AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE HASHEMITE KINGDOM OF JORDAN ON THE ESTABLISHMENT OF A FREE TRADE AREA

PREAMBLE

The Government of the United States of America ("United States") and the Government of the Hashemite Kingdom of Jordan ("Jordan"),

Desiring to strengthen the bonds of friendship and economic relations and cooperation between them;

Wishing to establish clear and mutually advantageous rules governing their trade;

Aspiring to promote their mutual interest through liberalization and expansion of trade between their countries;

Reaffirming their willingness to strengthen and reinforce the multilateral trading system as reflected in the World Trade Organization, and to contribute to regional and international cooperation;

Recognizing that Jordan's economy is still in a state of development and faces special challenges;

Recognizing the objective of sustainable development, and seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development;

Recognizing that their relations in the field of trade and economic activity should be conducted with a view to raising living standards and promoting economic growth, investment opportunities, development, prosperity, employment and the optimal use of resources in their territories;

Desiring to foster creativity and innovation and promote trade in goods and services that are the subject of intellectual property rights;

Recognizing the need to raise public awareness of the challenges and opportunities offered by trade liberalization;

Wishing to raise the capacity and international competitiveness of their goods and services;

Desiring to promote higher labor standards by building on their respective international commitments and strengthening their cooperation on labor matters; and

Wishing to promote effective enforcement of their respective environmental and labor law;

HAVE AGREED AS FOLLOWS:

ARTICLE 1: ESTABLISHMENT OF A FREE TRADE AREA AND RELATIONSHIP TO OTHER AGREEMENTS

1. The Parties to this Agreement, consistent with Article XXIV of *the General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article V of the *General Agreement on Trade in Services* ("GATS"), hereby establish a free trade area in accordance with the provisions of this Agreement.

2. The Parties reaffirm their respective rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement").

3. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles a good or service, or the supplier of a good or service, to treatment more favorable than that accorded by this Agreement.

4. Nothing in Article 17 shall be construed to authorize a Party to apply a measure that is inconsistent with the Party's obligations under the WTO Agreement.

ARTICLE 2: TRADE IN GOODS

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 2.1 and its schedule[1] to Annex 2.1.

2. For purposes of this Agreement, **originating good** means an article described in Annex 2.2.

3. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, subject to Annex 2.3.

4. A Party may not introduce a new customs duty on imports or a new quantitative restriction on imports in the trade between the Parties, other than as permitted by this Agreement, subject to Annex 2.3.

5. In the event that this Agreement enters into force on a date other than January 1, "year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the period from the date of entry into force of this Agreement through the end of the calendar year, and the duty reductions in each Party's schedule to Annex 2.1 shall take effect on such date of entry into force. In such event, the term "January 1 of year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the date of entry into force of this Agreement.

ARTICLE 3: TRADE IN SERVICES

1. This Article applies to measures by a Party affecting trade in services between the Parties.

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[1] For purposes of this Agreement, "schedule" shall include both the schedule and headnotes.

2. (a) With respect to market access through the modes of supply identified in Article I of the GATS, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations, and conditions agreed and specified in its Services Schedule to Annex 3.1 to this Agreement. In sectors where such market access commitments are undertaken, the measure which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Services Schedule to Annex 3.1, are those measures defined in Article XVI:2(a)-(f) of the GATS.

(b) In the sectors inscribed in its Services Schedule to Annex 3.1, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.

(c) (i) Subject to subparagraph (c)(ii), any market access or national treatment commitment inscribed in a Party's Services Schedule to Annex 3.1 shall give rise to the same rights and obligations[2] between the Parties as if that commitment had been inscribed in that Party's schedule of specific commitments annexed to the GATS.[3]

(ii) The provisions of GATS that shall be construed to give rise to rights and obligations under this Article are: Articles III*bis*; VI:1, 2, 3, 5, 6; VII:1 & 2; VIII:1, 2, 5; IX; XI; XII; XIII:1; XIV; XV:2; XVI; XVII; XVIII; XX:2; and XXVII; Annex on Movement of Natural Persons Supplying Services under the Agreement; Annex on Financial Services; Annex on Air Transport, paragraphs 1, 2, 3, 4, 6; and Annex on Telecommunications, paragraphs 1-5.

