Overview of the U.S.-Uruguay Treaty

The Treaty with Uruguay was signed by the United States and Uruguay on November 4, 2005. The following overview summarizes key provisions of the Treaty, and identifies provisions that vary materially from the 2004 U.S. Model BIT (Model).

Section A - General Provisions

Definitions, Scope and Coverage (Articles 1, 2)

Critical definitions relating to "investment" and "covered investment" were drawn from the Model. The Treaty defines an "investment" in broad terms as an asset that is directly or indirectly controlled by an investor and has characteristics such as the expectation, of profit, the assumption of risk by the investor, or the commitment of capital. The definition of investment provides an illustrative list of different types of investments. In addition, in a departure from the Model, the United States and Uruguay agreed to clarify in a footnote to the definition of "investment" that claims to payment that are immediately due and result from the sale of goods or services are not investments.

The Treaty applies generally to measures of either the United States or Uruguay, hereinafter referred to as the "Parties" or, individually, as a "Party," relating to investors of the other Party and to their investments in the territory of the first Party (defined as "covered investments"). A "covered investment" includes investments that exist on the date the Treaty enters into force and those that are established, acquired, or expanded thereafter.

National and Most-Favored-Nation Treatment (Articles 3, 4)

The Treaty protects investors of a Party and their covered investments from discriminatory measures by the other Party during the full life-cycle of an investment, including the establishment phase, when investors are attempting to make an investment. Each Party commits to provide to investors of the other Party and to their covered investments treatment no less favorable than that which it provides, in like circumstances, to its own investors or to investors from any third country and their investments.

Minimum Standard of Treatment (Article 5, Annex A)

Article 5 of the Treaty establishes a minimum standard of treatment that each Party owes to covered investments. The minimum standard of treatment is defined as "treatment in accordance with customary international law, including fair and equitable treatment and full protection and security." "Fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process found in the principal legal systems of the world. The obligation to provide "full protection and security" requires a host country to provide the level of police protection required under customary international law. Article 5 also states that a breach of another provision of the Treaty or of a separate international agreement would not necessarily constitute a breach of the Treaty's minimum standard of treatment obligation. The Article further requires that each Party must accord to covered investments and to investors of the other Party non-discriminatory treatment with respect to measures adopted in relation to losses suffered by investments due to armed conflict or civil strife. Finally, in the event that an investor suffers losses as a result of a Party's requisition or unnecessary destruction of its covered investment, restitution and/or compensation must be paid.

Annex A sets forth the shared understanding of the Parties regarding the meaning of "customary international law" in Article 5 (and in Annex B on Expropriation) and clarifies that the customary international law minimum standard of treatment of aliens owed under Article 5 refers to all customary international law principles that protect the economic rights and interests of aliens.

Expropriation and Compensation (Article* 6, *Annexes A and B)

Article 6 incorporates into the Treaty the customary international law standard for lawful expropriation, providing that a Party may expropriate property if it does so for a public purpose, in a non-discriminatory manner, in accordance with due process of law, and accompanied by prompt, adequate, and effective compensation. Article 6 addresses both direct expropriation, when a government actua1ly transfers title or seizes an investment, and indirect expropriation, when a governmental action or series of actions has an effect equivalent to direct expropriation.

Annex B clarifies these standards by setting forth the shared understanding of the Parties as to how a determination of whether an expropriation has occurred should be made. The Annex states that a Party's actions can only be considered an expropriation if they interfere with a tangible or intangible property interest or right in an investment. With respect to indirect expropriation, the Annex endorses a case-by-case, fact-based approach, and lists three factors,. among others, that tribunals must consider in determining whether an indirect expropriation has occurred: (1) the adverse economic impact of the government action, (2) the extent of government interference with reasonable investment-backed expectations, and (3) the character of the government action. The analytical approach adopted in Annex B is adapted from the seminal U.S. Supreme Court case relating to regulatory taking, *Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978), and is consistent with customary international law. Finally, Annex B observes that, except in rare circumstances, non-discriminatory regulatory actions designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriations. In the Protocol to the Treaty, the Parties confirm that the list of "legitimate public welfare objectives" in Annex B is not exhaustive.

