

UNITED STATES - MEXICO INCOME TAX CONVENTION

*Convention, with Protocol, Signed at Washington on September 18, 1992;
Transmitted by the President of the United States of America to the Senate on May 20, 1993
(Treaty Doc. No. 103-7, 103d Cong., 1st Sess.);
Reported favorably by the Senate Committee on Foreign Relations November 18, 1993 (S. Ex.
Rept. No. 103-20, 103d Cong., 1st Sess.);
Advice and Consent to Ratification by the Senate November 20, 1993, Given Subject to the
Following Understandings:*

*(a) That the phrase "both Contracting States shall apply that lower rate" in
paragraph 8 (b) of the Protocol is understood to mean that both Contracting States
agree to promptly amend the Convention to incorporate that lower rate; and*

*(b) That, while Mexico imposes no excise tax on insurance premiums paid to
foreign insurers and has no immediate plans to do so, should Mexico enact such a tax in
the future, Mexico will waive such tax on insurance premiums paid to insurers resident in
the United States.*

*Ratifications Exchanged December 28, 1993, Confirming the Two Understandings Referred to
Above;*

Entered into Force December 28, 1993; Effective January 1, 1994, for Most Provisions.

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1994

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL, SIGNED AT WASHINGTON ON SEPTEMBER 18, 1992

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 11, 1993.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at Washington on September 18, 1992.

The Convention contains provisions governing maximum rates of tax at source on payments of dividends, interest and royalties. These provisions are generally favorable for U.S. investors in Mexico because they provide certainty and in most cases substantially reduce the tax cost of investing there.

Business profits in general are taxable in the other country only to the extent attributable to a permanent establishment there, and then only on a net basis with deductions for business expenses.

Where the Convention requires Mexico to exempt or reduce its tax on Mexican income of a U.S. resident, Mexico also has agreed to provide relief from its assets tax when to impose the assets tax would negate the benefits of the Convention.

The Convention provides conditions under which each country may tax income derived by individual residents of the other country from independent personal services or as employees, as well as pension income and social security benefits. Special relief is granted to visiting students, trainees, and researchers. Items of income not specifically dealt with may be taxed only in the country of residence.

The Convention provides that Mexico and the United States will recognize each other's public charities on a reciprocal basis, with respect to both exempting the organizations from tax and to allowing tax deductions for contributions to such organizations, subject in the latter case to limitations to the income arising in the other country.

The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately using the Convention. Similar standards are found in other recent United States income tax conventions. The Convention seeks to assure that the country of residence will avoid double taxation of income which arises in the other country and has been taxed there in accordance with the treaty's provisions.

In addition, the Convention includes standard administrative provisions which will permit the tax authorities of the two countries to cooperate to resolve issues of potential double taxation and to exchange information relevant to implementing the Convention and the domestic laws imposing the taxes covered by the Convention. The Convention also includes non-discrimination provisions standards to treaties to avoid double taxation which apply to all taxes at all levels of government.

The Convention will enter into force on the date of the last notification that the constitutional requirements of each country have been satisfied. The provisions concerning taxes on dividends, interest

and royalties will take effect on the first day of the second month following the date of entry into force if that occurs during the first six months of the calendar year, and otherwise, on the first day of the following January. Provisions concerning other taxes will take effect for taxable years beginning on or after January 1 following the date of entry into force.

A Protocol accompanies the Convention and forms an integral part of it. It clarifies the operation of certain provisions and denies treaty benefits with respect to dividends and interest paid by certain United States investment companies.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

Enclosures: As stated.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 20, 1993.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at Washington on September 18, 1992. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The income tax Convention, the first between the two countries, is intended to reduce the distortions (double taxation or excessive taxation) that can arise when two countries tax the same income, thereby enabling United States firms to compete on a more equitable basis in Mexico and enhancing the attractiveness of the United States to Mexican investors. The Convention is generally based on the Model Treaty of the Organization for Economic Cooperation and Development and recent income tax conventions of both parties.

I recommend that the Senate give early and favorable consideration to the Convention and related Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the United Mexican States, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which shall hereafter be referred to as the "Convention," have agreed as follows:

ARTICLE 1
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
 - a) by the laws of either Contracting State; or
 - b) by any other agreement between the Contracting States.
3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.
4. The provisions of paragraph 3 shall not affect
 - a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1(b) and 3 of Article 19 (Pensions, Annuities, Alimony, and Child Support), and under Articles 22 (Exempt Organizations), 24 (Relief from Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and
 - b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students), and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor lawful permanent residents in, that State.

ARTICLE 2
Taxes Covered by the Convention

1. This Convention applies to income taxes imposed by each of the Contracting States.
2. There shall be regarded as taxes on income all taxes imposed on total income or any part of income, including tax on gains derived from the alienation of movable or immovable property.
3. The existing taxes to which this Convention shall apply are:
 - a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed on insurance premiums paid to foreign insurers and the excise taxes with respect to private foundations to the extent necessary to implement the provisions of paragraph 4 of Article 22 (Exempt Organizations). The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under this or any other convention which applies to these taxes.
 - b) in Mexico: the income tax imposed by the Income Tax Law.
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3
General Definitions

1. For the purposes of this Convention, unless the context otherwise requires, it is understood that:
 - a) the term "person" includes an individual or legal person, including a company, a corporation, a trust, a partnership, an association, an estate, and any other body of persons;
 - b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - c) the terms "enterprise of Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;
 - e) the term "competent authority" means:

- (i) in the United States, the Secretary of the Treasury or his authorized representative; and
- (ii) in Mexico, the Ministry of Finance and Public Credit;
- f) the term "United States" means the United States as defined in the Internal Revenue Code;
- g) the term "Mexico" means Mexico as defined in the Federal Fiscal Code;
- h) the term "national" means
 - (i) any individual possessing the nationality of a Contracting State; and
 - (ii) any legal person, association, or other entity deriving its status as such from the law in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4 Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residence shall be determined as follows:

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);
- b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, such person shall not be treated as a resident of either Contracting State for purposes of this Convention.

ARTICLE 5
Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes, especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. The term "permanent establishment" shall also include a building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, or supervisory activity in connection therewith, but only if such building site, construction or activity lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, scientific research, or for the preparations relating to the placement of loans, or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (e), provided that the total activity of the combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) has no such authority but habitually processes in the first-mentioned State on behalf of the enterprise goods or merchandise maintained in that State by that enterprise, provided that such processing is carried on using assets furnished, directly or indirectly, by that enterprise or any associated enterprise.

6. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a representative other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that in their commercial or financial relations with the enterprise conditions are not made or imposed that differ from those generally agreed to by independent agents.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats, aircraft, and containers shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of the Contracting State in which the immovable property is situated agrees to terminate the election.

ARTICLE 7 Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to

a) that permanent establishment;

b) sales in that other State of goods or merchandise of the same or similar kind as the goods or merchandise sold through that permanent establishment.

However, the profits derived from the sales described in subparagraph (b) shall not be taxable in the other State if the enterprise demonstrates that such sales have been carried out for reasons other than obtaining a benefit under this Convention.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of such amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents or other rights, by way of commission, for specific

services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of this Convention, the business profits to be attributed to the permanent establishment shall include only the profits or losses derived from the assets or activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft on a full (time or voyage) basis. They also include profits from the rental of ships or aircraft on a bareboat basis if such ships or aircraft are operated in international traffic by the lessee and such rental profits are accessory to other profits described in paragraph 1. The operation of ships or aircraft in international traffic by an enterprise does not include transportation by any other means of transport provided directly by such enterprise or the provision of overnight accommodation.

3. Profits of an enterprise of a Contracting State from the use, demurrage or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

ARTICLE 9 Associated Enterprises

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State; or
b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, shall in accordance with paragraph 2 of Article 26 (Mutual Agreement Procedure), make a corresponding adjustment to the amount of the tax charged therein on those profits if it agrees with the adjustment made by the first-mentioned Contracting State. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph I shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons, whether or not residents of a Contracting State, owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State. However, if the beneficial owner of the dividends is a resident of the other Contracting State, except as provided in paragraph 3, the tax so charged shall not exceed:

- a) 5 percent of the gross amount of the dividend if the beneficial owner is a company which owns at least 10 percent of the voting stock of the company paying the dividends;
- b) 10 percent of the gross amount of the dividends in other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. For a period of five years from the date on which the provisions of this Article take effect, the rate of 15 percent will apply in place of the rate provided in subparagraph (b) of paragraph 2.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as the dividends are paid to a resident of that State or the dividends are attributable to a permanent establishment or a fixed base situated in that State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State. However, if the beneficial owner of the interest is a resident of the other Contracting State, except as provided in paragraph 3 the tax so charged shall not exceed:

a) 4.9 percent of the gross amount of interest derived from:

(i) loans granted by banks, including investment banks and savings banks, and insurance companies;

(ii) bonds or securities that are regularly and substantially traded on a recognized securities market;

b) 10 percent of the gross amount of interest if the beneficial owner is not a person described in subparagraph (a) and the interest is:

(i) paid by banks, including investment banks and savings banks;

(ii) paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment in connection with a sale on credit; and

c) 15 percent of the gross amount of the interest in all other cases.

For purposes of this paragraph, interest paid on back-to-back loans will be taxed in accordance with the domestic law of the State in which the interest arises.

3. For a period of five years from the date on which the provisions of this Article take effect:

a) the rate of 10 percent shall apply in place of the rate provided in subparagraph (a) of paragraph 2; and

b) the rate of 15 percent shall apply in place of the rate provided in subparagraph (b) of paragraph 2.

4. Notwithstanding the provisions of paragraphs 2 and 3, interest referred to in paragraph 1 may only be taxed in the Contracting State in which the beneficial owner is a resident if:

a) the beneficial owner is a Contracting State, a political subdivision or local authority;

b) the interest is paid by any of the persons mentioned in subparagraph (a);

c) the beneficial owner is a trust, company, or other organization constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in that Contracting State;

d) the interest arises in the United States and is paid in respect of a loan for a period of not less than three years made, guaranteed, or insured, or a credit for such period extended, guaranteed, or insured, by the Banco Nacional de Comercio Exterior, S.N.C. or Nacional Financiera, S.N.C.; or

e) the interest arises in Mexico and is paid in respect of the loan for a period of not less than three years made, guaranteed, or insured, or a credit for such period extended, guaranteed, or insured, by the Export-Import Bank or the Overseas Private Investment Corporation.

5. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by a mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, local authority, or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State permanent establishment or a fixed base and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the interest, for whatever reason, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 11A

Branch Tax

1. A company which is a resident of a Contracting State may be subject in the other Contracting State to a tax in addition to the tax allowable under the other provisions of this Convention.

2. Such additional tax, however, may not exceed:

a) 5 percent of the "dividend equivalent amount" of the business profits of the company which are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the other Contracting State and which are either attributable to a permanent establishment in that other State or subject to a tax in that other State under Article 6 (Income from Immovable Property (Real Property)) or Article 13 (Capital Gains); and

b) 10 percent of the excess, if any, of:

(i) interest deductible in one or more taxable years in computing the corporation's profits that are either attributable to a permanent establishment in the other Contracting State or subject to tax in that other State under Article 6 (Income from Immovable Property (Real Property)) or Article 13 (Capital Gains), over

(ii) the interest paid by or from such permanent establishment or trade or business. In the case of the persons referred to in subparagraph (a)(i) of paragraph 2 of Article 11 (Interest), the tax imposed under this subparagraph shall not be levied at a rate in excess of 4.9 percent, after a period of five years from the date on which Article 11 takes effect.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalty.

3. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including motion picture films and works on film or tapes or other means of reproduction for use in connection with television, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience as well as for the use of or the right to use industrial, commercial, or scientific equipment not constituting immovable property referred to in Article 6. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where there is a special relationship between the payer and the beneficial owner or between both of them and some other person and the amount of the royalties, for whatever reason, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. However,

a) Where the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in that State in which the permanent establishment or fixed base is situated; or

b) where subparagraph (a) does not operate to deem royalties as arising in either Contracting State and the royalties relate to the use of, or the right to use, in one of the Contracting States, any property or right described in paragraph 3, they shall be deemed to arise in that State.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article, the term "immovable property situated in the other Contracting State" includes:

a) immovable property referred to in Article 6 (Income from Immovable Property (Real Property)) which is situated in that other Contracting State,

b) an interest in a partnership, trust, or estate to the extent that its assets consist of immovable property situated in that other State,

c) shares or comparable interests in a company or other legal person that is, or is treated as, a resident of that other Contracting State, the assets of which company consist or consisted at least 50 percent, by value, of immovable property situated in that other Contracting State, and

d) any other right that allows the use or enjoyment of immovable property situated in that other Contracting State.

3. Gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has or had in the other Contracting State, or which are attributable to a fixed base which is or was available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. In addition to gains taxable in accordance with the provisions of the preceding paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company or other legal person which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, during the 12 month period preceding such alienation, had a participation, directly or indirectly, of at least 25 percent in the capital of that company or other legal person. Such gains shall be deemed to arise in that other State to the extent necessary to avoid double taxation.

5. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, and containers (including trailers, barges, and related equipment for the transport of containers) used principally in international traffic shall be taxable only in that State.

6. Gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

7. Gains from the alienation of any property other than property referred to in paragraphs 1 through 6 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14
Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services or other activities of a similar nature in an independent capacity shall be taxable only in that State, unless:

- a) such resident has a fixed base in the other Contracting State which he regularly makes use of in the course of performing his activities; in such case, the other State may tax the income from services performed in that other State which is attributable to that fixed base; or
- b) the resident is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days within a 12 month period; in such case, the other State may tax the income attributable to activities performed in that other State.

2. The term “personal services” includes especially independent scientific, literary or artistic activities, educational or teaching activities, as well as independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15
Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 19 (Pensions, Annuities, Alimony, and Child Support) and 20 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in a 12 month period;
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

ARTICLE 16

Directors Fees

Directors' fees and similar payments derived by a resident of a Contracting State for services performed outside such Contracting State in his capacity as a director or overseer of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if such person is:

- a) an individual;
- b) a Contracting State, or a political subdivision or local authority thereof;
- c) engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company) and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;
- d) either
 - (i) a company in whose principal class of shares there is substantial and regular trading on a recognized securities exchange located in either of the States;
 - (ii) a company which is wholly owned, directly or indirectly, by a resident of that Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange located in either of the States; or
 - (iii) a company which is
 - A) wholly owned, directly or indirectly, by residents of any state that is a party to the North American Free Trade Agreement ("NAFTA") in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange; and
 - B) more than 50 percent owned, directly or indirectly, by residents of either Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange located in such a State;
- e) an entity that is a not-for-profit organization (including a pension fund or private foundation) and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention;
- f) a person that satisfies both of the following conditions:
 - (i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the

company's shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs (a), (b), (d) or (e); and

(ii) less than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs (a), (b), (d) or (e); or g) a person claiming benefits under Articles 10 (Dividends), 11 (Interest), 11A (Branch Tax), or 12 (Royalties) that satisfies the following conditions:

(i) more than 30 percent of the beneficial interest in such person (or, in the case of a company, more than 30 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons resident in a Contracting State and entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e);

(ii) more than 60 percent of the beneficial interest in such person (or, in the case of a company, more than 60 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons resident in a state that is a party to NAFTA; and

(iii)

A) less than 70 percent of the gross income of such person is used directly or indirectly to meet liabilities (including liabilities for interest or royalties) to persons that are not entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e); and

B) less than 40 percent of the gross income of such person is used directly or indirectly to meet liabilities (including liabilities for interest or royalties) to persons that are neither entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (e) nor residents of a state that is a party to NAFTA.

A resident of a state that is a party to NAFTA shall only be considered as owning a beneficial interest (or share) under subparagraph (g)(ii) if that state has a comprehensive income tax Convention with the Contracting State from which the income is derived and if the particular dividend, profit or income subject to the branch tax, interest, or royalty payment, in respect of which benefits under this Convention are claimed, would be subject to a rate of tax under that Convention that is no less favorable than the rate of tax applicable to such resident under Articles 10 (Dividends), 11 (Interest), 11A (Branch Tax), or 12 (Royalties) of this Convention.

2. A person which is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, demonstrate to the competent authority of the State in which the income arises that such person should be granted the benefits of the Convention. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

ARTICLE 18
Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the remuneration derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed \$3,000 United States dollars or its equivalent in Mexican pesos for the taxable year concerned. The other Contracting State may impose tax by withholding on the entire amount of all gross receipts derived by such entertainer or athlete during the taxable year concerned, provided that such entertainer or athlete is entitled to receive a refund of such taxes when there is no tax liability for such taxable year in accordance with the provisions of this Convention.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services) be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

ARTICLE 19
Pensions, Annuities, Alimony, and Child Support

1. Subject to the provisions of Article 20 (Government Service):

- a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment by that individual or another individual resident of the same Contracting State shall be taxable only in that State; and
- b) social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

2. Annuities derived and beneficially owned by an individual resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid

periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony and child support payments made by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support. The term "child support" as used in this paragraph means periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support.

ARTICLE 20 Government Service

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
 b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid directly by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services previously rendered to that State or subdivision or authority shall be taxable only in that State.
 b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 18 (Artistes and Athletes), and 19 (Pensions, Annuities, Alimony; and Child Support) shall apply to remuneration and pensions in respect of commercial or industrial activities carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21 Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources, or are remitted from, outside that State.

ARTICLE 22
Exempt Organizations

1. An organization resident in a Contracting State which is operated exclusively for religious, scientific, literary, educational or other charitable purposes shall be exempt from tax in the other Contracting State in respect of items of income, if and to the extent that:

- a) such organization is exempt from tax in the first-mentioned Contracting State, and
- b) the items of income of such organization would be exempt from tax in the other Contracting State if received by an organization recognized in such other Contracting State as exempt from tax as an organization with religious, scientific, literary, educational, or other charitable purposes.

2. If the Contracting States agree that a provision of Mexican law provides standards for organizations authorized to receive deductible contributions that are essentially equivalent to the standards of United States law for public charities:

- a) an organization determined by Mexican authorities to meet such standards shall be treated, for purposes of grants by United States private foundations and public charities, as a public charity under United States law, and
- b) contributions by a citizen or resident of the United States to such an organization shall be treated as charitable contributions to a public charity under United States law.

However, contributions described in subparagraph (b) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the limitations of the laws of the United States in respect to the deductibility of charitable contributions to public charities (as they may be amended from time to time without changing the general principle hereof) to the income of such citizen or resident arising in Mexico. The preceding sentence shall not be interpreted to allow in any taxable year deductions for charitable contributions in excess of the amount allowed under the limitations of the laws of the United States in respect to the deductibility of charitable contributions.

3. If the Contracting States agree that United States law provides standards for public charities that are essentially equivalent to the standards of Mexican law for organizations authorized to receive deductible contributions, contributions by a resident of Mexico to an organization determined by the United States authorities to meet the standards for public charities shall be treated as deductible contributions under Mexican law. However, such contributions shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the limitations of the laws of Mexico in respect to the deductibility of contributions to organizations authorized to receive deductible contributions (as they may be amended from time to time without changing the general principle hereof) to the income of such resident arising in the United States. The preceding sentence shall not be interpreted to allow in any taxable year deductions for contributions in excess of the amount allowed under the limitations of the laws of Mexico in respect to the deductibility of contributions.