3. Jordan has listed, in its schedule annexed to the GATS, exemptions from most-favored-nation treatment that are based on a reciprocity requirement. Jordan confirms that the United States satisfies those reciprocity requirements specified in Annex 3.2.

4. (a) Unless they are specifically defined in this Article or in the Services Schedules to Annex 3.1, terms used in this Article and such Services Schedules that are also used in the GATS shall be construed in accordance with their meaning in the GATS, *mutatis mutandis*.

(b) All references in this Article to the GATS are to the GATS in effect on the date of entry into force of this Agreement. If, after that date, a Party alters its schedule of specific commitments annexed to the GATS, the GATS is amended, or the results of the negotiations described in GATS Articles VI:4, X:1, XIII:2, or XV:1 enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties.

(c) Reference in this Article to a provision of the GATS includes any footnote to that provision.

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[2] Nothing in this Article shall require a Party to take any action with regard to the WTO or a Council, Committee, Body, or the Ministerial Conference of the WTO.

[3] The Parties acknowledge and accept that the commitments of the United States in financial services in subparagraphs 2(a) and 2(b) have been undertaken in accordance with the WTO Understanding on Commitments in Financial Services subject to the limitations and conditions set forth in the schedule of the United States.

ARTICLE 4: INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall, at a minimum, give effect to this Article, including the following provisions:

(a) Articles 1 through 6 of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization ("WIPO");

(b) Articles 1 through 22 of the *International Convention for the Protection of New Varieties of Plants* (1991) ("*UPOV Convention*");

(c) Articles 1 through 14 of the *WIPO Copyright Treaty* (1996) ("*WCT*")[4]; and

(d) Articles 1 through 23 of the *WIPO Performances and Phonograms Treaty* (1996) ("*WPPT*").[5]

2. Each Party shall make best efforts to ratify or accede to the *Patent Cooperation Treaty* (1984) and the Protocol Relating to the *Madrid Agreement Concerning the International Registration of Marks* (1989).

3. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[6] and enjoyment of all intellectual property rights and any benefits derived therefrom, subject to the exceptions provided in this Article.

4. A Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of the other Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

5. The obligations under paragraphs 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

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[4] Articles 1(4) and 6(2) of the *WCT* shall be excepted from this Agreement. Such exception shall be without prejudice to each Party's respective rights and obligations under the *WCT*, the *Berne Convention for the Protection of Literary and Artistic Works* (1971) ("*Berne Convention*") and the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("*TRIPS*").

[5] Articles 5, 8(2), 12(2), and 15 of the *WPPT* shall be excepted from this Agreement. Such exception shall be without prejudice to each Party's respective rights and obligations under the *WPPT*, the *Berne Convention* and *TRIPS*.

[6] For purposes of paragraphs 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as uses of intellectual property rights specifically covered by this Agreement.

Trademarks and Geographical Indications

6. Trademarks shall include service marks, collective marks and certification marks,[7] and may include geographical indications.[8]

7. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services which are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

8. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) ("*Paris Convention*") shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

9. Neither Party shall require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

Copyright and Related Rights

10. Each Party shall provide that all reproductions, whether temporary or permanent, shall be deemed reproductions and subject to the reproduction right as envisaged in the provisions embodied in *WCT* Article 1(4) and the *Agreed Statement* thereto, and *WPPT* Articles 7 and 11 and the *Agreed Statement* thereto.

11. Each Party shall provide to authors and their successors in interest, to performers and to producers of phonograms the exclusive right to authorize or prohibit the importation into each Party's territory of copies of works and phonograms, even where such copies were made with the authorization of the author, performer or producer of the phonogram or a successor in interest.

12. Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting and communication to the public of their performances or phonograms, regardless of whether the broadcast or communication is effected by wired or wireless means, except that a Party may provide exemptions for analog transmissions and free over-the-air broadcasts, and may introduce statutory licenses for non-interactive services that, by virtue of their programming practices, including both the content of their transmissions and their use of technological measures to prevent unauthorized uses, are unlikely to conflict with a normal exploitation of phonograms or performances.

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[7] Neither Party is obligated to treat certification marks as a separate category in national law, provided that such marks are protected.

[8] A geographical indication shall be considered a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

13. In applying the prohibition under Article 11 of the *WCT* and Article 18 of the *WPPT* on circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, each Party shall prohibit civilly and criminally the manufacture, importation or circulation of any technology, device, service or part thereof, that is designed, produced, performed or marketed for engaging in such prohibited conduct, or that has only a limited commercially significant purpose or use other than enabling or facilitating such conduct.[9]

14. Each Party shall provide that any natural person or legal entity acquiring or holding any economic rights by contract or otherwise, including contracts of employment involving protected subject matter, may freely and separately transfer such rights by contract and shall be able to exercise those rights in its own name and enjoy fully benefits of such rights.

15. Each Party shall issue appropriate laws, regulations, or other measures ("measures") providing that all government agencies use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government use.

16. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

Patents

17. Subject to paragraph 18, patents shall be available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application.

18. Each Party may exclude from patentability:

(a) inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment provided that such exclusion is not made merely because the exploitation is prohibited by their law;

(b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

19. If a Party permits the use by a third party of a subsisting patent to support an application for marketing approval of a product, the Party shall provide that any product produced under this authority shall not be made, used or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for marketing approval in the Party or in another country that permits the use by a third party of a subsisting patent to support an application for marketing approval of a product.

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[9] This provision does not require either Party to mandate that any consumer electronics, telecommunications or computing product not otherwise violating the prohibition be designed to affirmatively respond to any effective technological measure. Any violation of the prohibition shall be independent of any infringement of copyright or related rights.

20. Neither Party shall permit the use of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

(a) to remedy a practice determined after judicial or administrative process to be anti-competitive;

(b) in cases of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that such use is limited to use by government entities or legal entities acting under the authority of a government; or

(c) on the ground of failure to meet working requirements, provided that importation shall constitute working.

Where the law of a Party allows for such use pursuant to sub-paragraphs (a), (b) or (c), the Party shall respect the provisions of Article 31 of *TRIPS* and Article 5A(4) of the *Paris Convention*.

21. With regard to filing a patent application, when it is not possible to provide a sufficient written description of the invention to enable others skilled in the art to carry out the invention, each Party shall require a deposit with an "international depository authority," as defined in the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1980).

Measures Related to Certain Regulated Products

22. Pursuant to Article 39.3 of *TRIPS*, each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical entities,[10] the submission of undisclosed test or other data, or evidence of approval in another country,[11] the origination of which involves a considerable effort, shall protect such information against unfair commercial use. In addition, each Party shall protect such information against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

23. With respect to pharmaceutical products that are subject to a patent:

(a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process.

(b) the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent.

Enforcement of Intellectual Property Rights

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[10] It is understood that protection for "new chemical entities" shall also include protection for new uses for old chemical entities for a period of three years.

[11] It is understood that, in situations where there is reliance on evidence of approval in another country, Jordan shall at a minimum protect such information against unfair commercial use for the same period of time the other country is protecting such information against unfair commercial use.

24. Each Party shall provide that, at least in cases of knowing infringement of trademark, copyright and related rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement and any profits of the infringer that are attributable to the infringement that are not taken into account in computing such damages. Injury to the right holder shall be based upon the value of the infringed-upon item, according to the suggested retail price of the legitimate product, or other equivalent measures established by the right holder for valuing authorized goods.

25. Each Party shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence.

26. Each Party shall provide, at least in cases of copyright piracy or trademark counterfeiting, that its authorities may initiate criminal actions and border measure actions *ex officio*, without the need for a formal complaint by a private party or right holder.