***Transfers (Article* 7)**

The Treaty's free transfers obligation requires that a Party permit capital and other transfers related to a covered investment to be made freely and without delay both into and out of its territory. Additionally, a Party must permit transfers to be made in a "freely usable currency," as designated by the International Monetary Fund, at the market rate prevailing at the time of the transfer. Parties may prevent transfers through the equitable and non-discriminatory application of certain laws, including those relating to criminal offenses, the regulation of financial markets, and compliance with orders or judgments in judicial or administrative proceedings.

***Performance Requirements (Article* 8)**

Article 8 prohibits the imposition by Parties of several requirements relating to the performance of investments, including a requirement to achieve a given level of exports or domestic content or a requirement linking the value of imports or domestic sales by an investment to the level of its export or foreign exchange earnings. The Article also prohibits Parties from offering advantages, such as a tax holiday, in exchange for a more limited set of performance requirements. In addition, so as not to place U.S. and Uruguayan investors at a competitive disadvantage, the disciplines that Article 8 imposes upon performance requirements also apply to all investments in the territory of a Party, including those owned or controlled by host-country investors or by investors of a non-Party. The Article also clarifies that the prohibitions in paragraphs 1 and 2 only apply to the requirements specifically enumerated in those paragraphs.

***Senior Management and Boards of Directors (Article* 9)**

The Treaty prohibits measures requiring that persons of any particular nationality be appointed to senior management positions in a covered investment. A country may require that a majority of the board of directors of a covered investment be of a particular nationality, however, or that a director be a resident of the host country, so long as such requirements do not materially impair an investor's control over its investment.

Publication of Laws and Decisions Respecting Investment (Article 10)

Article 10 seeks to promote transparency in the legal framework governing investment. It requires the Parties to ensure that laws, regulations, procedures, administrative rulings of general application, and adjudicatory decisions that relate to any matter covered by the Treaty are promptly published or made publicly available.

***Transparency in Lawmaking and Administrative Proceedings (Article 11*)**

Under Article II, each Party is obligated, to the extent possible, to publish in advance any laws, regulations, procedures, or administrative rulings of general application with respect to matters covered by the Treaty that the Party proposes to adopt, and to provide interested persons and the other Party a reasonable opportunity to comment on proposed measures. Article 11 includes detailed provisions concerning the notification of information about government actions and the character of administrative proceedings, including review and appeal processes.

***Environment and Labor (Articles 12, 13*)**

In Articles 12 and 13, the Parties acknowledge that it would be inappropriate to encourage investment by weakening or reducing the protections afforded in domestic environmental and labor laws, respectively. Both Articles also provide that a Party may request consultations with the other Party if it considers that the other Party has offered such an encouragement. Article 12 provides that nothing in the Treaty shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with the Treaty that it considers appropriate to ensure that investment activity in its territory is conducted in a manner sensitive to environmental concerns. The Parties also agreed to a similar provision under Article 13 with respect to labor concerns, which is not included in the Model.

Non-Conforming Measures (Article 14, Annexes I, ll and III)

Article 14 establishes the framework for the Treaty's Annexes of non-conforming measures (NCMs). In these Annexes, each Party lists existing measures to which any or all of four key obligations of the Treaty do not apply, and sectors or activities in which each Party reserves the right to adopt future measures to which any or all of those obligations will not apply. The Article specifies that a Party may list measures that do not conform to the following four obligations: National Treatment (Article 3), Most-Favored-Nation Treatment (Article 4), Performance Requirements (Article 8), and Senior Management and Boards of Directors (Article 9). The Parties list existing NCMs maintained at either the central or regional level of government in Annexes I and ill. Annex ill is reserved for existing financial services NCMs. The Parties list the sectors or activities in which they reserve the right to adopt future NCMs in Annex II. The Parties negotiated the content of the Annexes in conjunction with the negotiation of the Treaty text, and the Annexes are an integral part of the Treaty.

Article 14 includes several other provisions. It makes clear that the four obligations above do not apply to existing NCMs maintained at local levels of government. The Article also prohibits a Party from adopting, in a sector or activity covered by Annex II, any future measure that requires an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment. It exempts application of the national treatment and most-favored-nation treatment obligations to measures covered by an exception to, or derogation from, the obligations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights. It also specifies that Articles 3 (National Treatment), 4 (Most-Favored-Nation Treatment), and 9 (Senior Management and Boards of Directors) do not apply to government procurement or to grants or subsidies provided by a Party.

Because the Parties' existing non-conforming measures are set out in detail in Annexes I and III, and because the Parties reserve the right in Annex II to adopt future NCMs on a sectoral basis, the following list merely identifies the sectors, subsectors or activities listed in each Party's Annex entries. The Annexes should be consulted for a complete and accurate description of each NCM.

Annex 1

Uruguay:	Fisheries, Print Media, Radio and Television, Railway Transportation Services, Road Transportation Services, Maritime Transportation Services and Ancillary Service, Air Services
United States:	Atomic Energy, Mining, Air Transportation, Customs Brokers, Radiocommunications Licenses, and restrictions on securities registration and OPIC insurance eligibility.

Annex II

Uruguay:	Road, Railway, Airport, and Port Services and Infrastructure; Water and Gas Distribution Services; preferences for minorities; restrictions on transfers of shares in certain state-held enterprises to Uruguayan nationals; Postal Services; Social Services; Traditional Events and Festivities; Railway Transportation Services and Ancillary Services; differential treatment pursuant to existing international treaties; and Ground Transportation.
United States:	Radio/Satellite Communications; Cable Television; Social Services; Minority Affairs; measures relating to U.S.-flagged maritime vessels; and differential treatment pursuant to existing international treaties;

Annex III

Uruguay:	Financial Services/Banking and Insurance;
United States:	Financial Services/Banking; Insurance; and general Financial Services

***Special Formalities and Information Requirements (Article 15*)**

Article 15 allows a Party to adopt or maintain measures that prescribe special formalities in connection with covered investments, such as investor residency or incorporation requirements, so long as such formalities do not materially impair the Treaty's protections. The Article also provides that, notwithstanding the Treaty's nondiscrimination obligations (Articles 3 and 4), a Party may require an investor of the other Party, or its covered investment, to provide information relating to the investment solely for informational or statistical purposes, so long as the Party imposing the requirement protects confidential business information from disclosure.

***Non-Derogation (Article 16*)**

Article 16 stipulates that the Treaty does not derogate from other obligations or laws of a Party that entitle an investor to more favorable treatment than that accorded by the Treaty.

***Denial of Benefits (Article 17*)**

Article 17 establishes that a Party may deny the benefits of the Treaty to an investor of the other Party that is an enterprise of the other Party, and to its investments, if persons of a third country own or control the enterprise and the denying Party either (1) has no diplomatic relations with the third country; or (2) adopts or maintains measures, such as foreign policy sanctions, with respect to the third country or to a person of the third country that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of the Treaty were accorded to the enterprise or to its investments. Article 17 also establishes that a Party may deny the benefits of the Treaty to an investor of the other Party that is an enterprise of the other Party, and to its investments, if the enterprise has no substantial business activities in the territory of the other Party and persons of a third country, or of the denying Party, own or control the enterprise.

***Essential Security (Article 18*)**

Article 18 states that nothing in the Treaty may be construed to preclude a Party from applying measures that it considers necessary either to protect its own essential security interests or to fulfill its obligations with respect to the maintenance or restoration of international peace and security. The Treaty makes explicit the implicit understanding that measures to protect a Party's essential security interests are self-judging in nature, although each Party would expect the provisions to be applied by the other in good faith. Article 18 also states that the Treaty does not require a Party to provide access to information if it determines that such disclosure would be contrary to its essential security interests.

Disclosure of Information (Article 19)

Article 19 establishes that nothing in the Treaty may be construed to require a Party to provide access to confidential information, the disclosure of which would impede law enforcement, would otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

Financial Services (Article 20, Annex F)

Article 20 includes two provisions that relate to the regulation of financial markets. Paragraph 1, the prudential exception, specifies that the Treaty does not prohibit a Party from adopting or maintaining measures relating to financial services for prudential reasons, including for the protection of depositors, investors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system. Paragraph 2, the monetary and exchange rate policy exception; establishes that no provision of the Treaty applies to non-discriminatory measures of general application that may be taken by a Party's central bank or monetary authority pursuant to monetary and related credit policies or exchange rate policies.

Article 20 modifies the standard investor-State dispute-settlement provisions of the Treaty for disputes in which a Party invokes one of the exceptions in paragraphs 1 or 2 as a defense against an investor claim. In the event that a Party invokes one of the exceptions, it must within 120 days of the date the investor's claim is submitted to arbitration submit to the competent financial authorities of both Parties a written request for a joint determination on the issue of whether and to what extent one of the exceptions is a valid defense to the investor's claim. If the competent financial authorities agree that the defense is valid, the investor's claim will be barred from arbitration. If the competent financial authorities fail to reach a determination by the end of the 120 day period, the tribunal will decide the issue. Article 20 also includes special procedures for the selection of arbitrators with expertise on financial matters. The Article also provides that the Party that is not a party to the dispute may make oral or written submissions to the tribunal regarding the issue of whether and to what extent paragraph 1 or 2 is a valid defense to the claim. If it fails to make such a submission, the non-disputing Party shall be presumed, for purposes of the arbitration, to take a position not inconsistent with that of the respondent.

Paragraph 4 of Article 20 also modifies the State-State dispute-settlement provisions of Section C of the Treaty for disputes in which the competent financial authorities of one Party provide written notice to their counterparts in the other Party that the dispute involves financial services. In the event that such notice is provided, the competent financial authorities of both Parties must conduct consultations regarding the dispute, and report the result of their consultations to the Parties, which either Party may transmit to the tribunal.

In addition, in a departure from the Model, the Parties agreed to an Annex that addresses financial services issues. Annex F clarifies the shared understanding of the Parties concerning the application of the national treatment and most-favored-nation treatment obligations to measures of a Party relating to financial institutions. It explains that, in evaluating the relative treatment that the host government has accorded to investors, the relevant treatment is treatment with respect to financial institutions and investments in financial institutions that the investors own or control. And, likewise, in evaluating the relative treatment that the host government has accorded to covered investments, the relevant treatment is treatment with respect to financial institutions and investments. It also provides that investor-State arbitration is not available for national treatment and most-favored-nation treatment claims concerning a measure of a Party relating to an investor or covered investment in a financial institution in its territory that is authorized to do business and regulated or supervised as a financial institution under domestic law. Finally, the Annex clarifies that the Treaty does not prevent a Party from taking measures relating to financial institutions that are necessary to secure compliance with laws or regulations that are not inconsistent with the Treaty, such as measures relating to the prevention of deceptive and fraudulent practices.

***Taxation (Article 21*)**

Article 21 provides that nothing in the Treaty, other than what is provided in the Article, applies to taxation measures. In a departure from the Model, the Parties agreed that Article 3 (National Treatment) and 4 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those relating to direct taxes (such as taxes on income, capital gains, and inheritances). This provision further restricts the coverage of Articles 3 and 4 with respect to several other taxation-related measures, including any nonconforming aspects of existing taxation measures.

Article 21 also provides that a claimant that asserts that a tax matter involves expropriation may submit that claim to arbitration under Section B only if (1) the claimant has first referred to the competent tax authorities of both Parties the issue of whether the tax matter involves an expropriation, and (2) the tax authorities have not both determined, within 180 days from the time of referral, that the matter does not involve an expropriation. Paragraph 4 specifies that the obligation in Article 8, on performance requirements, not to condition the receipt of an advantage on certain performance requirements will apply to the use of a taxation measure as an advantage. Paragraph 5 specifies that investor-state arbitration will be available for a claim under Section B that a taxation measure has breached an investment agreement. Finally, Article 21 establishes that nothing in the Treaty will affect the rights and obligations of either Party under a tax convention, and that in the event of any inconsistency between the Treaty and a tax convention, the convention shall prevail to the extent of the inconsistency. In a departure from the Model, the Parties agreed to define "tax convention," and to define the term to mean "a convention for the avoidance of double taxation or other international taxation agreement or arrangements regarding taxes."

***Entry into Force, Duration, and Termination (Article* 22)**

Article 22 specifies that the Treaty will remain in force for ten years after its entry into force and that a Party can terminate the Treaty anytime after ten years, so long as it provides one year's advance notice to the other Party. If the Treaty is terminated, all obligations will continue to apply for a period of ten years to covered investments established or acquired prior to the date of termination.

Section B - Investor-State Dispute Settlement

Submitting Investor Claims* to *Arbitration (Articles* 23-27, *Annexes C and G)

Article 24 provides a mechanism for investors to submit to arbitration a claim that a Party has breached an obligation under Articles 3 through 10 of the Treaty, an investment agreement, or an investment authorization. An investor may submit a claim on behalf of itself or on behalf of an enterprise of the other Party that the investor owns or controls directly or indirectly. An "investment agreement" is defined in the Treaty as a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the investment or the investor with respect to natural resources, the supply of public services, or infrastructure projects. The Treaty defines an "investment authorization" as an authorization that the foreign investment authority of a Party grants to a covered investment or to an investor of the other Party.

Article 24 specifies that an investor of a Party may submit two types of claim: a claim on behalf of itself and a claim on behalf of an enterprise of the other Party that the investor owns or controls directly or indirectly. In both cases, the claimant must prove a breach of an obligation of Section A of an investment agreement, or of an investment authorization and that the claimant or the enterprise, as the case may be, has incurred loss or damage as a result of the breach. In the Protocol to the Treaty, the Parties confirm their shared understanding that a claimant has the burden of proving all elements of its claim, whether the claim concerns the phase before or after the establishment of an investment.

Under paragraph 3 of Article 24, an investor may seek arbitration or a claim under several potential mechanisms, including the Convention on the Settlement of Investment Disputes and Nationals of Other States (known as the "ICSID Convention," after the International Centre for Settlement of Investment Disputes) and the ICSID rules of procedure, the Additional Facility of ICSID, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), or under any other mutually agreed arbitral institution or rules. The rules of the chosen arbitral mechanism will govern the arbitration except to the extent modified by the Treaty.

Article 24 also establishes that a claim may not be submitted to arbitration until six months have elapsed since the events giving rise to the claim. In addition, a claimant must deliver to the respondent Party a written notice of its intent to submit the claim at least 90 days before submitting a claim to arbitration. The notice of intent must identify the provision or provisions of the Treaty or investment agreement or investment authorization alleged to have been breached and the approximate amount of damages claimed.

To ensure that a Party cannot block arbitration by withholding its consent, Article 25 expressly states that the Parties consent to the submission or a claim to arbitration and that this consent will satisfy the consent requirements of the principal conventions relating to the arbitration of investment disputes.

Article 26 establishes a statute of limitations on arbitral claims by requiring that they be submitted no more than three years after the date that a claimant first acquired, or should have acquired, knowledge of an alleged breach and knowledge that the claimant has incurred loss or damage. Article 26 also specifies that no claim may be submitted to arbitration under Section B unless the claimant - or, in the event a claimant makes a claim on behalf of an enterprise that it owns or controls, the enterprise - waives in writing the right to initiate or continue any proceedings relating to the disputed measure in a court or administrative tribunal of either Party or in other dispute-settlement mechanisms. This Article thus generally permits investors to pursue other legal remedies during the three-year limitations period. After arbitration is initiated under Section B of the Treaty, however, all other legal action must be abandoned (except for actions for interim injunctive relief that do not involve monetary damages and that are brought for the sole purpose of preserving a claimant's rights during arbitration).

In two departures from the Model, the Parties agreed to Annex C and Annex G, both of which address certain types of claims not permitted under Section B. In Annex C, the Parties agreed that U.S. investors may not submit claims under Section B asserting a breach of an obligation under Articles 3 through 10, on its own behalf or on behalf of an enterprise of Uruguay that it owns or controls, if the investor or the enterprise had previously alleged the same breach of a BIT obligation before a court or administrative tribunal of Uruguay. Annex G bars any investor claim against Uruguay that a "negotiated restructuring" of a sovereign debt instrument breaches any obligation under Articles 5 through 10 (i.e., any obligation under Section A other than the national and most-favored-nation treatment obligations). The Annex defines a "negotiated restructuring" as a restructuring or rescheduling of a debt instrument that has been effected either through (1) a change of the key payment terms of the debt instrument, in accordance with its terms (i.e., a collective action clause); or (2) a debt exchange or other process consented to by debtors representing a percentage of outstanding principal required for the modification of key payment terms in Uruguay's most recent, widely distributed external bond issue. Any claims alleging that a restructuring of debt issued by Uruguay breached an obligation under Articles 5 through 10 could not be submitted until 270 days had elapsed since the date of the events giving rise to the claim.

Article 27 provides for the establishment of three-member arbitral tribunals, with one member appointed by each disputing party and a presiding arbitrator appointed by agreement between them. If, within 75 days of the submission of a claim to arbitration, one of the disputing parties has failed to appoint an arbitrator, or the two disputing parties have failed to agree on a presiding arbitrator, arbitrators may be named, in a departure from the Model, by the Chairman of the ICSID's Administrative Council, a position held by the President of the World Bank.

***Conduct of Investor-State Arbitration (Articles 28-33*)**

Article 28 includes a number of important provisions relating to the conduct of arbitral proceedings. To ensure the enforceability of arbitral awards, Article 28 provides that, unless otherwise agreed, arbitrations must take place in a country that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the "New York Convention." The Article authorizes a Party that is not involved in a dispute to make oral or written submissions to the tribunal on questions of interpretation of the Treaty, and authorizes tribunals to accept *amicus curiae* submissions from persons or entities that are not involved in the dispute. Article 28 also includes provisions that permit a tribunal to decide as a preliminary question whether an investor has made a claim that, as a matter of law, falls within the scope of the Treaty and whether the tribunal has jurisdiction. Upon written request of the Party against which a claim has been filed, these questions may be answered on an expedited basis within 150 days - or, if a hearing is requested, within 180 days - of receipt of the request. Tribunals are also authorized to award costs and attorneys' fees in connection with the submission of a frivolous claim or objection.

In addition, Article 28 authorizes tribunals to order interim measures of protection to preserve the rights or a disputing party or to ensure that the tribunal's jurisdiction is made fully effective. Such measures may include an order to preserve evidence in the control of a disputing party. A tribunal cannot, however, order attachment of assets or enjoin a Party from applying any measure that is the subject of a dispute.

Finally, Article 28 requires a tribunal, at the request of a disputing party, to issue an interim decision or award to the disputing parties and to the non-disputing Party, after which the disputing parties will have 60 days within which they may submit to the tribunal written comments on the interim decision or award. The tribunal must issue a final decision or award no later than 45 days after the expiration of the 60-day comment period. The Parties also agreed in Article 28 that, if a separate multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards by investor-State arbitral tribunals, the Parties will seek to reach an agreement under which that appellate body would review awards rendered under Section B of the Treaty. In Annex E, the Parties have agreed to consider within three years after the Treaty's entry into force the possibility of establishing a bilateral appellate body or similar mechanism to review arbitral awards rendered under the Treaty.

Article 29 specifies that all substantive documents submitted to or issued by a tribunal, with the exception of certain proprietary or other confidential information, shall be made available to the public. This Article also requires that arbitral proceedings be open to the public, subject to logistical arrangements agreed by a tribunal in consultation with the disputing parties, and sets out detailed procedures for the protection from disclosure of any protected information that is submitted to a tribunal. Article 29 also provides that nothing in Section B of the Treaty requires a respondent Party to withhold from the public information required to be disclosed by its laws.

Article 30 provides that, in the case of a claim of a breach of an obligation of Section A of the Treaty, an arbitral tribunal must decide the dispute in accordance with the Treaty and applicable rules of intemational law. In the case of an alleged breach of an investment agreement or investment authorization, the tribunal must apply the rules of law specified in the agreement or authorization or other rules to which the disputing parties have otherwise agreed. If no rules of law have been specified or agreed in the investment agreement or investment authorization, the tribunal is instructed to apply the domestic law of the respondent Party and applicable rules of international law. Article 3D further provides that a joint declaration by the Parties concerning the interpretation of a provision of the Treaty will be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with the joint declaration. Under Article 31, a respondent Party's defense that an alleged breach falls within the scope of a reservation set forth in one of its Annexes of non-conforming measures must, at the Party's request, be referred to the Parties for their consideration. Any decision the Parties make on the issue will be binding on a tribunal. If the Parties fail to issue such a decision within sixty days, the question is referred back to the tribunal.

Article 32 permits tribunals, on their own initiative or at the request of a disputing party, to seek advice from experts on environmental, health, safety, or other scientific matters at issue in a dispute. Article 33 sets out detailed procedures for the consolidation of investor claims that have a question of law or fact in common and arise out of the same events or circumstances. The Article provides for the establishment of a special three-member tribunal to consider whether it may assume jurisdiction over, or refer to a previously constituted tribunal, all or part of one or more such claims.

***Awards (Article 34*)**

Article 34 authorizes a tribunal, when it makes a final award against a respondent, to award money damages, restitution of property, or a combination of the two. Awards of restitution must offer a respondent the alternative of paying damages. No punitive damages may be awarded. In the event of an award in response to a claim submitted by an investor on behalf of an enterprise that it owns or controls, restitution of property or monetary damages must be provided to the enterprise and the award must specify that it is made without prejudice to any right that a person may have in the award under applicable domestic law. Artic1e 34 also stipulates that a tribunal award will have no binding force except between the disputing parties and in respect of the particular case.

Article 34 also addresses the enforcement of arbitral awards. It requires disputing parties to comply with awards without delay. Enforcement proceedings may be delayed in the event that a disputing party initiates revision or annulment proceedings under the ICSID Convention or revision, set aside, or annulment proceedings under ICSID Additional Facility Rules or UNCITRAL Arbitration Rules. If a respondent fails to comply with a final award, the non-disputing Party may ask a State-State arbitral panel to determine whether the respondent's failure to comply with the award is inconsistent with the Treaty and to recommend that the respondent comply.

Section C - State-State Dispute Settlement

Article 37 provides that any dispute between the Parties concerning the interpretation or application of the Treaty that is not resolved through consultations or other diplomatic channels shall be submitted on the request of either Party to binding arbitration. Unless the Parties otherwise agree, the arbitration shall be governed by UNCITRAL Arbitration Rules. State-State arbitration cannot be established for matters arising under Articles 12 (Environment) and 13 (Labor).