4. A religious, scientific, literary, educational or other charitable organization which is resident in Mexico and which has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

ARTICLE 23

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24

Relief From Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the Contracting States (as it may be amended from time to time without changing the general principle hereof), a Contracting State shall allow to a resident of that State and, in the case of the United States to a citizen of the United States, as a credit against the income tax of that State:

a) the income tax paid to the other Contracting State by or on behalf of such resident or citizen; and

b) in the case of a company owning at least 10 percent of the voting stock of a company which is a resident of the other Contracting State and from which the first-mentioned company receives dividends, the income tax paid to the other State by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For purposes of this paragraph, the taxes referred to in paragraphs 3 and 4 of Article 2 (Taxes Covered) shall be treated as income taxes, including any profits tax imposed on distributions but only to the extent such tax is imposed on earnings and profits as calculated under the tax accounting rules of the Contracting State of the beneficial owner of such distribution.

2. Where in accordance with the provisions of the Convention income derived by a resident of Mexico is exempt from tax in that State, Mexico may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. For the purposes of allowing relief from double taxation pursuant to this Article, income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 2 of Article 1 (General Scope)) shall be deemed to arise in that other State. Except as provided in Article 13 (Capital Gains), the preceding sentence is subject to such source rules in the domestic laws of the Contracting States as apply for purposes of limiting the foreign tax credit.

4. Where a United States citizen is a resident of Mexico:

a) With respect to items of income obtained by said citizen that are exempt from United States tax or that are subject to a reduced rate of United States tax, Mexico shall allow as a credit against Mexican tax, subject to the provisions of Mexican tax law regarding credit for foreign tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship of the taxpayer;

b) For purposes of computing United States tax, the United States shall allow as a credit against United States tax the income tax paid to Mexico after the credit referred to in subparagraph (a); but the credit so allowed shall not reduce that portion of the United States tax that is creditable against the Mexican tax in accordance with subparagraph (a);

c) For the exclusive purpose of relieving double taxation in the United States under subparagraph (b) items of income referred to in subparagraph (a) shall be deemed to arise in Mexico to the extent necessary to avoid double taxation of such income under subparagraph (b).

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. However, a national of a Contracting State who is subject to tax in that State on worldwide income and a national of the other Contracting State who is not taxed in the first-mentioned State on worldwide income are not in the same circumstances.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Nothing in this Article shall be construed as preventing either of the Contracting States from imposing the tax described in Article 11A (Branch Tax) or, in the case of Mexico, from denying a deduction for presumed expenses (without regard to where such expenses are incurred) to an individual resident of the United States who elects to be subject to tax in Mexico on a net basis with respect to income from real property.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State

shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to all taxes imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention, provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or the date of filing of the return in that other State, whichever is later. In such case, any agreement reached shall be implemented within ten years from the due date or the date of filing of the return in that other State, whichever is later, or a longer period if permitted by the domestic law of that other State.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together regarding cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot be resolved by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer(s) agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established between the States by notes to be exchanged through diplomatic

channels. The provisions of this paragraph shall have effect after the States have so agreed through the exchange of diplomatic notes.

ARTICLE 27
Exchange of Information

1. The competent authorities shall exchange information as provided in the Agreement Between the United States of America and the United Mexican States for the Exchange of Information with Respect to Taxes signed on November 9, 1989.

2. In the event such Agreement is terminated, the competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or to administer and enforce the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions.

3. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to all federal taxes.

ARTICLE 28
Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29
Entry Into Force

1. The Contracting States shall notify each other when their respective constitutional and statutory requirements for the entry into force of this Convention have been satisfied. The Convention will enter into force on the date of receipt of the later of such notifications.

2. The provisions of the Convention shall have effect:

a) in respect of taxes imposed in accordance with Articles 10 (Dividends), 11 (Interest), and 12 (Royalties), for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force if the Convention enters into force prior to July 1 of that year; otherwise, on the first day of January of the year following the year in which the Convention enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year following the year in which the Convention enters into force.

3. The existing agreement between the United Mexican States and the United States of America for the avoidance of double taxation of income derived from the operation of ships or aircraft in international traffic concluded by exchange of notes of August 7, 1989, shall terminate upon the entry into force of the Convention. However, the provisions of the said agreement shall continue in effect until the provisions of the Convention, in accordance with the provisions of paragraph 2(b), shall have effect.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which the Convention enters into force, provided that at least six months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes imposed in accordance with Articles 10 (Dividends), 11 (Interest), and 12 (Royalties), for amounts paid or credited on or after the first day of the second month next following the expiration of the six months period;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the six months period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Convention.

DONE at Washington, D.C., in duplicate, in the English and Spanish languages, both texts being equally authentic, this eighteenth day of September, 1992.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

(s) Nicholas F. Brady

FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES:

(s) Pedro Aspe Armella

PROTOCOL 1

At the moment of signing the Convention between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the

Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. With reference to paragraphs 1(f) and (g) of Article 3 (General Definitions),

When referred to in a geographical sense, Mexico and the United States include the areas of the seabed and subsoil adjacent to their respective territorial seas in which they may exercise rights in accordance with domestic legislation and international law.

2. With reference to paragraph 1 of Article 4 (Residence),

For purposes of paragraph 1 of Article 4 it is understood that:

a) Mexico shall consider a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) to be a resident of the United States only if the individual has a substantial presence in the United States or would be a resident of the United States and not of another country under the principles of subparagraph (a) and (b) of paragraph 2 of that Article;

b) a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income it derives is subject to tax in that State as the income of a resident, either in the hands of the partnership, estate or trust, or in the hands of its partners or beneficiaries;

c) the term "resident" also includes a Contracting State or a political subdivision or local authority thereof.

3. With reference to Articles 5 (Permanent Establishment), 6 (Income from Immovable Property (Real Property)), 7 (Business Profits) and 12 (Royalties),

It is understood that the asset tax imposed by Mexico shall not be applied to residents of the United States that are not subject to tax under the terms of Articles 5 and 7 of this Convention, except for the assets referred to in paragraph 2 of Article 6 and in paragraph 3 of Article 12 that are furnished by those residents to a resident of Mexico. In the former case, Mexico shall grant a credit against the tax on such assets in an amount equal to the income tax that would be imposed under the Mexican Income Tax Law on the gross income (if any) referred to in paragraph 1 of Article 6, whether or not the resident of the United States makes the election under paragraph 5 of Article 6 to be taxed on a net basis, provided less than 50 percent of the United States resident's gross income from such assets is used directly or indirectly to meet liabilities (including liabilities for interest) to persons who are not United States residents. In the latter case, Mexico shall grant a credit against the tax on such assets in an amount equal to the income tax that would have been imposed on the royalties paid (if any) applying the rate of tax provided in the Mexican Income Tax Law instead of the rate provided in Article 12.

4. With reference to Article 7 (Business Profits),

Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in any case where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment or in the cases covered by Article 23 of the Income Tax Law of Mexico, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.

5. With reference to paragraph 3 of Article 7 (Business Profits),

Expenses allowed as a deduction include a reasonable allocation of research and development expense, interest, and other expenses incurred in the taxable year for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), regardless of where incurred, but only to the extent that such expenses have not been deducted by such enterprise and are not reflected in other deductions allowed to the permanent establishment, such as the deduction for the cost of goods sold or of the value of the purchases.

6. With reference to Article 8 (Shipping and Air Transport),

Residents of the United States, whose profits derived from Mexico may not be taxed by Mexico in accordance with the provisions of Article 8 of the Convention, may not be subject to the Mexican assets tax on the assets used to produce such profits.

7. With reference to Article 9 (Associated Enterprises),

The provisions of paragraph 2 shall not apply in the case of fraud, gross negligence, or willful default.

8. With reference to paragraphs 2 and 3 of Article 10 (Dividends),

a) In the case of the United States, subparagraph (a) of paragraph 2 shall not apply to dividends paid by a United States Regulated Investment Company or a Real Estate Investment Trust. Subparagraph (b) of paragraph 2 and paragraph 3 shall apply in the case of dividends paid by a Regulated Investment Company. In the case of dividends paid by a Real Estate Investment Trust, subparagraph (b) of paragraph 2 and paragraph 3 shall apply if the beneficial owner of the dividends is an individual holding a less than 10 percent interest in the real estate investment trust; otherwise the rate of withholding applicable under domestic law shall apply.

b) If the United States agrees in a treaty with another country to impose a lower rate on dividends than the rate specified in subparagraph (a) of paragraph 2, both Contracting States shall apply that lower rate instead of the rate specified in subparagraph (a) of that paragraph.

9. With reference to paragraph 3 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), and paragraph 5 of Article 11 (Interest),

If the law of a Contracting State calls for a payment to be characterized in whole or in part as a dividend or limits the deductibility of such payment because of thin capitalization rules or because the relevant debt instrument includes an equity interest, the Contracting State may treat such payment in accordance with such law.

10. With reference to paragraphs 2, 3, and 4 of Article 11 (Interest),

a) The provision, of paragraphs 2, 3, and 4 shall not apply to a Mexican resident that is a holder of a residual interest in a U.S. real estate mortgage investment conduit (REMIC) with respect to any excess inclusion. Upon notification of the United States competent authority by the Mexican competent authority that, after this treaty takes effect, Mexico has authorized the marketing of securitized mortgages in a manner identical to a REMIC, the provisions of

paragraphs 2, 3, and 4 also shall not apply to a U.S. resident that is a holder of an interest in any such entity with respect to income that is comparable to an excess inclusion. Moreover, if either of the Contracting States develops an entity that, although not identical to a REMIC, is substantially similar to a REMIC or an instrument that is substantially similar to a residual interest in a REMIC, the competent authorities of the Contracting States shall consult to determine whether the treatment provided in this paragraph for REMICs shall apply to such instrument or entity.

b) With reference to subparagraph b (ii) of paragraph 2 of Article 11, the rate specified shall apply only if the beneficial owner of the interest is the original seller of the machinery and equipment. If the original seller transfers the beneficial ownership of the interest, the identity of the transferee will determine the rate of tax that may be charged upon the interest by the Contracting State in which the interest arises.

11. With reference to paragraph 3 of Article 12 (Royalties),

It is understood that the term “information concerning industrial, commercial or scientific experience” will be defined in accordance with paragraph 12 of the commentary on Article 12 (Royalties) of the 1977 Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on capital of the Organization for Economic Cooperation and Development.

12. With reference to paragraph 2 of Article 13 (Capital Gains),

The term “immovable property situated in the other Contracting State”, as described in this paragraph, when the United States is that other Contracting State includes a United States real property interest.

13. With reference to paragraph 4 of Article 13 (Capital Gains),

For purposes of this paragraph, no tax shall apply in the case of a transfer of property between members of a group of companies that file a consolidated tax return, to the extent that the consideration received by the transferor consists of participation or other rights in the capital of the transferee or of another company resident in the same Contracting State that owns directly or indirectly 80 percent or more of the voting rights and value of the transferee, if:

- a) the transferor and transferee are companies resident in the same Contracting State:
- b) before and immediately after the transfer, the transferor or the transferee owns, directly or indirectly, 80 percent or more of the voting rights and value of the other, or a company resident in the same Contracting State owns directly or indirectly (through companies resident in the same Contracting State) 80 percent or more of the voting rights and value of each of them; and
- c) for the purpose of determining gain on any subsequent disposition,
 - (i) the initial cost of the asset for the transferee is determined based on the cost it had for the transferor, increased by any cash or other property paid, or
 - (ii) the gain is measured by another method that gives substantially the same result.

Notwithstanding the foregoing, if cash or property other than such participation or other rights is received, the amount of the gain (limited to the amount of cash or other property received), may be taxed by the other Contracting State.

14. With reference to paragraph 1 of Article 14 (Independent Personal Services),

Article 14 shall also apply to income derived by a company which is a resident of the United States from the furnishing of personal services through a fixed base in Mexico in accordance with subparagraph (a) of paragraph 1. In that case, the company may compute the tax on the income from such services on a net basis as if that income were attributable to a permanent establishment in Mexico.

15. With reference to paragraph 2 of Article 11 (Interest), paragraph 2 of Article 11A (Branch Tax), and paragraph 1 of Article 17 (Limitation on Benefits),

a) For purposes of subparagraph (c) of paragraph 1 of Article 17 and paragraph 2 of Article 11A, the term "trade or business" means, in the case of Mexico, activities carried on through a permanent establishment as defined in the Income Tax Law of Mexico.

b) For purposes of subparagraph (a)(ii) of paragraph 2 of Article 11 and subparagraph (d) of paragraph 1 of Article 17, the term "recognized securities exchange" means:

(i) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

(ii) stock exchanges duly authorized under the terms of the Stock Market ("Mercado de Valores") Law of January 2, 1975; and

(iii) any other stock exchange agreed upon by the competent authorities of the Contracting States.

c) For purposes of subparagraph (f)(ii) of paragraph 1 of Article 17, the term "gross income" means gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

d) the provisions of subparagraphs (d)(iii) and (g) of paragraph 1 of Article 17 shall only take effect when NAFTA enters into force.