27. In civil cases involving copyright or related rights, each Party shall provide that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

28. Each Party shall provide that copyright piracy involving significant willful infringements that have no direct or indirect motivation of financial gain shall be considered willful copyright piracy on a commercial scale.

Transition Periods

29. Each Party shall implement fully the obligations of this Article within the following time periods:

(a) With respect to all obligations in paragraphs 1(c), 1(d), and 10 through 16, two years from the date of entry into force of this Agreement. In addition, Jordan agrees to accede to and ratify the *WCT* and *WPPT* within two years from the date of entry into force of this Agreement.

(b) With respect to all obligations in paragraph 1(b), six months from the date of entry into force of this Agreement. In addition, Jordan agrees to ratify the *UPOV Convention* within one year from the date of entry into force of this Agreement.

(c) With respect to all obligations in paragraph 22, except the obligation in footnote 10, immediately from the date of entry into force of this Agreement.

(d) With respect to all obligations under this Article not referenced in subparagraphs (a), (b) and (c), three years from the date of entry into force of this Agreement.

ARTICLE 5: ENVIRONMENT

1. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

2. Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

3. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

4. For purposes of this Article, "environmental laws" mean any statutes or regulations of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party's territory,

but does not include any statutes or regulations, or provision thereof, directly related to worker safety or health.

ARTICLE 6: LABOR

1. The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in paragraph 6 are recognized and protected by domestic law.

2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

3. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 and shall strive to improve those standards in that light.

4. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

5. The Parties recognize that cooperation between them provides enhanced opportunities to improve labor standards. The Joint Committee established under Article 15 shall, during its regular sessions, consider any such opportunity identified by a Party.

6. For purposes of this Article, "labor laws" means statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

ARTICLE 7: ELECTRONIC COMMERCE

1. Recognizing the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development, each Party shall seek to refrain from:

(a) deviating from its existing practice of not imposing customs duties on electronic transmissions;

(b) imposing unnecessary barriers on electronic transmissions, including digitized products; and

(c) impeding the supply through electronic means of services subject to a commitment under Article 3 of this Agreement, except as otherwise set forth in the Party's Services Schedule in Annex 3.1.

2. The Parties shall also make publicly available all relevant laws, regulations, and requirements affecting electronic commerce.

3. The Parties reaffirm the principles announced in the U.S.-Jordan Joint Statement on Electronic Commerce.

ARTICLE 8: VISA COMMITMENTS

1. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party solely to carry on substantial trade, including trade in services or trade in technology, principally between the Parties.

2. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.[12]

ARTICLE 9: GOVERNMENT PROCUREMENT

Pursuant to Jordan's July 12, 2000, application for accession to the WTO Agreement on Government Procurement, the Parties shall enter into negotiations with regard to Jordan's accession to that Agreement.

ARTICLE 10: SAFEGUARD MEASURES

1. If as a result of the reduction or elimination of a duty[13] under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product, such Party may:

(a) suspend the further reduction of any rate of duty provided for under this Agreement for the good; or

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[12] Paragraphs 1 and 2 of this Article render nationals of Jordan eligible for treaty-trader (E-1) and treaty-investor (E-2) visas subject to the applicable provisions of U.S. laws and corresponding regulations governing entry, sojourn and employment of aliens. They also guarantee similar treatment for U.S. nationals seeking to enter Jordan's territory.

[13] A determination that an originating good is being imported as a result of the reduction or elimination of a duty provided for in this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referenced in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referenced in this footnote shall not be made.

(b) increase the rate of duty on the good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is taken; and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the lesser of the MFN applied rate of duty that was in effect on the good for the immediately preceding corresponding season or the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a measure described in paragraph 1:

(a) a Party shall take the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*;

(b) in the investigation described in subparagraph (a), a Party shall comply with the requirements of Article 4.2(a) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*;

(c) a Party shall notify the other Party upon initiation of an investigation described in subparagraph (a) and shall consult with the other Party prior to taking the measure; and, if a Party takes a provisional measure pursuant to paragraph 3, the Party shall also notify the other Party prior to taking such measure, and shall initiate consultations with the other Party immediately after such measure is taken;

(d) no measure shall be maintained:

(i) except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(ii) for a period exceeding four years; or

(iii) beyond the expiration of the transition period, except with the consent of the Party against whose originating good the measure is taken;

(e) no measure may be applied against the same originating good on which a measure has previously been taken;

(f) where the expected duration of the measure is over one year, the importing Party shall progressively liberalize it at regular intervals during the period of application; and

(g) on termination of the measure, the rate of duty shall be the rate that, according to the Party's schedule in Annex 2.1 to this Agreement, would have been in effect one

year after initiation of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:

(i) apply the rate of duty set out in its schedule in Annex 2.1 to this Agreement as if the measure had never been applied; or

(ii) eliminate the tariff in equal annual stages ending on the date corresponding to the staging category set out in its schedule in Annex 2.1 or its schedule to Annex 2.1.

3. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a measure described in paragraph 1(a), 1(b), or 1(c) on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as a result of the preferential treatment under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of subparagraphs 2(a) and 2(b) shall be met. Any tariff increases shall be promptly refunded if the investigation described in subparagraph 2(a) does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period described in subparagraph 2(d).

4. The Party applying a measure described in paragraph 1 shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation, the Party against whose originating good the measure is applied may take tariff action having trade effects substantially equivalent to the measure applied under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects. However, the right to take tariff action shall not be exercised for the first 24 months that the measure is in effect, provided that the measure has been applied as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Article.

5. The Parties recognize that, because it has recently begun to produce a like or directly competitive product described in paragraph 1, an infant industry may face challenges that more mature industries do not encounter. Each Party shall ensure that the procedures described in paragraph 2 do not create obstacles to infant industries that seek the imposition of such measures.

6. At its regularly scheduled session for the year commencing 14 years after the date of entry into force of this Agreement, the Joint Committee shall conduct a review of the operation of this Article. Based on the results of this review and on the agreement of the Joint Committee, the transition period may be extended.

7. For purposes of this Article:

domestic industry means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

serious injury means a significant overall impairment of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 15-year period beginning on January 1 of the year following entry into force of this Agreement, except if such period is extended in accordance with paragraph 6 of this Article.

8. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

ARTICLE 11: BALANCE OF PAYMENTS

Should either Party decide to impose measures for balance of payments purposes, it shall do so in accordance with the Party's obligations under the WTO Agreement. In adopting such measures, the Party shall strive not to impair the relative benefits accorded to the other Party under this Agreement.

ARTICLE 12: EXCEPTIONS

1. For purposes of Article 2 of this Agreement, Article XX of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to conservation of living and non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

3. Except as set out in this paragraph, nothing in this Agreement shall apply to taxation measures.

(a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) Notwithstanding subparagraph (a), Article 2.3 and such other provisions of this Agreement as are necessary to give effect to Article 2.3 shall apply to taxation measures to the same extent as does Article III of the GATT 1994.

(c) Notwithstanding subparagraph (a), the national treatment commitment under Article 3.2 shall apply to taxation measures to the same extent as under the GATS, and the national treatment commitment under Article 3.2(b) shall apply to taxation measures to the same extent as if the Party had made an identical national treatment commitment under Article XVII of the GATS.

ARTICLE 13: ECONOMIC COOPERATION AND TECHNICAL ASSISTANCE

To realize the objectives of this Agreement and to contribute to the implementation of its provisions:

(a) the Parties declare their readiness to foster economic cooperation; and

(b) in view of Jordan's developing status, and the size of its economy and resources, the United States shall strive to furnish Jordan with economic technical assistance, as appropriate.

ARTICLE 14: RULES OF ORIGIN AND COOPERATION IN CUSTOMS ADMINISTRATION

1. The Parties recognize that the rules regarding eligibility for the preferential tariff treatment afforded by this Agreement, as set out in Article 2 and Annex 2.2, are crucial to the functioning of this Agreement, and each Party shall strive to administer such rules effectively, uniformly, and consistently with the object and purpose of this Agreement and the WTO Agreement.

2. The Parties shall consult as appropriate, through the Joint Committee or through the consultative mechanism established in Article 16:

(a) to agree upon the means to cooperate and provide administrative assistance to achieve the commitments in paragraph 1; and

(b) to address situations pertaining to claims of preferential treatment under this Agreement for imported goods that do not satisfy the requirements in Annex 2.2.

3. The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing interpretative and explanatory materials on the implementation of Annex 2.2.

ARTICLE 15: JOINT COMMITTEE

1. A Joint Committee is hereby established to supervise the proper implementation of this Agreement and to review the trade relationship between the Parties.

2. The functions of the Joint Committee shall include, *inter alia*:

(a) reviewing the general functioning of this Agreement;

(b) reviewing the results of this Agreement in light of the experience gained during its functioning and its objectives, and considering ways of improving trade relations between the Parties, and furthering the objectives of the Agreement, including through further cooperation and assistance;

(c) facilitating the avoidance and settlement of disputes, including through consultations pursuant to Articles 17.1 (b) and 17.2 (a);

(d) considering and adopting any amendment to this Agreement or modification to the commitments therein, provided that the adoption of such amendment or modification shall be subject to the domestic legal requirements of each Party;

(e) developing guidelines, explanatory materials, and rules on the proper implementation of this Agreement, as necessary, and particularly: (i) guidelines and explanatory materials on the implementation of Annex 2.2, and (ii) rules for the selection and conduct of members of panels formed under Article 17, and model rules of procedure for such panels;

(f) at its first meeting, discussing the review performed by each Party of the environmental effects of this Agreement.

3. Structure of the Joint Committee

(a) The Joint Committee shall be composed of representatives of the Parties and shall be headed by (i) the United States Trade Representative and (ii) Jordan's Minister primarily responsible for international trade, or their designees.

(b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing committees or working groups, and seek the advice of non-governmental persons or groups.

4. The Joint Committee shall convene at least once a year in regular session in order to review the general functioning of the Agreement. Regular sessions of the Joint Committee shall be held alternately in each country. Special meetings of the Joint Committee shall also be convened within 30 days at the request of either Party and shall be held in the territory of the other Party, except as the Parties may otherwise agree. The Joint Committee shall establish its own rules of procedure. All decisions of the Joint Committee shall be taken by consensus.

5. Recognizing the importance of transparency and openness, the Parties reaffirm their respective practices of considering the views of interested members of the public in order to draw upon a broad range of perspectives in the implementation of this Agreement.

6. Each Party shall designate an office to serve as the contact point with regard to this Agreement. That office shall receive official correspondence related to this Agreement and provide administrative assistance to the Joint Committee and to dispute settlement panels established under Article 17.

ARTICLE 16: CONSULTATIONS

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Either Party may request consultations with the other Party with respect to any matter affecting the operation or interpretation of this Agreement. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

ARTICLE 17: DISPUTE SETTLEMENT

1. (a) The Parties shall make every attempt to arrive at a mutually agreeable resolution through consultations under Article 17, whenever

(i) a dispute arises concerning the interpretation of this Agreement;

(ii) a Party considers that the other Party has failed to carry out its obligations under this Agreement; or

(iii) a Party considers that measures taken by the other Party severely distort the balance of trade benefits accorded by this Agreement, or substantially undermine fundamental objectives of this Agreement.

(b) A Party seeking consultations pursuant to subparagraph (a) shall submit a request for consultations to the contact point provided for under Article 15.6. If the Parties fail to resolve a matter described in subparagraph (a) through consultations within 60 days of the submission of such request, either Party may refer the matter to the Joint Committee, which shall be convened and shall endeavor to resolve the dispute.

(c) If a matter referred to the Joint Committee has not been resolved within a period of 90 days after the dispute was referred to it, or within such other period as the Joint Committee has agreed, either Party may refer the matter to a dispute settlement panel. Unless otherwise agreed by the Parties, the panel shall be composed of three members: each Party shall appoint one member, and the two appointees shall choose a third who will serve as the chairman.

(d) The panel shall, within 90 days after the third member is appointed, present to the Parties a report containing findings of fact and its determination as to whether either Party has failed to carry out its obligations under the Agreement or whether a

measure taken by either Party severely distorts the balance of trade benefits accorded by this Agreement or substantially undermines the fundamental objectives of this Agreement. Where the panel finds that a Party has failed to carry out its obligations under this Agreement, it may, at the request of the Parties, make recommendations for resolution of the dispute. The report of the panel shall be non-binding.

(e) (i) If the dispute settlement panel under this Agreement or any other applicable international dispute settlement mechanism under an agreement to which both Parties are Party has been invoked by either Party with respect to any matter, the mechanism invoked shall have exclusive jurisdiction over that matter.

(ii) If a mechanism described in subparagraph (e)(i) fails for procedural or jurisdictional reasons to make findings of law or fact, as necessary, on a claim included in a matter with respect to which a Party has invoked such mechanism, subparagraph (e)(i) shall not be construed to prevent the Party from invoking another mechanism with respect to such claim.

2. (a) After a dispute has been referred to a dispute settlement panel under this Agreement and the panel has presented its report, the Joint Committee shall endeavor to resolve the dispute, taking the report into account, as appropriate.

(b) If the Joint Committee does not resolve the dispute within a period of 30 days after the presentation of the panel report, the affected Party shall be entitled to take any appropriate and commensurate measure.

1. The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing rules for the selection and conduct of members of panels and Model Rules of Procedure for panels. The Joint Committee shall adopt such rules. Unless the Parties otherwise agree, a panel established under this Article shall conduct its proceedings in accordance with the Model Rules of Procedure.

4. (a) A Party may invoke a panel under paragraph 1(c) of this Article for claims arising under Article 3 only to the extent that a claim arises with regard to a commitment that is inscribed in the Party's Services Schedule to Annex 3.1 to this Agreement, but is not inscribed in the Party's schedule of specific commitments annexed to the GATS. Such commitment may include a market access or national treatment commitment in a sector, a horizontal commitment applicable to a sector, or additional commitment.

(b) Except as otherwise agreed by the Parties, a Party may invoke a panel under paragraph 1(c) of this Article for claims arising under Article 4 only to the extent that the same claim would not be subject to resolution through the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

(c) If a dispute involves both a claim described in subparagraph (a) or (b) and another claim, subparagraph 1(e) shall not prevent a Party from invoking another international dispute settlement mechanism with regard to such other claim. Nothing in this subparagraph shall allow a Party to invoke the dispute settlement mechanism of both this Article and another international dispute settlement mechanism with regard to the same claim.

ARTICLE 18: MISCELLANEOUS PROVISIONS

1. Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

2. For purposes of Articles 5 and 6, "statutes and regulations" means,

(a) with respect to Jordan, an act of the Jordanian Parliament, or by-law or regulation promulgated pursuant to an act of the Jordanian Parliament that is enforceable by action of the Government of Jordan; and

(b) with respect to the United States, an act of the United States Congress or regulation promulgated pursuant to an act of the U.S. Congress that is enforceable, in the first instance, by action of the federal government.

3. The Annexes and Schedules to this Agreement are an integral part thereof.

4. All references in this Agreement to GATT 1994 are to the GATT 1994 in effect on the date of entry into force of this Agreement.

ARTICLE 19: ENTRY INTO FORCE AND TERMINATION

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force two months after the date on which the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree.

3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire six months after the date of such notification.

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

Done at Washington, in duplicate, in the English language, this twenty-fourth day of October, 2000, which corresponds to this twenty-sixty day of Rajab, 1421. An Arabic language text shall be prepared, which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text. In the event of a discrepancy, the English language text shall prevail.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN: