ARTICLE VII:

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultation or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitration tribunal or binding decision in accordance with the applicable rules of international law. In the absence

an agreement that the parties to the contract, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the parties or the arbitrators with the consent of the parties, shall govern.

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 shall be a national of a third State. The UNCITRAL Rules for appointing members of three-member panels shall apply, mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the International Centre for the Settlement of Investment Disputes.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the parties.

ARTICLE VIII:

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 of settling disputes.

ARTICLE IX:

This Treaty shall not 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 granted by a party's foreign investment authority, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X:

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 under the Charter of the United Nations 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 XI:

1. With respect to its tax policies, each party shall strive to accord fairness and equity in the treatment of investments of nationals and companies of the other party.

2. Nevertheless, the provisions of this Treaty, and in particular Articles VI and VII, shall apply to matters of taxation only with respect to the following:

a) expropriation, pursuant to Article III;

b) transfers, pursuant to Article IV; or

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

to the extent they are not subject to the disposition of Convention for the avoidance of double taxation between the two Parties, shall have been included in the settlement provisions and shall be resolved within the period of time.

ARTICLE XII:

This Treaty shall apply to the political division of the Parties.

ARTICLE XIII:

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investment existing at the time of entry into force as well to investment made or acquired thereafter.
2. 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.
3. With respect to 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 thereafter continue to be effective for the period of ten years from the date of termination.
4. The Annex and Protocol shall form an integral part of the Treaty.

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

DONE in duplicate at Washington on the fourth day of February, 1994, in the English language.

ANNEX

1. The United States shall have the right to make or maintain in limited exception to national treatment, as provided in Article II, paragraph 1, in the sectors or matters indicated below:

air transportation; ocean and coast shipping; banking; insurance; government grant; government insurance and long programs; energy and power production; customs brokerage; ownership of telephony; ownership of radio and television stations; ownership of health in the Communication Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of marine cable services; oil and natural gas lease; mining on the public domain; maritime services and maritime related services; and primary development in United States government activities.

2. The United States shall have the right to make or maintain in limited exception to most favored nation treatment, as provided in Article II, paragraph 1, in the sectors or matters indicated below:

ownership of telephony; mining on the public domain; maritime services and maritime related services; and primary development in United States government activities.

3. Jamaica shall have the right to make or maintain in limited exception to national treatment, as provided in Article II, paragraph 1 in the sectors or matters indicated below:

civil aviation; electricity; banking; shipping; communication (including postal and telegraph services, and broadcasting); mining and natural gas lease; government grant and other assistance to small-scale enterprise with total net of U.S. \$50,000 or less; customs brokerage; central; electricity generation; television generation; gambling; and lottery.

4. Jamaica shall have the right to make or maintain in limited exception to most favored nation treatment, as provided in Article II, paragraph 1, in the sectors or matters indicated below:

shipping.

PROTOCOL

1. The Parties and have entered into an agreement in accordance with Article II(1)(b) of the Treaty, whereupon the Parties have agreed to provide for a mechanism by which one of the Parties shall adhere to the other.
2. With respect to Article II(4), the Parties shall apply the laws and regulations of the country in which the company is engaged in its management and business.
3. If the foreign exchange reserves of Jamaica do not permit the advance of the sale of the shares of the company of all or part of an investment provided for in Article IV(1)(e), Jamaica shall allow the advance of the company to take place over a period not to exceed three years from the date the advance is required and shall guarantee the availability of a loan on the part of the necessary financial institutions for each of the two years of the three-year period. With respect to the advance, Jamaica shall ensure that the company and the company of the United States are not favored over the company of another country. Jamaica shall ensure that the company of another country does not have the right to participate in the sale of the shares of the company on a non-discriminatory basis. Pursuant to Article V of the Treaty, and with respect to the procedure set forth in Article VI and VII, the two Parties agree to consult with each other in the event of any emergency arising from the implementation of Article IV and of the paragraph.

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. y