16. With reference to Article 18 (Artistes and Athletes),

Remuneration derived by an entertainer or athlete who is a resident of a Contracting State shall include remuneration for any personal activities performed in the other Contracting State relating to that individual's reputation as an entertainer or athlete. The provisions of this Article shall not apply to auxiliary or supporting personnel, such as technicians, or to managers or coaches, who shall remain subject to the provisions of Articles 14 and 15.

17. With reference to paragraphs 1, 2, and 3 of Article 22 (Exempt Organizations),

a) The certification made by a Contracting State of the status of a resident of that State as an organization which is operated exclusively for religious, scientific, literary, educational or

other charitable purposes and exempt from tax in that State shall be accepted by the other Contracting State for the purpose of allowing such organization to be exempt from tax in that other Contracting State in accordance with the provisions of paragraph 1. However, if the competent authority of the other Contracting State determines that granting an exemption is inappropriate in a specific case or circumstance, the exemption may be denied after consultation with the competent authority of the first Contracting State.

b) The Contracting States agree that:

(i) Article 70-B of the Mexican Income Tax Law and section 509(a)(1) and (2), except for organizations described in section 170(b)(1)(A)(i), of the United States Internal Revenue Code, as interpreted by the governing regulations and administrative rulings of Mexico and the United States, respectively, in effect on the date of the signing of this Convention, provide essentially equivalent standards for organizations within their coverage, within the meaning of paragraphs 2 and 3; and

(ii) Therefore, a finding by the tax authorities of Mexico that an organization qualifies under Article 70-B, or by the United States tax authorities that an organization qualifies under section 509(a)(1) or (2), except for an organization described in section 170(b)(1)(A)(i), shall be accepted by the other Contracting State for the purpose of extending to such organization the benefits provided for in paragraphs 2 and 3. However, if the competent authority of the other Contracting State determines that granting such benefits is inappropriate with respect to a particular organization or type of organization, such benefits may be denied after consultation with the competent authority of the first Contracting State.

18. With reference to paragraph 5 of Article 26 (Mutual Agreement Procedure),

a) After a period of three years after the entry into force of this Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes referred to in paragraph 5 of Article 26 (Mutual Agreement Procedure).

b) If the competent authorities of both States agree to submit a disagreement regarding the interpretation or application of this Convention in a specific case to arbitration according to paragraph 5 of Article 26, the following procedures will apply:

(i) If, in applying paragraphs 1 to 4 of Article 26, the competent authorities fail to reach an agreement within two years of the date on which the case was submitted to one of the competent authorities, they may agree to invoke arbitration in a specific case, but only after fully exhausting the procedures available for paragraphs 1 to 4 of Article 26. The competent authorities will not accede to arbitration with respect to matters concerning the tax policy or domestic law of either State.

(ii) The competent authorities shall establish an arbitration board for each specific case in the following manner:

A. An arbitration board shall consist of not fewer than three members. Each competent authority shall appoint the same number of members, and these members shall agree on the appointment of the other member(s). The

competent authorities may issue further instructions regarding the criteria for selecting the other member(s) of the arbitration board.

B. Arbitration board member(s) (and their staffs) upon their appointment must agree in writing to abide by and be subject to the applicable confidentiality and disclosure provisions of both States and the Convention. In case those provisions conflict, the most restrictive condition will apply.

(iii) The competent authorities may agree on and instruct the arbitration board regarding specific rules of procedure, such as appointment of a chairman, procedures for reaching a decision, establishment of time limits, etc. Otherwise, the arbitration board shall establish its own rules of procedure consistent with generally accepted principles of equity.

(iv) Taxpayers and/or their representatives shall be afforded the opportunity to present their views to the arbitration board.

(v) The arbitration board shall decide each specific case on the basis of the Convention, giving due consideration to the domestic laws of the States and the principles of international law. The arbitration board will provide to the competent authorities an explanation of its decision. The decision of the arbitration board shall be binding on both States and the taxpayer(s) with respect to that case. While the decision of the arbitration board shall not have precedential effect, it is expected that such decisions ordinarily will be taken into account in subsequent competent authority cases involving the same taxpayer(s), the same issue(s), and substantially similar facts, and may also be taken into account in other cases where appropriate.

(vi) Costs for the arbitration procedures will be borne in the following manner:

A. Each State shall bear remuneration for the member(s) as well as for its representation before the arbitration board;

B. The cost of remuneration for the other member(s) and all other costs of the arbitration board shall be shared equally between the States; and

C. The arbitration board may decide on a different allocation of costs.

However, if it deems appropriate in a specific case, in view of the nature of the case and the roles of the parties, the competent authority of one of the States may require the taxpayer(s) to agree to bear that State's share of the costs as a prerequisite for arbitration.

(vii) The competent authorities may agree to modify or supplement these procedures; however, they shall continue to be bound by the general principles established herein.

19. With reference to paragraph 1 of Article 27 (Exchange of Information),

If the Agreement between the United States of America and the United Mexican States for the Exchange of Tax Information should be terminated, the Contracting States shall promptly endeavor to conclude a protocol to this Convention to accomplish the purposes of this Article.

20. With reference to Article 30 (Termination),

When the competent authority of one of the Contracting States considers that the law of the other Contracting State is or may be applied in a manner that eliminates or significantly limits a benefit

provided by the Convention, that State shall inform the other Contracting State in a timely manner and may request consultations with a view to restoring the balance of benefits of the Convention. If so requested, the other State shall begin such consultations within three months of the date of such request.

PROTOCOL 2

ADDITIONAL PROTOCOL THAT MODIFIES THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

ADDITIONAL PROTOCOL THAT MODIFIES THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT WASHINGTON ON SEPTEMBER 18, 1992. THE ADDITIONAL PROTOCOL WAS SIGNED AT MEXICO CITY ON SEPTEMBER 8, 1994

LETTER OF SUBMITTAL (PROTOCOL 2)

DEPARTMENT OF STATE,
Washington, September 9, 1994.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, an Additional Protocol that Modifies the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington, September 18, 1992. The Additional Protocol was signed at Mexico City, September 8, 1994.

Article 27 of the Convention provides for the exchange of information under the Agreement for the Exchange of Information with Respect to Taxes between the United States and Mexico, signed on November 9, 1989. The Additional Protocol will amend Article 27 to broaden the scope of tax information exchange with Mexico. The Protocol provides that the administrative authorities of each Party are authorized to exchange information in accordance with and with respect to any tax covered by any tax information exchange agreement. Information exchange under the treaty will also apply to taxes imposed at all levels of government.

The treaty Protocol will be of significant benefit to the United States by enabling state tax administrations to streamline procedures and thereby encourage cross border commerce. At the same time, more comprehensive tax compliance programs can be developed targeting the underground economies on both sides of the border.

The Protocol will enter into force when both governments have completed their constitutional and statutory procedures and have notified each other to that effect.

The current Agreement Between the United States of America and the United Mexican States for the Exchange of Information with Respect to Taxes, which now applies only to federal taxes, is also being amended by a protocol to provide for the exchange of information to administer and enforce tax laws at all levels of government. This protocol will enter into force only after the Additional Protocol to the Convention has been ratified.

A technical memorandum explaining in detail the provisions of the Protocol is being prepared by the Department of Treasury and will be submitted separately to the Senate Committee on Foreign Relations. That memorandum will attach a copy of the protocol amending the Agreement for the Exchange of Information with Respect to Taxes.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Additional Protocol. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

LETTER OF TRANSMITTAL (PROTOCOL 2)

THE WHITE HOUSE, *September 19, 1994.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Additional Protocol that Modifies the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of

Fiscal Evasion with Respect to Taxes on Income, signed at Washington on September 18, 1992. The Additional Protocol was signed at Mexico City on September 8, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Additional Protocol.

The Additional Protocol will amend the tax treaty provisions to broaden the scope of tax information exchange with Mexico. The Protocol will authorize the exchange of tax information under any tax information exchange agreement between the two countries and will provide for information exchange under the treaty for taxes at all levels of government.

The current Agreement Between the United States of America and the United Mexican States for the Exchange of Information with Respect to Taxes, which now applies only to Federal taxes, is also being amended by a protocol to provide for the exchange of information to administer and enforce tax laws at all levels of government. This protocol, which was also signed at Mexico City on September 8, 1994, will enter into force only after the Protocol to the Convention has been ratified.

I recommend that the Senate give early and favorable consideration to the Additional Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

ADDITIONAL PROTOCOL THAT MODIFIES THE CONVENTION
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON, D.C.,
ON SEPTEMBER 18, 1992

The Government of the United States of America and the Government of the United Mexican States, desiring to amend the Convention between the United States of America and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed on September 18, 1992, have agreed upon the following provisions which shall be an integral part of the Convention:

ARTICLE I

Article 27 (Exchange of Information) of the Convention shall be amended to read as follows:

"1. The Competent Authorities are authorized to exchange information with respect to any tax covered by, and in accordance with, the provisions of any agreement between the Contracting States for the exchange of information with respect to taxes.

2. In the event that no such agreement is in effect, the competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of the Convention or to administer and enforce the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement and prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions.

3. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to all taxes imposed by a Contracting State, including taxes imposed by a state, municipality, or other political subdivision or local authority thereof."

ARTICLE II

The Contracting States shall notify each other when their respective constitutional and statutory requirements for the entry into force of this Protocol have been satisfied. This Protocol shall enter into force on the date of receipt of the later of such notifications.

ARTICLE III

This Protocol shall remain in force as long as the Convention and Protocol of September 18, 1992, remain in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol

DONE at Mexico City, on the *eighth* day of *September* 1994, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

(s) Lloyd Bensen

FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES:

(s) Pedro Aspe Armella

SECOND ADDITIONAL PROTOCOL THAT MODIFIES THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the United Mexican States, desiring to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, along with a Protocol (the "Convention" and " Protocol", respectively), signed at Washington, D.C. on September 18, 1992; and

Having amended the Convention by an Additional Protocol that Modifies the Convention, signed at Mexico City on September 8, 1994;

Have agreed upon the following provisions which shall be an integral part of the Convention:

ARTICLE I

Article 1 of the Convention is deleted and the following Article is substituted:

“ARTICLE 1

General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
 2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded:
 - a) by the laws of either Contracting State; or
 - b) by any other agreement between the Contracting States.
 3. Notwithstanding the provisions of subparagraph b) of paragraph 2:
 - a) any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 26 (Mutual Agreement Procedure) of this Convention; and
 - b) the provisions of any other agreement shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 25 (Non-Discrimination) of this Convention.
- For the purposes of this paragraph, a “measure” is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.
4. Notwithstanding any provision of this Convention except paragraph 5, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect.
 5. The provisions of paragraph 4 shall not affect:
 - a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under subparagraph b) of paragraph 1 and paragraph 3 of Article 19 (Pensions, Annuities, Alimony, and Child Support), and under Articles 22

(Exempt Organizations), 24 (Relief from Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students), and 28 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor lawful permanent residents in, that State.

6. a) A former citizen or long-term resident whose loss of citizenship or long-term resident status had as one of its principal purposes the avoidance of tax (as defined under the laws of the Contracting State of which the person was a citizen or long-term resident) shall be treated for purposes of paragraph 4 of this Article as a citizen of that Contracting State, but only for a period of 10 years following the loss of such status. This paragraph shall apply only in respect of income from sources within that Contracting State (including income deemed under the domestic law of that State to arise from such sources).

b) The term “long-term resident” shall mean any individual who is a lawful permanent resident of a Contracting State in 8 or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of the other Contracting State under this Convention, or as a resident of any country other than the first-mentioned Contracting State under the provisions of any other tax treaty of that Contracting State, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

7. In the case of an individual who is a former citizen of a Contracting State, the following factors shall be considered favorably in determining whether or not one of the principal purposes of that individual’s loss of citizenship of that Contracting State was the avoidance of tax:

a) at the time of the individual ceasing to be a citizen of that Contracting State or within a reasonable period thereafter, the individual is or becomes a resident fully liable to income tax in the other Contracting State, and

- b)
 - i) the individual was a citizen of both Contracting States at birth and has remained a citizen of the other Contracting State;
 - ii) at the time of the loss of such citizenship (or within a reasonable period thereafter), the individual was or became a citizen of the other Contracting State, and that other Contracting State was that individual's country of birth, or the country of birth of that individual's spouse or of either of that individual's parents;
 - iii) in the 10 years preceding the loss of such citizenship, the individual was present in that Contracting State for no more than 30 days in each taxable year or year of assessment; or
 - iv) the loss of citizenship occurred before the individual attained the age of 18 and one half years.

8. In the case of an individual who is a former long-term resident of a Contracting State, the following factors shall be considered favorably in determining whether or not one of the principal purposes of that individual's ceasing to be a long-term resident of that Contracting State was the avoidance of tax:

- a) at the time of the individual ceasing to be a long-term resident of that Contracting State or within a reasonable period thereafter, the individual is or becomes a resident fully liable to income tax in the other Contracting State, and that other Contracting State is:
 - i) the country in which the individual was born;
 - ii) the country in which the individual's spouse was born; or
 - iii) the country where either of the individual's parents was born;
- b) in the 10 years preceding the individual's ceasing to be a long-term resident of that Contracting State, the individual was present in that Contracting State for no more than 30 days in each taxable year or year of assessment; or
- c) the individual ceases to be a long-term resident of that Contracting State before reaching the age of 18 and one half years."

ARTICLE II

- a) Article 10 of the Convention is deleted and the following Article is substituted:

“ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - a) 5 percent of the gross amount of the dividends, if the beneficial owner is a company which owns directly at least 10 percent of the voting stock of the company paying the dividends; and
 - b) 10 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is a resident of the other Contracting State and is either:
 - a) a company that has owned shares representing 80 percent or more of the voting stock of the company paying the dividends for a 12-month period ending on the date the dividend is declared, and that:
 - i) prior to October 1, 1998 owned, directly or indirectly, shares representing 80 percent or more of the voting stock of the company paying the dividends; or

- ii) is entitled to the benefits of the Convention under clauses (i) or (ii) of subparagraph d) of paragraph 1 of Article 17 (Limitation on Benefits); or
 - iii) is entitled to the benefits of the Convention with respect to the dividends under subparagraph g) of paragraph 1 of Article 17; or
 - iv) has received a determination from the relevant competent authority pursuant to paragraph 2 of Article 17 with respect to this paragraph; or
- b) a trust, company, or other organization constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in the Contracting State of which it is a resident, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such trust, company or organization.
4. a) Subparagraph a) of paragraph 2 and subparagraph a) of paragraph 3 shall not apply in the case of dividends paid by a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT).
- b) In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply.
- c) In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply only if:
- i) the person beneficially entitled to the dividends is an individual or a person described in subparagraph b) of paragraph 3, in either case owning an interest of not more than 10 percent in the REIT;
 - ii) the dividends are paid with respect to a class of stock that is publicly traded and the person beneficially entitled to the dividends owns an interest of not more than 5 percent of any class of the REIT's stock; or
 - iii) the person beneficially entitled to the dividends owns an interest of not more than 10 percent in the REIT and the gross value of no single interest in real property held by the REIT exceeds 10 percent of the gross value of the REIT's total interest in real property.

5. The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated in that other Contracting State, or performs or has performed in that other Contracting State independent personal services from a fixed base situated in that other State, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights that is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

7. When a company that is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by a company which is not a resident of that State, except insofar as such dividends are paid to a resident of that other State or the dividends are attributable to a permanent establishment or fixed base situated in that State.

8. The competent authorities of the Contracting States shall consult each other with a view to develop a commonly agreed application of clause iv) of subparagraph a) of paragraph 3 of this Article, including the publication of regulations or other public guidance.”

b) Paragraph 8 of the Protocol is deleted and the following is substituted:

“8. *With reference to paragraph 3 of Article 10 (Dividends).*

If the United States agrees in a treaty with another country to a provision similar to paragraph 3 of Article 10 of the Convention, but with more beneficial conditions than those contained in paragraph 3 of Article 10, the Contracting States shall, at Mexico’s request, consult each other with a view to concluding an additional protocol to incorporate similar provisions into paragraph 3 of Article 10 to restore the balance of the benefits provided under the Convention.”

c) With regard to paragraph 9 of the Protocol, the reference to “paragraph 4 of Article 10 (Dividends),” is deleted and substituted by “paragraph 6 of Article 10 (Dividends),”.

ARTICLE III

Article 11A of the Convention is amended by inserting an additional paragraph as follows:

“3. Notwithstanding the provisions of the preceding paragraphs, a company will be exempt from the tax described in subparagraph a) of paragraph 2 if such company:

- a) prior to October 1, 1998, was engaged in activities giving rise to profits attributable to the permanent establishment described in paragraph 2 or to income or gains to which the provisions of Article 6 (Income From Immovable Property (Real Property)) or, as the case may be, paragraphs 1 and 4 of Article 13 (Capital Gains) apply;
- b) is entitled to the benefits of the Convention under clauses (i) or (ii) of subparagraph d) of paragraph 1 of Article 17 (Limitation on Benefits);
- c) is entitled to the benefits of the Convention with respect to the dividends under subparagraph g) of paragraph 1 of Article 17; or
- d) has received a determination from the relevant competent authority pursuant to paragraph 2 of Article 17 with respect to this paragraph.”

ARTICLE IV

Paragraph 4 of Article 13 (Capital Gains) of the Convention is deleted and the following paragraph is substituted:

“4. In addition to gains taxable in accordance with the provisions of the preceding paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company or other legal person which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, during the 12-month period preceding such alienation, had a participation,

directly or indirectly, of at least 25 percent in the capital of that company or other legal person.”

ARTICLE V

Paragraph 3 of Article 24 (Relief From Double Taxation) of the Convention is deleted and the following is substituted:

“3. For the purposes of allowing relief from double taxation pursuant to this Article, an item of gross income, as determined under the laws of a Contracting State, derived by a resident of that State that under this Convention may be taxed in the other Contracting State (other than solely by reason of citizenship in accordance with paragraph 4 of Article 1 (General Scope)), shall be deemed to be income from sources in that other State.”

ARTICLE VI

- a) The Contracting States shall notify each other, through diplomatic channels, when their respective constitutional and statutory requirements for the entry into force of this Protocol have been satisfied. This Protocol shall enter into force on the date of receipt of the later of such notifications.
- b) The provisions of this Protocol shall have effect:
 - i) in respect of Article II, for dividends paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force;
 - ii) in respect of Articles I, III, IV and V, for taxable periods beginning on or after the first day of January of the year following the year in which the Protocol enters into force.

ARTICLE VII

This Protocol shall remain in force as long as the Convention and Protocol of September 18, 1992, remain in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at _____, on the ____ day of _____, 2002, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES: