ENTRO

EASTERN NILE POWER TRADE PROGRAM STUDY

AfDB

POWER TRADE

STRATEGY REPORT

VOL 2

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with participation of:

- EPS (Egypt)
- Tropics (Ethiopia)
- YAM (Sudan)

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PHYSICAL UNITS AND CONVERSION FACTORS

bbl	barrel	(1t = 7.3 bbl)
cal	calorie	(1 cal = 4.1868 J)
Gcal	Giga calorie	
GWh	Gigawatt-hour	
h	hour	
km	kilometer	
km²	square kilometer	
kW	kilo Watt	
kWh	kilo Watt hour	(1 kWh = 3.6 MJ)
MBtu	Million British Thermal Units	(= 1 055 MJ = 252 kCal)
	one cubic foot of natural gas produces approximately 1,000 BTU	
MJ	Million Joule	(= 0,948.10^{-3} MBtu = 238.8 kcal)
MW	Mega Watt	
m	meter	
m^3/d	cubic meter per day	
mm	millimeter	
mm^3	million cubic meter	
Nm^3	Normal cubic meter, i.e. measured under normal conditions, i.e. 0°C and 1013 mbar	
	(1 Nm^3 = 1.057 m^3 measured under standard conditions, i.e. 15°C and 1013 mbar)	
t	ton	
toe	tons of oil equivalent	
tcf	ton cubic feet	
°C	Degrees Celsius	

General Conversion Factors for Energy

To:	TJ	Gcal	Mtoe	MBtu	GWh
From:	multiply by:				
TJ	1	238.8	2.388×10^{-5}	947.8	0.2778
Gcal	4.1868×10^{-3}	1	10^{-7}	3.968	1.163×10^{-3}
Mtoe	4.1868×10^{4}	10^{7}	1	3.968×10^{7}	11630
MBtu	1.0551×10^{-3}	0.252	2.52×10^{-8}	1	2.931×10^{-4}
GWh	3.6	860	8.6×10^{-5}	3412	1

ABBREVIATIONS AND ACRONYMS

ADB	African Development Bank
ADF	African Development Fund
CC	Combined Cycle
CCGT	Combined Cycle Gas Turbine
CIDA	Canadian International Development Agency
CT	Combustion Turbine
DANIDA	Danish Development Assistance
DFID	Department for International Development (UK)
DIDC	Department for International Development Cooperation (GoF)
DSA	Daily Subsistence Allowance
EEHC	Egyptian Electricity Holding Company
EEPCO	Ethiopian Electric Power Corporation
EHV	Extra High Voltage
EHVAC	Extra High Voltage Alternating Current
EIA	Environmental Impact Assessment
EIRR	Economic Internal Rate of Return
EN	Eastern Nile
ENCOM	Eastern Nile Council of Ministers
ENSAP	Eastern Nile Subsidiary Action Program
ENSAPT	Eastern Nile Subsidiary Action Program Team
ENTRO	Eastern Nile Technical Regional Office
ENTRO PCU	Eastern Nile Technical Regional Office Power Coordination Unit
FIRR	Financial Internal Rate of Return
GEP	Generation Expansion Plan
GTZ	German Technical Co-operation
HPP	Hydro Power Plant
HFO	Heavy fuel oil
HV	High Voltage
HVDC	High Voltage Direct Current
ICCON	International Consortium for Cooperation on the Nile
ICS	Interconnected System
IDEN	Integrated Development of the Eastern Nile
IDO	Industrial Diesel Oil
IMF	International Monetary Fund
JICA	Japanese International Co-operation Agency
JMP	Joint Multipurpose Project
LNG	Liquefied Natural Gas
LOLP	Loss of Load Probability
LPG	Liquefied Petroleum Gas
LRFO	Light Residuel Fuel Oil
MENA	Middle East, North Africa Countries
MIWR	Ministry of Irrigation & Water Resources (Sudan)
MWR	Ministry of Water Resources (Ethiopia)
MWRI	Ministry of Water Resources and Irrigation (Egypt)
MSD	Medium Speed Diesel (TPP)
NBI	Nile Basin Initiative
NEC	National Electricity Corporation (Sudan)
NECC	National Electricity Control Centre (Egypt)
NELCOM	Nile Equatorial Lake Council of Ministers
NELSAP	Nile Equatorial Lake Subsidiary Action Program
NG	Natural Gas

NGO	Non Governmental Organization
NORAD	Norwegian Aid Development
NPV	Net Present Value
O&M	Operations and Maintenance
OCGT	Open Cycle Gas Turbine
OPEC	Organization of the Petroleum Exporting Countries
PPA	Power Purchase Agreement
PBP	Pay Back Period
PHRD	Policy & Human Resource Development Fund
PIU	Project Implementation Unit
PRSP	Poverty Reduction Strategy Paper
RCC	Regional Electricity Control Centre (Egypt)
RMC	Regional Market Co-ordinator
RE	Rural Electrification
REB	Regional Energy Broker
REM	Regional Electricity Market
SAPP	Southern Africa Power Pool
SIDA	Swedish International Development Agency
SO	System Operator
SSD	Slow speed diesel (TPP)
STPP	Steam Turbine Power Plant
STS	Senior Technical Specialist
TAF	Technical Assistant Fund
TPP	Thermal Power Plant
UA	Unit of Account
UNDP	United Nations Development Program
WB	World Bank

1. GENERAL ISSUES

Progress in developing a regional competitive electricity market in the region will depend on progress in developing new market forms within the individual countries. Progress towards more liberal international market structures cannot, in general, go faster than the development of more liberal structures at national level. Furthermore, for the three countries involved, there is an almost complete absence of legal or regulatory structure relating to existing forms of international trade in electricity. Existing international electricity trade is largely conducted on an ad hoc basis, involving national Governments as well as utilities.

For a country's electricity system to move from vertically-integrated monopoly towards a more competitive structure, legal changes are indispensable. These changes need to take place in the domain of energy or electricity law, but such changes are not enough to provide a structure in which real change will take place in behaviour.

There are three further requirements:

- A wide range of accompanying measures must complement the basic legislation. Most energy law must be supplemented by further and more detailed decisions on matters of detailed implementation: some of this may be in legal form (supplementary decrees, regulations, etc.) and much normally must be done in the form of policy decisions that are permitted but not specifically mandated by the basic law. These are issues which are covered, to a significant extent, under Sections 1 to 3 of Volume 2 (Commercial Aspects) and Volume 4 (Institutional Aspects).
- Among the “accompanying measures” mentioned above, provisions for regulating the electricity system at arm's length from Government are critical for the success of moves towards more liberal market behaviour. A major discouragement to the entry of new firms to the electricity industry is a perception of arbitrary and frequent political intervention in the industry in the pursuit of objectives having little to do with the electricity industry (e.g. general inflation control, undue political influence over senior appointments, etc.). This means that the establishment of regulatory authorities that are independent of day-to-day political intervention (while remaining accountable in a more general way to the political process) is a necessary condition for more competitive behaviour in electricity markets.
- Legislation in related areas must allow the objectives of changes in energy law to be carried out. For the beneficiary countries in this project, the relevant areas are general commercial law (including the enforcement of commercial contracts and of bankruptcy where necessary), general competition law and legal provisions relating to the treatment of privatisation and foreign investment. If there are failings in these adjacent legal areas, the provisions of new energy or electricity laws may be unenforceable or simply ineffective. Conversely, effective commercial, competition, privatisation and foreign investment law can serve to reinforce energy or electricity law designed to open markets up. Environmental law can also impact on the development of more competitive markets, though it needs not do so, even where it involves the application of stringent environmental standards.

2. DETERMINATION AND PROPOSAL OF GENERAL RULES FOR THE OPERATION OF THE EAST NILE ELECTRICITY MARKET

2.1 INTRODUCTION

It is now necessary to examine the international legal and regulatory issues that must be taken into account in implementing a regional electricity market in the East Nile Region. This consideration also takes into account all the other sections of this Report, especially Volume 4 on institutional market design issues. It is too early in the process of establishing a market to lay down the precise way in which all legal and regulatory issues must be resolved, but below are presented the main issues and potential problems that legal and regulatory structures will need to resolve if a market is to be successfully established.

While the long-term goal is the establishment of a competitive international market in electricity, it is important that the first steps taken are realistic in relation to the current policies and positions of the participating countries. It will be impossible for steps to be taken in law and regulation at the international level that are further advanced along the path of liberalisation than in the least reformed of the beneficiary countries.

New trade opportunities in electricity will therefore need to start from the present position of limited bilateral trades on relatively long-term arrangements between large utilities in beneficiary countries, and then move towards trading that is more systematic and transparent, and may involve transactions across longer distances. It will therefore not be surprising if it takes some time to organise a competitive East Nile Regional Market and East African Power Pool.

2.2 LAW, VOLUNTARISM AND LEVELS OF ANALYSIS AND ACTION

There are frequently fears, when new legal codes are being contemplated and developed, that countries or utilities will be forced into positions that are against their own best interests. It is important to recognise that the proposals being made in this project will not compel any party to undertake any action without their prior consent. In particular, electricity trades will only take place if trade is perceived to be in the interests of both contracting parties, and (importantly in many possible cases) the third party of an intermediate transit country. Once a country or utility signs up to the rules of the proposed new market, it will be necessary to observe those rules in any transaction undertaken, but parties will only sign up to new rules if they wish to do so, and will only undertake trade if it is their own interest to participate. The existence of a new market structure for electricity trading will therefore only offer an opportunity (on a voluntary basis) for taking an active part in that market, not a requirement to do so.

It is in any case important to note that in the evolving structure of markets for electricity nationally and internationally, the trend - even in quite tight power pools such as cannot be contemplated for

the East Nile Region for some time to come - has been towards voluntary rather than mandatory markets.

In terms of the legal and regulatory aspects of new regional market structures, it is useful to think in terms of a four-level hierarchy of legal and regulatory instruments that may be needed. These are as follows:

- International treaties and agreements such as the European Energy Charter Treaty and its adapted version to Western Africa, the ECOWAS Energy Protocol;
- Primary national legislation;
- Secondary national legislation and accompanying regulation;
- Management and governance at institutional level.

Legal issues can be categorised, in terms of these four levels, as 'top-down' and 'bottom-up'. The international treaty and primary national legislation levels are the clearest cases of top-down approaches, where general principles are enunciated and have to be applied at lower levels though secondary measures and the formulation of detailed local rules (management and governance at institutional level). These local management and governance activities are also, however, the clearest cases of potential bottom-up activity. While local governance structures always depend ultimately on higher level authority, there is usually scope for local activity in the formulation of new rules and procedures at local level (in this case for the proposed electricity market) provided they do not contradict the provisions of higher levels of legal authority.

As argued above, it is highly unlikely that all beneficiary countries will be able to undertake relevant primary national legislation that would facilitate “tight” market structures (e.g. power pool arrangements) in the coming years. The legal and regulatory aspects of the new market structures will therefore have to work within the current framework of international and national legal structures. In other words, they will need to concentrate on developing proposals at the local management or governance level (i.e. the rules of the proposed new market) and fit these into existing national and international structures.

However the fact that proposals put forward here must not require changes at the “top-down” levels does not mean that these levels can be ignored. Adherence to international treaties may often assist in the development of market structures and rules. National level legislation may also assist in such market developments, or more often in the context of the present project, restrict the scope or diversity of market participation achievable (e.g. by granting monopoly powers over imports or exports of power to state-owned companies). This means that even if new legislative and regulatory action will necessarily be concentrated at the local level of electricity market rules, it is first important to consider how the existing international and national structures may affect the scope for rule-making at market level.

The national legislative situations were described and analysed earlier. This analysis is the basis of the argument that relatively slow progress towards fully competitive markets can be made in the coming years, as the international market structures cannot get ahead of the pace of development of the slowest participating country. It is now time to examine the highest level of all - those international legal agreements or practices that will impact on the ways in which regional electricity market rules can be developed. The most relevant international legal instrument is the Energy Protocol (adapted version of the European Energy Charter Treaty).

2.3 INTERNATIONAL AGREEMENTS AND THE EAST NILE ELECTRICITY MARKET: THE ENERGY PROTOCOL

2.3.1 THE EUROPEAN ENERGY CHARTER TREATY:

The original Energy Charter was signed in 1991 but negotiations for a legally binding treaty were not concluded until the signing of the European Energy Charter Treaty in December 1994 in Lisbon, and negotiations on various supplementary protocols on a range of detailed subjects remains an ongoing task for the nations involved. The basis for the Charter was that western capital would be encouraged into the energy sectors of Central and Eastern Europe, in return for which the West would get reliable access to energy supplies.

The Charter Treaty is concerned with three principal topics:

- investment promotion and protection;
- transit regimes for all energy sources; and
- dispute settlement and arbitration.

More generally it is concerned to stimulate economic growth in the energy exporting countries of Central and Eastern Europe and to help consuming countries diversify their sources of supply. There is also an ongoing attempt to apply relevant GATT law within the Treaty.

The provisions of the Charter Treaty on transit are much more important to development of electricity trade. There are two reasons for this. First, the development of transparent arrangements for transmission and transit of power between countries is the most critical single area to be resolved in setting up improved electricity market arrangements, (especially where there are limited borders between the countries trading and third countries must be involved). Second, transit arrangements already a main pillar of the Treaty via Article 7, arguably the most elaborated international mechanism for energy transit that yet exists.

Under Article 7 of the Charter Treaty, Governments have the obligation to facilitate transit and not to interrupt existing transit in the event of a dispute. In addition, there is a provision for conciliation and dispute resolution within the Charter that is much more rapid than other existing international procedures. For the most likely type of transit dispute, on tariffs, the Charter procedure can provide at least an interim solution within three or at the most four months. An independent conciliator is appointed by the Secretary-General, and if agreement cannot be reached by the parties, he or she can impose an interim tariff for up to 12 months. In the meantime transit cannot be interrupted.

In April 1998, a legally binding tariff commitment was adopted by Charter Treaty signatories on trade in energy materials. This means that WTO rules on tariffs have been extended to energy-related equipment, including physical transit infrastructures, even if individual countries are not WTO members.

Even more usefully, a major priority for the Charter Secretariat in 1999-2000 is a further development of transit arrangements through a new Multilateral Transit Framework which, it is hoped, will be fully in place by mid-2000. The intention here is to focus on sanctity of contracts and the development of transparency and (hopefully) competition. There is intended to be an obligation

on all participants to negotiate with all possible transit clients, and to ensure that there is a clear methodology for fixing transit tariffs. These developments assist in providing a useful international legal framework within which negotiations between beneficiary countries and potential transit countries could take place, both to establish specific rules of electricity transit, and transparent tariff methods.

2.3.2 THE ECOWAS ENERGY PROTOCOL:

The context in which was elaborated the ECOWAS Energy Protocol is quite different, ECOWAS being a regional organization, which regroups together 15 countries of Western Africa and whose mission is to promote the economic integration between member countries in all the domains of the economic activity, including energy and natural resources. The elaboration of the Energy Protocol is linked to the implementation of the West African Power Pool (WAPP) and answers the need for establishing a regional legal framework favorable to energy exchanges and to protecting the investments in the countries of the region.

The ECOWAS Energy Protocol was elaborated following the same structure as the one adopted for the European Energy Charter Treaty.

The objective of the Energy Protocol, such as expressed in its Article 2, is to establish a legal framework to promote a long-term cooperation in the field of the energy based on complementarity and mutual interest to increase investment and develop the energy business in Western Africa.

Therefore, the main purpose of the Energy Protocol is to:

- Ensure free flow of energy and energy materials and products between ECOWAS member states, and protection for international investors;
- Attract national and international private investments for the financing of power projects in the region.

The provisions of the Protocol will facilitate these purposes by creating a favourable environment meeting international standards through:

- *The creation of an effective open, competitive and non-discriminatory market* with provisions related to freedom of transit, open access to transmission facilities – ***Third Party Access***, protection of environment and energy efficiency as well as dispute non-discriminatory trade rules and dispute settlement for transit;
- ***The promotion and protection of energy investments*** in ECOWAS region with provisions to secure energy investments such as:
    - Equitable, stable and transparent conditions for investments;
    - Respect of contractual obligation and effective dispute settlement;
    - Non-discriminatory treatment and compensation in the case of loss or expropriation;
    - Guarantee for transfer of profits and repatriation of capital;
    - Right to employ key personnel of the investor choice;

- Non-discriminatory trade rules consistent with WTO agreement.

The Energy Protocol provides also provisions for establishing regional regulatory frameworks to promote:

- efficient functioning of market mechanisms including market-oriented price formation and a fuller reflection of environmental costs and benefits;
- reduction of barriers to energy efficiency, thus stimulating investments;
- mechanisms for financing energy efficiency initiatives;
- education and awareness;
- dissemination and transfer of technologies;
- transparency of legal and regulatory frameworks.

The ECOWAS Energy Protocol, to which all relevant countries in the West African Region are signatories, has a major concern with energy transit and an active programme to develop rules for transit regimes further.

It would be an extremely useful legal context in which the critical area of transmission and transit could be negotiated in the development of the East Nile Electricity Market.

The ECOWAS Energy Protocol is presented in Appendix 5.

2.4 "BOTTOM-UP" APPROACHES TO THE DEVELOPMENT OF THE EAST NILE ELECTRICITY MARKET

With the framework of existing international and national law relevant to trade, what legal and regulatory issues need to be resolved at the level of the institutions needed to manage and oversee the proposed new electricity market itself?

In this area, formal law is perhaps of less importance than decisions on regulation. Legal issues will be important at interface with the national/international level, e.g. ensuring that the new market rules do not prove inconsistent with any national legislation, and ensuring that adopted procedures are consistent with the provisions on transit of the Energy Protocol, but in practice the main "bottom-up" questions of market rules will be regulatory and open to negotiation: they concern particular rules that will be negotiated specifically for this market. There will be specific legal issues around the question of the form of contracts and IPPs that may be used in the proposed market.

The proposal (as outlined in institutional detail in 5) is to make use of the newly created institution of the East African Power Pool (EAPP). The EAPP will be, in this proposal, an operational body with responsibility for the development and oversight of the electricity market. Initially, the market may consist of only one "trader" per country involved. This is because several of the beneficiary countries retain single national utilities with exclusive responsibility for import and export of power, and in such circumstances, only one trader per country may be initially possible. In these

circumstances the national utilities will be the traders. As the controllers of the grid systems, the utilities will also be the actors most directly responsible for the physical implementation of the market arrangements.

The EAPP will need a higher level of management as its ultimate source of authority. The main legal issue surrounding the EAPP is the way in which the management will be constituted and will operate. The management will clearly need to contain high-level representation from each national Government. Ideally only one Government Ministry per country would participate in the management, to act as a single channel for the expression of the interest of each Government. Such a Ministry would need to act as a conduit for the wider interests of each nation participating (which might include ministries concerned with trade, industry, finance, energy, water affairs and environment). In all cases the management representatives will need to maintain close liaison with the national utilities who will constitute the traders, as the utilities' advice will be essential on questions of grid integrity.

In order for national Governments to feel confident about participation in this regional market, a vital legal issue will be the mechanism for the resolution of disputes. This will need to be encompassed within the management structure but a possible approach is that independent representatives with expertise in relevant areas be made a member of the management committee in order to provide reassurance that disputes can be put to a party without a direct interest in any of the economic outcomes.

Indeed, it is the case for the EAPP. The EAPP organizational structure is composed of the following organs and bodies (Refer to Appendix 1 and 2 of Volume 5):

- The Conference of Ministers: consists of the Ministers responsible for electricity in the Region;
- The Steering Committee: consists of the Chief Executive Officers of the EAPP Active Members;
- The Independent Regulatory Board: consists of nominees of national regulatory boards in the Countries of the Parties;
- The Permanent Secretariat: led by an Executive Secretary recommended by the Steering Committee and approved by the Conference of Ministers.

An obvious approach to the question of independent representation on the Management Committee would be to involve the EAPP Permanent Secretariat. The advantages of the EAPP Permanent Secretariat are that it will be seen as independent by all market participants, and that the Permanent Secretariat is the location of the most important mechanism for transit dispute resolution (the most likely single cause of dispute between traders or countries within the market). However detailed issues of representation on the management committee are matters that should properly await the next stage of the development of a regional market.

The management committee would in important respects be the interface between the regional market and the wider world. While, facing inwards, it would on the one hand approve the rules of the market proposed by EAPP, it would also, facing outwards, need to deal with wider national and international matters affecting the market. For example, a possible issue for resolution would be the treatment of cross-border taxes (import duties, etc.) and how these might be managed. This is a good illustration of the importance of having Government representatives on the management committee able to deal with all relevant national matters, in this case wider questions of trade and taxation policy.

Two specific areas with legal/regulatory implications are worth highlighting.

First, a very important issue will be co-ordination between the EAPP, with its knowledge of international contracts, and the grid controllers of each national participant in the market. A major issue will then be what will happen in the event of congestion within a national network. Here, it will be vital to develop completely transparent rules for the "unloading" of contracts, so that all participants know which power will be interrupted if interruptions are needed.

Second, there is the question of the status of the basic "manuals" or operating documents for the market. It is proposed that there will be two levels of such documents. First, there will be a general market operation agreement. Every market participant would have to sign this agreement, which would be framed in fairly general terms and designed to be long-lasting. It would therefore have some real legal force and would be the basic document to which reference would be made at the start of any dispute resolution process. Second, there will need to be a set of much more detailed documentation that outlines the operational characteristics of the market at any one moment. This would itself have two main components: a grid code for physical operation, harmonised and integrated into individual national grid codes, and a pricing and settlement code, specifying the way in which tariffs and payments are to be organised and settled.

This second level of documentation on grid, pricing and settlement rules would be designed to be open to very frequent change. All experience with electricity market development in recent history suggests that as markets evolve, they must be subject to significant and sometimes almost continuous changes of rules and conventions. While these second level rules are to be enforced at any given moment, they would need to be designed not only to allow, but positively to encourage, rule changes as these prove necessary. Hence, the importance of having both a general market agreement to which all parties can be expected to adhere over relatively long periods, and a second level designed to be as flexible as possible as needs change.

2.5 CONCLUSIONS

No international trade structures can implement structures that are more liberal than the least liberalised of the market participants. Given the variable speed of liberalisation of beneficiary countries in their electricity industries, the proposal being made in this Report is for an early and pragmatic development of a regional market for electricity which will grow directly out of existing bilateral trade practices. This has a number of legal and regulatory implications, both "top-down" (implications of international and national law for the market) and "bottom-up" (the design of specific rules for the market).

First, in the international arena of law (in the "top-down" mode), the Energy Protocol assumes a central place. This is because all relevant countries in the region will be signatories; it deals with energy transit (a vital issue for the success of this market) as one of its major interests; it has a rapid dispute resolution procedure for tariff and other transit disputes; and it is developing a new Multilateral Transit Framework by introducing the "Third Party Access" Principle. This are the reasons why we highly recommend the adoption of the Energy Protocol by all the participating countries of the Region.

As far as “bottom-up” issues are concerned, regulatory questions are probably more important that formal law. Nevertheless, there are important issues surrounding the control of the proposed Regional Electricity Market by a management committee that will need Government and, if possible, independent representation, and of the way in which the specific rules of the market are formulated. Almost certainly, it will be desirable to frame a rather general set of rules to which all market parties need to be signatories and which will endure for some time, and a second level of rules for physical and financial issues which are designed for flexibility and rapid change when necessary.

This has been fortunately enforced by the signature of the Inter-Governmental and Inter-Utility Memorandum of Understanding by the Member Countries of EAPP (Refer to Appendix 1 and 2, Volume 5).

APPENDIX 1:

ECONOMIC COMMUNITY OF
WEST AFRICAN STATES

COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE
DE L'OUEST

ECOWAS ENERGY PROTOCOL

ECONOMIC COMMUNITY OF
WEST AFRICAN STATES

COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE
DE L'OUEST

ECOWAS ENERGY PROTOCOL A/P4/1/03

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ECOWAS ENERGY PROTOCOL

ECOWAS ENERGY PROTOCOL

PREAMBLE

THE HIGH CONTRACTING PARTIES

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

CONSIDERING the provisions of the Treaty of the Economic Community of West African States (hereinafter referred to as, the "ECOWAS Treaty") relating to the promotion, cooperation, integration and development of the energy projects and sectors of Member States of the Community, with particular reference to Articles 3, 26, 28 and 55;

NOTING the decision A/DEC.3/5/82 of the Authority of the Heads of States and Governments of ECOWAS relating to the ECOWAS Energy Policy;

MINDFUL of the fact that the responsibility for the economic development of the West African region rests with the Member States themselves;

WANTING to secure regionally efficient and reliable supplies of electricity and other forms of energy;

CONSIDERING that the principles articulated and adopted by 51 nations of Europe and Asia, and memorialised in the document known as the Energy Charter Treaty which was signed in December, 1994, and which went into effect in April, 1998, represent the leading internationally accepted basis for the promotion, cooperation, integration and development of energy investment projects and energy trade among sovereign nations;

APPRECIATING the fact that the Energy Charter Treaty is the outcome of a thorough and thoughtful debate, deliberation and compromise among its signatory nations;

CONVINCED that adherence to the terms and principles of the Energy Charter Treaty by Member States of the Community will demonstrate to international investors and capital markets that the ECOWAS Region is a very attractive region for investing in energy projects and infrastructure;

WISHING to implement the basic concept of the Energy Charter initiative, which is to catalyse economic growth in the ECOWAS region by means of measures to liberalize energy investment and trade in energy;

AFFIRMING that the Member States of ECOWAS attach the highest importance to implementing the most favoured nation treatment and that such commitments will make it possible to realize investments in accordance with this Protocol;

HAVING REGARD to the objective of progressive liberalization of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the Agreement Establishing the World Trade Organization and as otherwise provided for in this Protocol;

DETERMINED to progressively remove technical, administrative and other barriers to trade in electricity, gas and other Energy Materials and Energy-Related Equipment, technologies and services;

MINDFUL of the rights and obligations of certain Contracting Parties which are also members of the World Trade Organisation;

HAVING REGARD to competition rules concerning mergers, monopolies, anti-competitive practices and abuse of dominant position;

RECOGNIZING the necessity for the most efficient exploration, production, conversion, storage, transport, distribution and use of energy;

UNDERSTANDING that sustaining the environment is an essential component of all phases of development and trade in the energy sector;

RECOGNIZING the vital role of the private sector in promoting and implementing energy investments, and intent on ensuring a favourable institutional framework for economically viable investment in energy infrastructure;

CONVINCED of the urgency of the need to promote energy sector investment and energy trade in West Africa; and

RECOGNIZING that adoption of the highest international trade standards is the most efficient course to pursue to attract energy sector investors to the ECOWAS Region

HAVE AGREED AS FOLLOWS:

CHAPTER I

DEFINITIONS AND PURPOSE

ARTICLE 1

DEFINITIONS

As used in this Protocol:

(1) "Area" means with respect to a state that is a Contracting Party:

(a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and

(b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

(c) With respect to a Regional Economic Integration Organization which is a Contracting Party, Area means the Areas of the member states of such Organization, under the provisions contained in the agreement establishing that Organization.

(2) "Community" means the Economic Community of West African States established by Article 2 of the ECOWAS Treaty.

(3) "Contracting Party" means an ECOWAS Member State or Regional Economic Integration Organization which has consented to be bound by this Protocol and for which the Protocol is in force.

(4) "Cost-Effective" or “Cost-Effectiveness” means achievement of a defined objective at the lowest cost or to achieve the greatest benefit at a given cost.

(5) "Economic Activity in the Energy Sector" means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex B, or concerning the distribution of heat to multiple premises.

(6) "Energy Cycle" means the entire energy chain, including activities related to prospecting for, exploration, production, conversion, storage, transport, distribution and consumption of the various forms of energy, and the treatment and disposal of wastes, as well as the decommissioning, cessation or closure of these activities, minimizing harmful Environmental Impacts;

(7) "Energy Materials and Products", based on the Harmonized System of the World Customs Organization, means the items included in Annexes A .

(7bis) "Energy-Related Equipment", based on the Harmonised System of the World Customs Organization, means the items included in a list as adopted by the Meeting of Energy Ministers.

(8) "Environmental Impact" means any effect caused by a given activity on the environment, including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interactions among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;

(9) "Executive Secretariat" means the Executive Secretariat established under Article 17 of the ECOWAS Treaty.

(10) "Freely Convertible Currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

(11) "Improving Energy Efficiency" means acting to maintain the same unit of output (of goods or services) without reducing the quality or performance of the output, while reducing the amount of energy required to produce that output;

(12)"Intellectual Property" includes copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

(13)"Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

(a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

(b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;

(c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;

(d) Intellectual Property;

(e) Returns;

(f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the date of entry into force of this Protocol for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the "Effective Date") provided that this Protocol shall only apply to matters affecting such investments after the Effective Date.

"Investment" refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as "efficiency projects" and so notified to the Executive Secretariat of ECOWAS.

(14) "Investor" means:

(a) a natural person having the citizenship or nationality of, or who resides or establishes an office in the Area of, a Contracting Party in accordance with its applicable laws; or,

(b) a company or other organization organized, or registered, in accordance with the law applicable in that Contracting Party.

(15) "Make Investments" or "Making of Investments" means establishing new Investments, acquiring all or part of existing Investments or moving into different fields of Investment activity.

(16) "Meeting of Energy Ministers" means the meeting of the organ responsible for implementation of the present Protocol composed by the Energy Ministers of ECOWAS.

(17) "Regional Economic Integration Organization" means an organization constituted by Member States to which they have transferred competence over certain matters a

number of which are governed by this Protocol, including the authority to take decisions binding on them in respect of those matters.

(18)"Returns" means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.

(19)(a) "WTO" means the World Trade Organization established by the Agreement Establishing the World Trade Organization.

(b)"WTO Agreement" means the Agreement Establishing the World Trade Organization, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time.

(c) "GATT 1994" means the General Agreement on Tariffs and Trade as specified in Annex 1A of the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified from time to time.

A party to the Agreement Establishing the World Trade Organization is considered to be a party to GATT 1994.

(d) "Related Instruments" means, the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended or modified.

ARTICLE 2

PURPOSE OF THE PROTOCOL

This Protocol establishes a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, with a view to achieving increased investment in the energy sector, and increased energy trade in the West Africa region.

CHATPER II

COMMERCE

ARTICLE 3

INTERNATIONAL MARKETS

The Contracting Parties shall work to promote access to international markets relating to Energy Materials and Products and Energy-Related Equipment on commercial terms, and generally to develop an open and competitive energy market.

ARTICLE 4

NON-DEROGATION FROM WTO AGREEMENT

Nothing in this Protocol shall derogate, as between particular Contracting Parties which are members of the WTO, from the provisions of the WTO Agreement as they are applied between those Contracting Parties.

ARTICLE 5

TRADE-RELATED INVESTMENT MEASURES

(1) A Contracting Party shall not apply any trade-related investment measure that is inconsistent with the provisions of article III or XI of the GATT 1994; this shall be without prejudice to the Contracting Party's rights and obligations under the WTO Agreement and Article 29 of this Protocol.

(2) Such measures include any investment measure which is mandatory or enforceable under domestic law or under any administrative ruling, or compliance with which is necessary to obtain an advantage, and which requires:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise's purchase or use of imported products be limited to an amount related to the volume or value of local products that it exports;

or which restricts:

(c) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(d) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(e) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

(3) Nothing in paragraph (1) shall be construed to prevent a Contracting Party from applying the trade-related investment measures described in subparagraphs (2)(a) and (c) as a condition of eligibility for export promotion, foreign aid, government procurement or preferential tariff or quota programmes.

(4) Notwithstanding paragraph (1), a Contracting Party may temporarily continue to maintain trade-related investment measures which were in effect more than 180 days before its signature of this Protocol, subject to the notification and phase-out provisions set out in Annex C.

ARTICLE 6

COMPETITION

(1) Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector.

(2) Each Contracting Party shall ensure that within its jurisdiction it has and enforces such laws as are necessary and appropriate to address unilateral and concerted anti-competitive conduct in Economic Activity in the Energy Sector.

(3) Contracting Parties with experience in applying competition rules shall give full consideration to providing, upon request and within available resources, technical assistance on the development and implementation of competition rules to other Contracting Parties.

(4) Contracting Parties may co-operate in the enforcement of their competition rules by consulting and exchanging information.

(5) If a Contracting Party considers that any specified anti-competitive conduct carried out within the Area of another Contracting Party is adversely affecting an important interest relevant to the purposes identified in this Article, the Contracting Party may notify the other Contracting Party and may request that its competition authorities initiate appropriate enforcement action. The notifying Contracting Party shall include in such notification sufficient information to permit the notified Contracting Party to identify the anti-competitive conduct that is the subject of the notification and shall include an offer of such further information and co-operation as the notifying Contracting Party is able to provide. The notified Contracting Party or, as the case may be, the relevant competition authorities may consult with the competition authorities of the notifying Contracting Party and shall accord full consideration to the request of the notifying Contracting Party in deciding whether or not to initiate enforcement action with respect to the alleged anti-competitive conduct identified in the notification. The notified Contracting Party shall inform the notifying Contracting Party of its decision or the decision of the relevant competition authorities and may if it wishes inform the notifying Contracting Party of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party shall advise the notifying Contracting Party of its outcome and, to the extent possible, of any significant interim development.

(6) Any information provided under the terms of this Article shall be made only with due regard for internal laws of a Contracting Party regarding disclosure of information, confidentiality or business secrecy.

(7) The procedures set forth in paragraph (5) and Article 27(1) shall be the exclusive means within this Protocol of resolving any disputes that may arise over the implementation or interpretation of this Article.

(8) Contracting Parties agree that open and non-discriminatory access to power generation sources and transmission facilities encourages investment in generation and distribution facilities, and thereby increases competition in such sub-sectors of the power industry, in turn leading to reduced cost for power. Contracting Parties agrees therefore to make accessible for all other Contracting Parties and Investors, without any discrimination, power generation sources and transmission facilities sited within their Areas.

ARTICLE 7

TRANSIT

(1) Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

(2) Contracting Parties shall encourage relevant entities to co-operate in:

(a) modernising Energy Transport Facilities necessary to the Transit of Energy Materials and Products;

(b) the development and operation of Energy Transport Facilities serving the Areas of more than one Contracting Party;

(c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;

(d) facilitating the interconnection of Energy Transport Facilities.

(3) Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, unless an existing international agreement provides otherwise. Contracting Parties shall, subject to paragraphs (6) and (7), secure established flows of Energy Materials and Products to, from or between the Areas of other Contracting Parties.

(4) In the event that Transit of Energy Materials and Products cannot be achieved by means of existing Energy Transport Facilities consistent with paragraph (1), the Contracting Parties shall not place obstacles in the way of new capacity being established, except in the case where a Contracting Party can prove that the new capacity or the building of new capacities would endanger the security or efficiency of the existing energy system, including supply security, except as may be otherwise provided in applicable legislation which is consistent with paragraph (1).

(5) A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

(a) permit the construction or modification of Energy Transport Facilities; or
(b) permit new or additional Transit through existing Energy Transport Facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems, including the security of supply.

(6) A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products prior to the conclusion of the dispute resolution procedures set out in paragraph (7), except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision.

(7) The following provisions shall apply to a dispute envisioned by paragraph (6), but only following the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute or between any entity referred to in paragraph (6) and an entity of another Contracting Party to the dispute:

(a) A Contracting Party to the dispute may refer it to the Executive Secretariat of ECOWAS by a notification summarizing the matters in dispute. The Executive Secretariat of ECOWAS shall notify all Contracting Parties of any such referral.

(b) Within 30 days of receipt of such a notification, the Executive Secretariat of ECOWAS, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in the Area of a party to the dispute or one of the other Contracting Parties concerned.

(c) The conciliator shall seek the agreement of the parties to the dispute to a resolution thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify for 12 months or until the dispute is resolved, whichever is earlier.

(d) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under subparagraph (c)

on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.

(e) Notwithstanding subparagraph (b) the ECOWAS Executive Secretariat may elect not to appoint a conciliator if in its judgement the dispute concerns Transit that is or has been the subject of the dispute resolution procedures set out in subparagraphs (a) to (d) and those proceedings have not resulted in a resolution of the dispute.

(f) The Meeting of Energy Ministers shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.

(8) Nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.

(9) This Article shall not be so interpreted as to oblige any Contracting Party which does not have a certain type of Energy Transport Facilities used for Transit to take any measure under this Article with respect to that type of Energy Transport Facilities. Such a Contracting Party is, however, obliged to comply with paragraph (4).

(10) For the purposes of this Article:

(a) "Transit" means

(i) the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a Contracting Party; or

(ii) the carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party.

(b) "Energy Transport Facilities" consist of high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, and other fixed facilities specifically for handling Energy Materials and Products.

ARTICLE 8

TRANSFER OF TECHNOLOGY

(1) The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and Investment and to implement the objectives of this Protocol subject to their laws and regulations, and to the protection of Intellectual Property rights.

(2) Accordingly, to the extent necessary to give effect to paragraph (1) the Contracting Parties shall eliminate existing obstacles and create no new ones to the transfer of technology in the field of Energy Materials and Products and related equipment and services, subject to non-proliferation and other international obligations.

ARTICLE 9

ACCESS TO CAPITAL

(1) The Contracting Parties acknowledge the importance of open capital markets in encouraging the flow of capital to finance trade in Energy Materials and Products and for the making of and assisting with regard to Investments in Economic Activity in the Energy Sector in the Areas of other Contracting Parties. Each Contracting Party shall accordingly endeavour to promote conditions for access to its capital market by companies and nationals of other Contracting Parties, or, any other third state, for the purpose of financing trade in Energy Materials and Products and for the purpose of Investment in Economic Activity in the Energy Sector in the Areas of those other Contracting Parties, on a basis no less favourable than that which it accords in like circumstances to its own companies and nationals or companies and nationals of any other Contracting Party or any third state, whichever is the most favourable.

(2) A Contracting Party may adopt and maintain programmes providing for access to their Investors to public loans, grants, guarantees or insurance for facilitating trade or Investment within the Area of other Contracting Parties. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including any objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

(3) Contracting Parties shall, in implementing programmes in Economic Activity in the Energy Sector to improve the economic stability and investment climates of the Contracting Parties, seek as appropriate to encourage the operations and take advantage of the expertise of relevant international financial institutions.

(4) Nothing in this Article shall prevent:

(a) financial institutions from applying their own lending or underwriting practices based on market principles and prudential considerations; or

(b) a Contracting Party from taking prudent measures, including:

(i) steps to protect its investors, consumers, depositors, insured or persons to whom a fiduciary duty is owed by a financial service supplier; or

(ii) steps to ensure the integrity and stability of its financial system and capital markets.

CHAPTER III

INVESTMENT PROMOTION AND PROTECTION

ARTICLE 10

PROMOTION, PROTECTION AND TREATMENT OF INVESTMENTS

(1) Each Contracting Party shall, in accordance with the provisions of this Protocol, encourage and create stable, equitable, favourable and transparent conditions for Investors to make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or with respect to an Investment.

(2) Each Contracting Party shall endeavour to accord to Investors, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).

(3) For the purposes of this Article, "Treatment" means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own Investors or to Investors of any other Contracting Party or, indeed, of any third state, whichever is the most favourable.

(4) Each Contracting Party shall, as regards the Making of Investments in its Area, endeavour to:

(a) limit to the minimum the exceptions to the Treatment described in paragraph (3);

(b) progressively remove existing restrictions affecting Investors.

(5) (a) A Contracting Party may, as regards the Making of Investments in its Area, at any time declare voluntarily to the Meeting of Energy Ministers, through the Executive Secretariat of ECOWAS, its intention not to introduce new exceptions to the Treatment described in paragraph (3).

(b) A Contracting Party may, furthermore, at any time make a voluntary commitment to accord to Investors, as regards the Making of Investments in some or all Economic Activities in the Energy Sector in its Area, the Treatment described in paragraph (3). Such commitments shall be notified to the Executive Secretariat of ECOWAS and shall be binding under this Protocol.

(6) Each Contracting Party shall, in its Area, accord to Investments of Investors and their related activities including management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to its own Investors or of the Investors of any third state and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable.

(7) The modalities of application of paragraph (6) may exclude programmes under which a Contracting Party provides to its own national investors grants or other financial assistance, or enters into contracts, for energy technology research and development. Each Contracting Party shall through the Executive Secretariat of ECOWAS keep the Meeting of Energy Ministers informed of the modalities it applies to the programmes described in this paragraph.

(8) Each state or Regional Economic Integration Organization which signs or accedes to this Protocol shall, on the date it signs the Protocol or deposits its instrument of accession, submit to the Executive Secretariat of ECOWAS a report summarizing all laws, regulations or other measures relevant to:

(a) exceptions to paragraph (2); or

(b) the programs referred to in paragraph (7).

A Contracting Party shall keep its report up to date by promptly submitting amendments to the Executive Secretariat of ECOWAS. The Meeting of Energy Ministers shall review these reports periodically.

In respect of subparagraph (a) the report may designate parts of the energy sector in which a Contracting Party accords to Investors the Treatment described in paragraph (3).

In respect of subparagraph (b) the review by the Meeting of Energy Ministers may consider the effects of such programmes on competition and Investments.

(9) Notwithstanding any other provision of this Article, the treatment described in paragraphs (3) and (6) shall not apply to the protection of Intellectual Property; instead, the treatment shall be as specified in the corresponding provisions of the applicable international agreements for the protection of Intellectual Property rights to which the respective Contracting Parties are parties.

(10) For the purposes of Article 26, the application by a Contracting Party of a trade-related investment measure as described in Article 5(1) and (2) to an Investment of an Investor existing at the time of such application shall, subject to Article 5(3) and (4), be considered a breach of an obligation of the former Contracting Party under this Part.

(11) Each Contracting Party shall ensure that its domestic law provides effective means for the assertion of claims and the enforcement of rights with respect to Investments, investment agreements, and investment authorizations.

ARTICLE 11

KEY PERSONNEL

(1) A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by Investors and key personnel who are employed by such Investors or by Investments of such Investors, to enter and remain temporarily in its Area to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant Investments, including the provision of advice or key technical services.

(2) A Contracting Party shall permit Investors which have Investments in its Area, and Investments of such Investors, to employ any key person of the Investor's or the Investment's choice regardless of nationality and citizenship provided that such key

person has been permitted to enter, stay and work in the Area of the Contracting Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person.

ARTICLE 12

COMPENSATION FOR LOSSES

(1) Except where Article 13 applies, an Investor which suffers a loss with respect to any Investment in the Area of a Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Area, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment which is the most favourable of that which that Contracting Party accords to any other Investor, whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third state.

(2) Without prejudice to paragraph (1), an Investor which, in any of the situations referred to in that paragraph, suffers a loss in the Area of a Contracting Party resulting from

(a) requisitioning of its Investment or part thereof by the latter's forces or authorities; or

(b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

ARTICLE 13

EXPROPRIATION

(1) Investments of Investors in the Area of any Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is:

(a) for a purpose which is in the public interest;

(b) not discriminatory;

(c) carried out under due process of law; and

(d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.

(2) The Investor affected shall have a right to prompt review, under the law of the Contracting Party making the Expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

(3) For the avoidance of doubt, Expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in which an Investor has an Investment, including through the ownership of shares.

ARTICLE 14

TRANSFERS RELATED TO INVESTMENTS

(1) Each Contracting Party shall with respect to Investments made in its Area by Investors guarantee the freedom of transfer into and out of its Area, including the transfer of:

(a) the initial capital plus any additional capital for the maintenance and development of an Investment;

(b) Returns;

(c) payments under a contract, including amortization of principal and accrued interest payments pursuant to a loan agreement;

(d) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment;

(e) proceeds from the sale or liquidation of all or any part of an Investment;

(f) payments arising out of the settlement of a dispute;

(g) payments of compensation pursuant to Articles 12 and 13.

(2) Transfers under paragraph (1) shall be effected without delay and (except in case of a Return in kind) in a Freely Convertible Currency.

(3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the Investor.

(4) Notwithstanding paragraphs (1) to (3), a Contracting Party may protect the rights of creditors, or ensure compliance with laws on the issuing, trading and dealing in securities and the satisfaction of judgements in civil, administrative and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its laws and regulations.

(5) Notwithstanding subparagraph (1)(b), a Contracting Party may restrict the transfer of a Return in kind in circumstances where the Contracting Party is permitted under Article 29(2) or the WTO Agreement to restrict or prohibit the exportation or the sale for export of the product constituting the Return in kind; provided that a Contracting Party shall permit transfers of Returns in kind to be effected as authorized or specified in an investment agreement, investment authorization, or other written agreement between the Contracting Party and either an Investor or its Investment.

ARTICLE 15

SUBROGATION

(1) If a Contracting Party or its designated agency (hereinafter referred to as the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an Investment of an Investor (hereinafter referred to as the "Party Indemnified") in the Area of another Contracting Party (hereinafter referred to as the "Host Party"), the Host Party shall recognize:

(a) the assignment to the Indemnifying Party of all the rights and claims in respect of such Investment; and

(b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.

(2) The Indemnifying Party shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1); and

(b) the same payments due pursuant to those rights and claims,

as the Party Indemnified was entitled to receive by virtue of this Protocol in respect of the Investment concerned.

(3) In any proceeding under Article 26, a Contracting Party shall not assert as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

ARTICLE 16

RELATION TO OTHER AGREEMENTS

Where two or more Contracting Parties have entered into a prior international agreement, or enter into a subsequent international agreement, whose terms in either case concern the subject matter of Chapter III or V of this Protocol,

(1) nothing in Chapter III or V of this Protocol shall be construed to derogate from any provision of such terms of the other agreement or from any right to dispute resolution with respect thereto under that agreement; and

(2) nothing in such terms of the other agreement shall be construed to derogate from any provision of Chapter III or V of this Protocol or from any right to dispute resolution with respect thereto under this Protocol,

where any such provision is more favourable to the Investor or Investment.

ARTICLE 17

NON-APPLICATION OF CHAPTER III IN CERTAIN CIRCUMSTANCES

Each Contracting Party reserves the right to deny the advantages of the provisions of Chapter III to:

(1) a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized; or

(2) an Investment, if the denying Contracting Party establishes that such Investment is an Investment of an Investor of a third state with or as to which the denying Contracting Party:

(a) does not maintain a diplomatic relationship; or

(b) adopts or maintains measures that:

(i) prohibit transactions with Investors of that state; or

(ii) would be violated or circumvented if the benefits of this Chapter were accorded to Investors of that state or to their Investments.

CHAPTER IV

MISCELLANEOUS PROVISIONS

ARTICLE 18

SOVEREIGNTY OVER ENERGY RESOURCES

(1) The Contracting Parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.

(2) Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, this Protocol shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.

(3) Each state continues to hold in particular the rights to decide the geographical areas within its Area to be made available for exploration and development of its energy resources, the optimization of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploration, development and reclamation within its Area, and to participate in such exploration and exploitation, inter alia, through direct participation by the government or through state enterprises.

(4) The Contracting Parties undertake to facilitate access to energy resources, inter alia, by allocating in a non-discriminatory manner on the basis of published criteria authorizations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

ARTICLE 19

ENVIRONMENTAL ASPECTS

(1) In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimize in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area, taking proper account of safety. In doing so each Contracting Party shall act in a Cost-Effective manner. In its policies and actions each Contracting Party shall strive to take precautionary measures to prevent or minimize environmental degradation. The Contracting Parties agree that the polluter in the Areas of Contracting Parties, shall bear the cost of the avoidance, elimination, and clean-up of any pollution, as well as the cost of any other consequences of such pollution, including trans-boundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade. Contracting Parties shall accordingly:

(a) take account of environmental considerations throughout the formulation and implementation of their energy policies;

(b) promote market-oriented price formation and a fuller reflection of environmental costs and benefits throughout the Energy Cycle;

(c) encourage co-operation in the attainment of the environmental objectives of this Protocol and co-operation in the field of international environmental standards for the Energy Cycle;

(d) have particular regard to Improving Energy Efficiency, to developing and using renewable energy sources, to promoting the use of cleaner fuels and to employing technologies and technological means that reduce pollution;

(e) promote the collection and sharing among Contracting Parties of information on environmentally sound and economically efficient energy policies and Cost-Effective practices and technologies;

(f) promote public awareness of the Environmental Impacts of energy systems, of the scope for the prevention or abatement of their adverse Environmental Impacts, and of the costs associated with various prevention or abatement measures;

(g) promote and co-operate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimize harmful Environmental Impacts of all aspects of the Energy Cycle in an economically efficient manner;

(h) encourage favourable conditions for the transfer and dissemination of such technologies consistent with the adequate and effective protection of Intellectual Property rights;

(i) promote the transparent assessment at an early stage and prior to decision, and subsequent monitoring, of Environmental Impacts of environmentally significant energy investment projects;

(j) promote international awareness and information exchange on Contracting Parties' relevant environmental programmes and standards and on the implementation of those programmes and standards;

(k) participate, upon request, and within their available resources, in the development and implementation of appropriate environmental programmes in their Areas.

(2) At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Meeting of Energy Ministers aiming at a solution.

ARTICLE 20

TRANSPARENCY

(1) Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products or Energy-Related Equipment are, in accordance with Article 29(2), among the measures subject to the transparency disciplines of the WTO Agreement.

(2) Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Protocol shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

(3) Each Contracting Party shall designate one or more enquiry points to which requests for information about the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and shall communicate promptly such designation to the Executive Secretariat of ECOWAS which shall make it available on request.

ARTICLE 21

TAXATION

(1) Except as otherwise provided in this Article, nothing in this Protocol shall create rights or impose obligations on Investors with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of this Protocol, this Article shall prevail to the extent of the inconsistency.

(2) Article 7(3) shall apply to Taxation Measures other than those on income or on capital, except that such provision shall not apply to:

(a) an advantage accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii); or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure of a Contracting Party arbitrarily discriminates against Energy Materials and Products originating in, or destined for the Area of another Contracting Party or arbitrarily restricts benefits accorded under Article 7(3).

(3) Article 10(2) and (6) shall apply to Taxation Measures of the Contracting Parties other than those on income or on capital, except that such provisions shall not apply to:

(a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii) or resulting from membership of any Regional Economic Integration Organization; or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates against an Investor or arbitrarily restricts benefits accorded under the Investment provisions of this Protocol.

(4) Article 29(2) to (8) shall apply to Taxation Measures other than those on income or on capital.

(5) (a) Article 13 shall apply to taxes.

(b) Whenever an issue arises under Article 13, to the extent it pertains to whether a tax constitutes an expropriation or whether a tax alleged to constitute an expropriation is discriminatory, the following provisions shall apply:

(i) The Investor or the Contracting Party alleging expropriation shall refer the issue of whether the tax is an expropriation or whether the tax is discriminatory to the relevant Competent Tax Authority. Failing such referral by the Investor or the Contracting Party, bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) shall make a referral to the relevant Competent Tax Authorities;

(ii) The Competent Tax Authorities shall, within a period of six months of such referral, strive to resolve the issues so referred. Where non-discrimination issues are concerned, the Competent Tax Authorities shall apply the non-discrimination provisions of the relevant tax convention or, if there is no non-discrimination provision in the relevant tax convention applicable to the tax or no such tax convention is in force between the Contracting Parties concerned, they shall apply the non-discrimination principles under the Model Tax Convention on Income and Capital of the Organisation for Economic Co-operation and Development or any other model agreed upon by the Contracting Parties;

(iii) Bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) may take into account any conclusions arrived at by the Competent Tax Authorities regarding whether the tax is an expropriation. Such bodies shall take into account any conclusions arrived at within the six-month period prescribed in subparagraph (b)(ii) by the Competent Tax Authorities regarding whether the tax is discriminatory. Such bodies may also take into account any conclusions arrived at by the Competent Tax Authorities after the expiry of the six-month period;

(iv) Under no circumstances shall involvement of the Competent Tax Authorities, beyond the end of the six-month period referred to in subparagraph (b)(ii), lead to a delay of proceedings under Articles 26 and 27.

(6) For the avoidance of doubt, Article 14 shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means.

(7) For the purposes of this Article:

(a) The term "Taxation Measure" includes:

(i) any provision relating to taxes of the domestic law of the Contracting Party or of a political subdivision thereof or a local authority therein; and

(ii) any provision relating to taxes of any convention for the avoidance of double taxation or of any other international agreement or arrangement by which the Contracting Party is bound.

(b) There shall be regarded as taxes on income or on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and

gifts, or substantially similar taxes, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(c) A "Competent Tax Authority" means the competent authority pursuant to a double taxation agreement in force between the Contracting Parties or, when no such agreement is in force, the minister or ministry responsible for taxes or their authorized representatives.

(d) For the avoidance of doubt, the terms "tax provisions" and "taxes" do not include customs duties.

ARTICLE 22

STATE AND PRIVILEGED ENTERPRISES

(1) Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party's obligations under Chapter III of this Protocol.

(2) No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under other provisions of this Protocol.

(3) Each Contracting Party shall ensure that if it establishes or maintains an entity and entrusts the entity with regulatory, administrative or other governmental authority, such entity shall exercise that authority in a manner consistent with the Contracting Party's obligations under this Protocol.

(4) No Contracting Party shall encourage or require any entity to which it grants exclusive or special privileges to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under this Protocol.

(5) For the purposes of this Article, "entity" includes any enterprise, agency or other organization or natural person.

ARTICLE 23

OBSERVANCE BY SUB-NATIONAL AUTHORITIES

(1) Each Contracting Party is fully responsible under this Protocol for the observance of all provisions of the Protocol, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its Area.

(2) The dispute settlement provisions in Chapters II, IV and V of this Protocol may be invoked in respect of measures affecting the observance of the Protocol by a Contracting Party which have been taken by regional or local governments or authorities within the Area of the Contracting Party.

ARTICLE 24

EXCEPTIONS

(1) This Article shall not apply to Articles 12, 13 and 29.

(2) The provisions of this Protocol other than

(a) those referred to in paragraph (1); and

(b) with respect to subparagraph (i), Chapter III of the Protocol

shall not preclude any Contracting Party from adopting or enforcing any measure

(i) necessary to protect human, animal or plant life or health;

(ii) essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that

(A) all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and

(B) any such measure that is inconsistent with this Protocol shall be discontinued as soon as the conditions giving rise to it have ceased to exist; or

(iii) designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure

(A) has no significant impact on that Contracting Party's economy; and

(B) does not discriminate between Investors not included among those for whom the measure is intended,

provided that no such measure shall constitute a disguised restriction on Economic Activity in the Energy Sector, or arbitrary or unjustifiable discrimination between Contracting Parties or between Investors or other interested persons of Contracting Parties. Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Protocol to an extent greater than is strictly necessary to the stated end.

(3) The provisions of this Protocol other than those referred to in paragraph (1) shall not be construed to prevent any Contracting Party from taking any measure which it considers necessary:

(a) for the protection of its essential security interests including those

(i) relating to the supply of Energy Materials and Products to a military establishment; or

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

(b) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to fulfil its obligations under this Protocol or any other treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings; or

(c) for the maintenance of public order.

Such measure shall not constitute a disguised restriction on Transit.

(4) The provisions of this Protocol which accord most favoured nation treatment shall not oblige any Contracting Party to extend to an Investor any preferential treatment resulting from that Contracting Party’s membership of a free-trade area or customs union.

ARTICLE 25

ECONOMIC INTEGRATION AGREEMENTS

(1) The provisions of this Protocol shall not be so construed as to oblige a Contracting Party which is party to an Economic Integration Agreement (hereinafter referred to as "EIA") to extend, by means of most favoured nation treatment, to another Contracting Party which is not a party to that EIA, any preferential treatment applicable between the parties to that EIA as a result of their being parties thereto.

(2) For the purposes of paragraph (1), "EIA" means an agreement substantially liberalizing, inter alia, trade and investment, by providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.

(3) This Article shall not affect the application of the WTO Agreement.

CHAPTER V

DISPUTE SETTLEMENT

ARTICLE 26

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

(1) Disputes between a Contracting Party and an Investor relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Chapter III shall, if possible, be settled amicably.

(2) If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:

(a) to the courts or administrative tribunals of the Contracting Party to the dispute;

(b) in accordance with any applicable, previously agreed dispute settlement procedure; or

(c) in accordance with the following paragraphs of this Article.

(3) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:

(a) (i) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the "ICSID Convention"), if the country of origin of the Investor and the Contracting Party to the dispute are both parties to the ICSID Convention; or

(ii) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the "Additional Facility Rules"), if the country of origin of the Investor or the Contracting Party to the dispute, but not both, is a party to the ICSID Convention; or

(b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); or

(c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce; or

(d) an arbitral proceeding under the organization for the Harmonization of Trade Laws in Africa (OHADA).

(5) (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) shall be considered to satisfy the requirement for:

(i) written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention and for purposes of the Additional Facility Rules;

(ii) an "agreement in writing" for purposes of article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as the "New York Convention"); and

(iii) "the parties to a contract [to] have agreed in writing" for the purposes of article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article shall at the request of any party to the dispute be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article I of that Convention.

(6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Protocol and applicable rules and principles of international law.

(7) An Investor other than a natural person which has the nationality of a Contracting Party to the dispute on the date of the consent in writing referred to in paragraph (4) and which, before a dispute between it and that Contracting Party arises, is controlled by Investors of another Contracting Party, shall for the purpose of article 25(2)(b) of the ICSID Convention be treated as a "national of another Contracting Party" and shall for the purpose of article 1(6) of the Additional Facility Rules be treated as a "national of another State".

(8) The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. An award of arbitration concerning a measure of a sub-national government or authority of the disputing Contracting Party shall provide that the Contracting Party may pay monetary damages in lieu of any other remedy granted. Each Contracting Party shall carry out without delay any such award and shall make provision for the prompt and effective enforcement in its Area of such awards.

ARTICLE 27

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

(1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Protocol through diplomatic channels.

(2) If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Protocol or agreed in writing by the Contracting Parties, and except as concerns the application or interpretation of Article 6 or Article 19 upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.

(3) Such an ad hoc arbitral tribunal shall be constituted as follows:

(a) The Contracting Party instituting the proceedings shall appoint one member of the tribunal and inform the other Contracting Party to the dispute of its appointment within 30 days of receipt of the notice referred to in paragraph (2) by the other Contracting Party;

(b) Within 60 days of the receipt of the written notice referred to in paragraph (2), the other Contracting Party which is a party to the dispute shall appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within 90 days of the receipt of the written notice referred to in paragraph (2), request that the appointment be made in accordance with subparagraph (d);

(c) A third member, who may not be a national or citizen of a Contracting Party to the dispute, shall be appointed by the Contracting Parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the receipt of the notice referred to in paragraph (2), the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with subparagraph (d), at the request of either Contracting Party submitted within 180 days of the receipt of that notice;

(d) Appointments requested to be made in accordance with this paragraph shall be made by the Executive Secretary of the Executive Secretariat of ECOWAS within 30 days of the receipt of a request to do so;

(e) Appointments made in accordance with subparagraphs (a) to (d) shall be made with regard to the qualifications and experience, particularly in matters covered by this Protocol, of the members to be appointed;

(f) In the absence of an agreement to the contrary between the Contracting Parties, the Arbitration Rules of UNCITRAL shall govern, except to the extent modified by the Contracting Parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members;

(g) The tribunal shall decide the dispute in accordance with this Protocol and applicable rules and principles of international law;

(h) The arbitral award shall be final and binding upon the Contracting Parties to the dispute;

(i) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties to the dispute. The tribunal may,

however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties to the dispute;

(j) Unless the Contracting Parties to the dispute agree otherwise, the tribunal shall sit in Abuja, Nigeria, and use the facilities of the ECOWAS Court of Justice;

(k) A copy of the award shall be deposited with the Executive Secretariat of ECOWAS which shall make it generally available.

ARTICLE 28

NON-APPLICATION OF ARTICLE 27 TO CERTAIN DISPUTES

A dispute between Contracting Parties with respect to the application or interpretation of Article 5 or 29 shall not be settled under Article 27 unless the Contracting Parties to the dispute so agree.

CHAPTER VI

TRANSITIONAL PROVISIONS

ARTICLE 29

INTERIM PROVISIONS ON TRADE-RELATED MATTERS

(1) The provisions of this Article shall apply to trade in Energy Materials and Products and Energy-Related Equipment while any Contracting Party is not a member of the WTO.

(2) Trade in Energy Materials and Products and Energy-Related Equipment between Contracting Parties at least one of which is not a member of the WTO shall be governed, subject to the exceptions and rules provided for in Annex D, by the provisions of the WTO Agreement, as applied and practised with regard to Energy Materials and Products and Energy-Related Equipment by members of the WTO among themselves, as if all Contracting Parties were members of the WTO.

(3) Each signatory to this Protocol, and each state or Regional Economic Integration Organization acceding to this Protocol, shall on the date of its signature or of its deposit of its instrument of accession provide to the Executive Secretariat of ECOWAS a list of all customs duties and other charges levied on Energy Materials and Products at the time of importation or exportation, notifying the level of such duties and charges applied on such date of signature or deposit. Any changes to such duties or other charges shall be notified to the Executive Secretariat of ECOWAS, which shall inform the Contracting Parties of such changes.

(4) Each Contracting Party shall endeavour not to increase any customs duty or tariff rate or other charge levied at the time of importation or exportation:

(a) in the case of the importation of Energy Materials and Products listed in Annex A or Energy-Related Equipment listed in the document to be adopted by the Meeting of Energy Ministers under the terms of Article 30 of this Protocol and described in Part I of the Schedule relating to the Contracting Party referred to in article II of the GATT 1994, above the level set forth in that Schedule, if the Contracting Party is a member of the WTO;

(b) in the case of the exportation of Energy Materials and Products listed in Annex A or Energy-Related Equipment listed in the document to be adopted by the Meeting of Energy Ministers under the terms of Article 30 of this Protocol, and that of their importation if the Contracting Party is not a member of the WTO, above the level most recently notified to the Executive Secretariat of ECOWAS, except as permitted by the provisions made applicable by paragraph (2).

(5) A Contracting Party may increase such customs duty or other charge above the level referred to in paragraph (4) only if:

(a) in the case of a customs duty or other charge levied at the time of importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex D; or

(b) it has, to the fullest extent practicable under its legislative procedures, notified the Executive Secretariat of ECOWAS of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.

(6) In respect of trade between Contracting Parties at least one of which is not a member of the WTO, no such Contracting Party shall increase any customs duty or charge of any kind imposed on or in connection with importation or exportation of Energy Materials and Products listed in Annex A or Energy-Related Equipment listed in the

document to be adopted by the Meeting of Energy Ministers under the terms of Article 30 of this Protocol above the lowest of the levels applied on the date of the decision by the Meeting of Energy Ministers to list the particular item in the relevant Annex or document.

A Contracting Party may increase such customs duty or other charge above that level only if:

(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex D; or

(b) in exceptional circumstances not elsewhere provided for in this Protocol, the Meeting of Energy Ministers decides to waive the obligation otherwise imposed on a Contracting Party by this paragraph, consenting to an increase in a customs duty, subject to any conditions the Meeting of Energy Ministers may impose.

(7) Other duties and charges imposed on or in connection with importation or exportation of Energy Materials and Products or Energy-Related Equipment shall be subject to the provisions of the Understanding on the Interpretation of Article II: 1(b) of the GATT 1994 as modified according to Annex D.

(8) Annex E shall apply:

(a) to disputes regarding compliance with provisions applicable to trade under this Article;

(b) to disputes regarding the application by a Contracting Party of any measure, whether or not it conflicts with the provisions of this Article, which is considered by another Contracting Party to nullify or impair any benefit accruing to it directly or indirectly under this Article; and

(c) unless the Contracting Parties to the dispute agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a member of the WTO, except that Annex E shall not apply to any dispute between contracting Parties, the substance of which arises under an agreement that establishes a free-trade area or a customs union as described in article XXIV of the GATT 1994.

ARTICLE 30

ENERGY-RELATED EQUIPMENT

The Meeting of Energy Ministers shall approve a list of Energy-Related Equipment to be included in the trade provisions of this Protocol. The list of Energy-Related Equipment may not be exhaustive. If an Investor needs to use equipment not included in the list, it must submit to the Contracting Party of the area in which it is acting an additional list for approval.

CHAPTER VII

STRUCTURE AND INSTITUTIONS

ARTICLE 31

IMPLEMENTATION

(1) The Meeting of the Energy Ministers of the ECOWAS Member States shall be the organ responsible for implementation of the West African Energy Protocol.

(2) The functions of the Meeting of Energy Ministers shall be to:

(a) carry out the duties assigned to it by this Protocol and any other Agreements under Article 37 of this Protocol;

(b) keep under review and facilitate the implementation of the principles and provisions of this Protocol and other Agreements under Article 37 of this Protocol;

(c) facilitate in accordance with this Protocol and other Agreements under Article 37 of this Protocol the co-ordination of appropriate general measures to carry out the principles of this Protocol;

(d) consider and adopt programmes of work to be carried out by the ECOWAS Executive Secretariat;

(e) consider and approve or adopt the terms of any headquarters or other agreement, including privileges and immunities considered necessary for the Executive Secretariat of ECOWAS;

(f) encourage co-operative efforts aimed at facilitating and promoting market-oriented reforms and modernization of energy sectors in the countries of West Africa;

(g) authorize and approve the terms of reference for the negotiation of protocols, and consider and adopt the texts thereof and of amendments thereto;

(h) authorize the negotiation of declarations, and approve their issuance;

(i) decide on accessions to this Protocol;

(j) authorize the negotiation of and consider and approve or adopt association agreements;

(k) consider and adopt texts of amendments to this Protocol;

(l) consider and approve modifications of and technical changes to the Annexes to this Protocol;

(m) Commit and bind Contracting Parties with respect to obligations for facilitating the creation and execution of energy systems, programmes and projects within the framework of implementation of this Protocol.

(n) Establish regulatory bodies for energy systems, programmes and projects within the framework of implementation of this Protocol.

(3) In the performance of its duties, the Meeting of Energy Ministers, through the Secretariat, shall co-operate with and make as full a use as possible, consistent with economy and efficiency, of the services and programmes of other institutions and organizations with established competence in matters related to the objectives of this Protocol.

(4) The Meeting of Energy Ministers may establish such subsidiary bodies as it considers appropriate for the performance of its duties.

(5) The Meeting of Energy Ministers shall consider and adopt rules of procedure and financial rules.

ARTICLE 32

SECRETARIAT

(1) In accomplishing its mission, the Meeting of Energy Ministers shall receive the support of the Executive Secretariat of ECOWAS which is responsible for implementing the decisions of the Community.

(2) The Executive Secretariat of ECOWAS shall provide to the Meeting of Energy Ministers all assistance necessary for accomplishment of its mission and shall exercise the functions assigned to it under this Protocol or any other Agreement under Article 37 of this Protocol and any other functions that may be assigned to it by the Meeting of Energy Ministers.

ARTICLE 33

VOTING

(1) Decisions of the Meeting of Energy Ministers shall be by consensus, or a simple majority, of members present at the meeting.

(2) Decisions may not be taken unless a minimum of two thirds of the Member States are represented at the meeting.

CHAPTER VIII

FINAL PROVISIONS

ARTICLE 34

RATIFICATION

This Protocol shall be subject to ratification by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Executive Secretariat of ECOWAS in Abuja, Nigeria.

ARTICLE 35

ACCESSION

This Protocol shall be open for accession, from the date on which the Protocol is closed for signature, by states and Regional Economic Integration Organizations which are Member States of ECOWAS on terms to be approved by the Meeting of Energy Ministers. The instruments of accession shall be deposited with the Executive Secretariat of ECOWAS.

ARTICLE 36

AMENDMENTS AND REVISIONS

(1) Any Contracting Party may submit proposals for amending or revising this Protocol.

(2) All such proposals should be submitted to the Executive Secretariat of the ECOWAS which shall distribute them to the Member States within thirty (30) days after their receipt. The Meeting of the Energy Ministers of ECOWAS will examine the amendments or revisions proposals within three (3) months accorded to the Contracting Parties.

(3) The amendments and revisions shall be adopted by the Meeting of the Energy Ministers of ECOWAS in accordance with the provisions of article 33 of this

Protocol and submitted to all the Contracting Parties for ratification according to their respective constitutional procedures. They will enter into force and effect in accordance with the provisions of Article 39 of this Protocol.

ARTICLE 37

ENERGY PROTOCOLS, AGREEMENTS AND DECLARATIONS

(1) The Meeting of Energy Ministers may authorize the negotiation of a number of Agreements or declarations in order to pursue the objectives and principles of this Protocol.

(2) Any signatory to this Protocol may participate in such negotiation.

(3) A state or Regional Economic Integration Organization shall not become a party to any agreement referred to in paragraph (1), above, or declaration unless it is, or becomes at the same time, a signatory and a Contracting Party to this Protocol.

(4) Subject to paragraph (3) and subparagraph (6)(a), final provisions applying to a protocol shall be defined in that protocol.

(5) An Agreement shall apply only to the Contracting Parties which consent to be bound by it, and shall not derogate from the rights and obligations of those Contracting Parties not party to the Agreement.

(6) (a) An Agreement may assign duties to the Meeting of Energy Ministers and functions to the Executive Secretariat of ECOWAS, provided that no such assignment may be made by an amendment to an Agreement unless that amendment is approved by the Meeting of Energy Ministers, whose approval shall not be subject to any provisions of the Agreement which are authorized by subparagraph (b).

(b) An Agreement which provides for decisions thereunder to be taken by the Meeting of Energy Ministers may, subject to subparagraph (a), provide with respect to such decisions:

(i) for voting rules other than those contained in Article 33;

(ii) that only parties to the Agreement shall be considered to be Contracting Parties for the purposes of Article 33 or eligible to vote under the rules provided for in the Agreement.

ARTICLE 38

ASSOCIATION AGREEMENTS

(1) The Meeting of Energy Ministers may authorize the negotiation of association agreements with states or Regional Economic Integration Organizations, or with international organizations, in order to pursue the objectives and principles of this Protocol and the provisions of this Protocol or any other Agreements such as those referred to in Article 37.

(2) The relationship established with and the rights enjoyed and obligations incurred by an associating state, Regional Economic Integration Organization, or international organization shall be appropriate to the particular circumstances of the association, and in each case shall be set out in the association agreement.

ARTICLE 39

ENTRY INTO FORCE

(1) This Protocol and the attached annexes which form an integral part thereof shall enter into force on the ninetieth day after the date of deposit of the ninth instrument of ratification thereof, or of accession thereto, by an ECOWAS Member State.

(2) For each state or Regional Economic Integration Organization which ratifies this Protocol or accedes thereto after the deposit of the ninth instrument of ratification it shall enter into force on the ninetieth day after the date of deposit by such state or Regional Economic Integration Organization of its instrument of ratification, or accession.

(3) For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organization shall not be counted as additional to those deposited by Member States of ECOWAS.

ARTICLE 40

PROVISIONAL APPLICATION

(1) Each signatory agrees to apply this Protocol provisionally pending its entry into force for such signatory in accordance with Article 39, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(2) (a) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depository a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depository.

(b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory may claim the benefits of provisional application under paragraph (1).

(c) Notwithstanding subparagraph (a), any signatory making a declaration referred to in subparagraph (a) shall apply Chapter VII provisionally pending the entry into force of the Protocol for such signatory in accordance with Article 39, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(3) (a) Any signatory may terminate its provisional application of this Protocol by written notification to the Depository of its intention not to become a Contracting Party to the Protocol. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depository.

(b) In the event that a signatory terminates provisional application under subparagraph (a), the obligation of the signatory under paragraph (1) to apply Chapters III and V with respect to any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for twenty years following the effective date of termination.

(4) Pending the entry into force of this Protocol the signatories shall meet periodically in the provisional Meeting of Energy Ministers, the first meeting of which shall be convened by the ECOWAS Executive Secretariat.

(5) A state or Regional Economic Integration Organization which, prior to this Protocol's entry into force, accedes to the Protocol in accordance with Article 35 shall, pending the Protocol's entry into force, have the rights and assume the obligations of a signatory under this Article.

ARTICLE 41

RESERVATIONS

No reservations shall be made to this Protocol.

ARTICLE 42

WITHDRAWAL

(1) At any time after five years from the date on which this Protocol has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depository of its withdrawal from the Protocol.

(2) Any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depository, or on such later date as may be specified in the notification of withdrawal.

(3) The provisions of this Protocol shall continue to apply to Investments made by Investors in the Area of a withdrawing Contracting Party for a period of 20 years from such date of withdrawal.

(4) All Agreements referred to in Article 37(1) to which a Contracting Party is party shall cease to be in force for that Contracting Party on the effective date of its withdrawal from this Protocol.

ARTICLE 43

ENERGY EFFICIENCY

(1) Basic Provisions

(a) Contracting Parties shall co-operate and, as appropriate, assist each other in developing and implementing energy efficiency policies, laws and regulations.

(b) Contracting Parties shall establish energy efficiency policies and appropriate legal and regulatory frameworks which promote, inter alia:

(i) efficient functioning of market mechanisms including market-oriented price formation and a fuller reflection of environmental costs and benefits;

(ii) reduction of barriers to energy efficiency, thus stimulating investments;

(iii) mechanisms for financing energy efficiency initiatives;

(iv) education and awareness;

(v) dissemination and transfer of technologies;

(vi) transparency of legal and regulatory frameworks.

(c) Contracting Parties shall strive to achieve the full benefit of energy efficiency throughout the Energy Cycle. To this end they shall, to the best of their competence, formulate and implement energy efficiency policies and co-operative or coordinated actions based on Cost-Effectiveness and economic efficiency, taking due account of environmental aspects.

(d) Energy efficiency policies shall include both short-term measures for the adjustment of previous practices and long-term measures to improve energy efficiency throughout the Energy Cycle.

(e) When co-operating to achieve the objectives of this Protocol, Contracting Parties shall take into account the differences in adverse effects and abatement costs between Contracting Parties.

(f) Contracting Parties recognize the vital role of the private sector. They shall encourage action by energy utilities, responsible authorities and specialised agencies, and close co-operation between industry and administrations.

(g) Co-operative or coordinated action shall take into account relevant principles adopted in international agreements, aimed at protection and improvement of the environment, to which Contracting Parties are parties.

(h) Contracting Parties shall take full advantage of the work and expertise of competent international or other bodies and shall take care to avoid duplication.

(2) Division of Responsibility and Coordination: Each Contracting Party shall strive to ensure that energy efficiency policies are coordinated among all of its responsible authorities.

(3) Domestic Programmes

(a) In order to achieve the policy aims formulated according to Article 5, each Contracting Party shall develop, implement and regularly update energy efficiency programmes best suited to its circumstances.

(b) These programmes may include activities such as the:

(i) development of long-term energy demand and supply scenarios to guide decision-making;

(ii) assessment of the energy, environmental and economic impact of actions taken;

(iii) definition of standards designed to improve the efficiency of energy using equipment, and efforts to harmonize these internationally to avoid trade distortions;

(iv) development and encouragement of private initiative and industrial co-operation, including joint ventures;

(v) promotion of the use of the most energy efficient technologies that are economically viable and environmentally sound;

(vi) encouragement of innovative approaches for investments in energy efficiency improvements, such as Third Party Financing and co-financing;

(vii) development of appropriate energy balances and data bases, for example with data on energy demand at a sufficiently detailed level and on technologies for Improving Energy Efficiency;

(viii) promotion of the creation of advisory and consultancy services which may be operated by public or private industry or utilities and which provide information about energy efficiency programmes and technologies, and assist consumers and enterprises;

(ix) support and promotion of cogeneration and of measures to increase the efficiency of district heat production and distribution systems to buildings and industry;

(x) establishment of specialized energy efficiency bodies at appropriate levels, that are sufficiently funded and staffed to develop and implement policies.

(c) In implementing their energy efficiency programmes, Contracting Parties shall ensure that adequate institutional and legal infrastructures exist.

(4) Role of the ECOWAS Executive Secretariat: The ECOWAS Executive Secretariat shall endeavour to adopt, within 180 days after the entry into force of this Protocol, procedures for keeping under review and facilitating the implementation of its provisions, including reporting requirements.

ARTICLE 44

DEPOSITORY

The ECOWAS Executive Secretariat shall be the Depository of this Protocol.

ECOWAS Executive Secretariat will provide certified copies of the present Protocol to all ECOWAS Member States, notifying them of the dates for filing of the ratification instruments and membership instruments and shall have the present Protocol filed with the African Union, The United Nations, and with any other organizations which Meeting of Energy Ministers may determine.

ARTICLE 45

TESTIMONIUM/AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol in English, French, and Portuguese of which each text is equally authentic, in one original, which will be deposited with the ECOWAS Executive Secretariat.

DONE IN DAKAR ON THE 31st OF JANUARY IN THE YEAR OF TWO THOUSAND AND THREE

ANNEXES TO THE WEST AFRICA ENERGY PROTOCOL

ANNEX A

ENERGY MATERIAL AND PRODUCTS
(In accordance with Article 1(5))

Nuclear energy	26.12	Uranium or thorium ores and concentrates	
		26.12.10	Uranium ores and concentrates
		26.12.10	Thorium ores and concentrates
	28.44	Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products.	
		28.44.10	Natural uranium and its compounds.
		28.44.20	Uranium enriched in U235 and its compounds; plutonium and its compounds.
		28.44.30	Uranium depleted in U235 and its compounds; thorium and its compounds.
		28.44.40	Radioactive elements and isotopes and radioactive compounds other than 28.44.10, 28.44.20 or 28.44.30
		28.44.50	Spent (irradiated) fuel elements (cartridges) of nuclear reactors.
		28.45.10	Heavy water (deuterium oxide).
Coal, Natural Gas, Petroleum and Petroleum Products, Electrical Energy	27.01	Coal, briquettes, ovoids and similar solid fuels manufactured from coal.	
	27.02	Lignite, whether or not agglomerated excluding jet.	
	27.03	Peat (including peat litter), whether or not agglomerated.	
	27.04	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon.	
	27.05	Coal gas, water gas, producer gas and similar gasses, other than petroleum gases and other gaseous hydrocarbons.	
	27.06	Tar distilled from coal, from lignite or from peat, and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars.	
	27.07	Oils and other products of the distillation of high	

		temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents (e.g., benzole, toluole, xylole, naphtalene, other aromatic hydrocarbon mixtures, phenols, creosote oils and others).
	27.08	Pitch and pitch coke, obtained from coal tar or from other mineral tars.
	27.09	Petroleum oils and oils obtained from bituminous minerals, crude.
	27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude.
	27.11	Petroleum gases and other gaseous hydrocarbons Liquified:
		- natural gas
		- propane
		- butanes
		- ethylene, propylene, butylenes and butadiene (27.11.14)
		- other
		In gaseous state:
		- natural gas
		- other
	27.13	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals.
	27.14	Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks.
	27.15	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (e.g., bituminous mastics, cut-backs).
	27.16	Electrical energy.
Biomass Energy	44.01.10	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms.
	44.02	Charcoal (including charcoal from shells or nuts), whether or not agglomerated.

ANNEX B

NON-APPLICABLE ENERGY MATERIALS AND PRODUCTS
FOR DEFINITIONS OF "ECONOMIC ACTIVITY IN THE ENERGY SECTOR"
(In accordance with Article 1(4))

	27.07	Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents (e.g., benzole, toluole, xylole, naphtalene, other aromatic hydrocarbon mixtures, phenols, creosote oils and others).
Biomass Energy	44.01.10	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms.
	44.02	Charcoal (including charcoal from shells or nuts), whether or not agglomerated.

ANNEX C

NOTIFICATION AND PHASE-OUT (TRIMs)
(In accordance with Article 5(4))

(1) Each Contracting Party shall notify to the Executive Secretariat of ECOWAS all trade-related investment measures which it applies that are not in conformity with the provisions of Article 5, within:

(a) 90 days after the entry into force of this Protocol if the Contracting Party is a member of the WTO; or

(b) 12 months after the entry into force of this Protocol if the Contracting Party is not a party to the WTO.

Such trade-related investment measures of general or specific application shall be notified along with their principal features.

(2) In the case of trade-related investment measures applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

(3) Each Contracting Party shall eliminate all trade-related investment measures which are notified under paragraph (1) within:

(a) two years from the date of entry into force of this Protocol if the Contracting Party is a party to the WTO; or

(b) three years from the date of entry into force of this Protocol if the Contracting Party is not a party to the WTO.

(4) During the applicable period referred to in paragraph (3) a Contracting Party shall not modify the terms of any trade-related investment measure which it notifies under paragraph (1) from those prevailing at the date of entry into force of this Protocol so as to increase the degree of inconsistency with the provisions of Article 5 of this Protocol.

(5) Notwithstanding the provisions of paragraph (4), a Contracting Party, in order not to disadvantage established enterprises which are subject to a trade-related investment measure notified under paragraph (1), may apply during the phase-out period the same trade-related investment measure to a new Investment where:

(a) the products of such Investment are like products to those of the established enterprises; and

(b) such application is necessary to avoid distorting the conditions of competition between the new Investment and the established enterprises.

Any trade-related investment measure so applied to a new Investment shall be notified to the Executive Secretariat of ECOWAS. The terms of such a trade-related investment measure shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time.

(6) Where a state or Regional Economic Integration Organization accedes to this Protocol after the Protocol has entered into force:

(a) the notification referred to in paragraphs (1) and (2) shall be made by the later of the applicable date in paragraph (1) or the date of deposit of the instrument of accession; and

(b) the end of the phase-out period shall be the later of the applicable date in paragraph (3) or the date on which the Protocol enters into force for that state or Regional Economic Integration Organization.

ANNEX D

EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE PROVISIONS OF THE WTO AGREEMENT
(In accordance with Article 29(2))

(A) Exceptions to the Application of the Provisions of the WTO Agreement.

(1) The following provisions of the WTO Agreement shall not be applicable under Article 29(2):

(a) Agreement Establishing the World Trade Organisation
All except article IX, paragraphs 3 and 4 and XVI, paragraphs 1, 3, and 4

(i) General Agreement on Tariffs and Trade 1994

II	Schedules of Concessions, paragraphs (1)(a), (1)(b,1st sentence), (1)(c) and (7)
IV	Special Provisions relating to Cinematographic Films
XV	Exchange Arrangements
XVIII	Governmental Assistance to Economic Development
XXII	Consultation
XXIII	Nullification or Impairment
XXIV	Customs Unions and Free-Trade Areas, paragraph 6
XXV	Joint Action by the Contracting Parties
XXVI	Acceptance. Entry into Force and Registration
XXVII	Withholding or Withdrawal of Concessions
XXVIII	Modification of Schedules
XXVIIIbis	Tariff Negotiations
XXIX	The relation of this Agreement to the Havana Charter
XXX	Amendments
XXXI	Withdrawal
XXXII	Contracting Parties
XXXIII	Accession
XXXV	Non-application of the Agreement between particular Contracting Parties
XXXVI	Principles and Objectives
XXXVII	Commitments

XXXVIII Joint Action
Annex H Relating to Article XXVI
Annex I Notes and Supplementary Provisions (related to above-mentioned GATT provisions)

Understanding on the interpretation of Article II: 1(b) of the GATT 1994

2 Date of incorporation of other duties and charges into the schedule
4 Challenges, (1st sentence only)
6 Dispute settlement
8 Supersession of BISD 27S/24

Understanding on the Interpretation of Article XVII of the GATT 1994

1 only the phrase "for review by the working party to be set up under paragraph (5)"
5 Working Party on state trading

Understanding on the Balance-of-Payments Provisions of the GATT 1994

5 Committee on Balance-of-Payments Restrictions, except last sentence
7 Review by the Committee, the phrase "or under paragraph 12(b) of Article XVIII"
8 Simplified consultation procedures
13 Conclusions of Balance-of-Payments consultations, first sentence, third sentence: the phrase "and XVII: B, the 1979 Declaration" and last sentence.

Understanding on the Interpretation of Article XXIV of the GATT 1994

All except paragraph 13

Understanding in Respect of Waivers of Obligations under the GATT 1994

3 Nullification and Impairment

Understanding on the Interpretation of Article XXVIII of the GATT 1994

Marrakesh Protocol to the GATT 1994

(ii) Agreement on Agriculture

(iii) Agreement on the Application of Sanitary and Phytosanitary Measures

(iv) Agreement on Textiles and Clothing

(v) Agreement on Technical Barriers to Trade

Preamble	(paragraphs 1, 8, 9)
1.3	General provisions
10.5	The words "Developed country" and the words "French or Spanish" which shall be replaced by "Russian"
10.6	The phrase "and draw attention of developing country Members…interest to them."
10.9	Information about technical regulations, standards and certification systems (languages)
11	Technical assistance to other Parties
12	Special and differential treatment of developing countries
13	The Committee on Technical Barriers to Trade
14	Consultation and dispute settlement
15	Final provisions (other than 15.5 and 15.13)
Annex 2	Technical Expert Groups

(vi) Agreement on Trade-Related Investment Measures

(vii) Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping)

15	Developing Country Members
16	Committee on Anti-Dumping Practices
17	Consultation and Dispute Settlement
18	Final Provisions, paragraphs 2 and 6

(vii) Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation)

Preamble	paragraph 2, the phrase "and to secure additional benefits for the international trade of developing countries"
14	Application of Annexes (second sentence except as far as it refers to Annex III paragraphs 6 and &)
18	Institutions (Committee on Customs Valuation)
19	Consultation and Dispute Settlement
20	Special and differential treatment of developing countries
21	Reservations

23 Review
24 Secretariat
Annex II Technical Committee on Customs Valuation
Annex III Extra Provisions (except paragraphs 6 and 7)

(ix) Agreement on Preshipment Inspection

Preamble paragraphs 2 and 3
3.3 Technical Assistance
6 Review
7 Consultation
8 Dispute Settlement

(x) Agreement on Rules of Origin

Preamble 8th indent
4 Institutions
6 Review
7 Consultation
8 Dispute Settlement
9 Harmonization of Rules of Origin
Annex I Technical Committee on Rules of Origin

(xi) Agreement on Import Licensing Procedures

1.4(a) General Provisions (last sentence)
2.2 Automatic Import Licensing (footnote 5)
3.5(iv) Non-Automatic Import Licensing (last sentence)
4 Institutions
6 Consultations and Dispute Settlement
7 Review (except paragraph 3)
8 Final provisions (except paragraph 2)

(xii) Agreement on Subsidies and Countervailing Measures

4 Remedies (except paragraphs 4.1, 4.2 and 4.3)
5 Adverse Effects, last sentence
6 Serious Prejudice (paragraphs 6.6, the phrases "subject to the provisions of paragraph 3 of Annex V" and "arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7", 6.8 the phrase ", including information submitted in accordance with the provisions of Annex V" and 6.9)
7 Remedies (except paragraphs 7.1, 7.2 and 7.3)

8 Identification of Non-Actionable Subsidies, paragraph 8.5 and Footnote 25
9 Consultations and Authorised Remedies

24 Committee on Subsidies and Countervailing Measures and Subsidiary Bodies
26 Surveillance
27 Special and Differential Treatment of Developing Country Members
29 Transformation into Market Economy, paragraph 29.2 (except first sentence)
30 Dispute Settlement
31 Provisional Application
32.2, 32.7 and 32.8 (only insofar as it refers to Annexes V and VII) Final Provisions

Annex V Procedures for Developing Information concerning Serious Prejudice
Annex VII Developing Countries

(xiii) Agreement on Safeguards

9 Developing Country Members
12 Notification and Consultation, paragraph 10
13 Surveillance
14 Dispute Settlement
Annex Exception

(b) Annex 1B to the WTO Agreement:
General Agreement on Trade in Services

(c) Annex 1C to the WTO Agreement:
Agreement on Trade-Related Aspects of Intellectual Property Rights

(d) Annex 2 to the WTO Agreement:
Understanding on Rules and Procedures Governing the Settlement of Disputes

(e) Annex 3 to the WTO Agreement:
Trade Policy Review Mechanism

(f) Annex 4 to the WTO Agreement:
Plurilateral Trade Agreements:

(i) Agreement on Trade in Civil Aircraft

(ii) Agreement on Government Procurement

(g) Ministerial Decisions, Declarations and Understanding:

(i) Decision on Measures in favour of Least-Developed Countries

(ii) Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy Making

(iii) Decision on Notification Procedures

(iv) Declaration on the Relationship of the WTO with the IMF

(v) Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries

(vi) Decision on Notification of First Integration under Article 2.6 of the Agreement on Textiles and Clothing

(vii) Decision on Review of the ISO/IEC Information Centre Publication

(viii) Decision on Proposed Understanding on WTO-ISO Standards Information System

(ix) Decision on Anti-Circumvention

(x) Decision on Review of Article 17.6 of the Agreement on Implementation of Article VI of the GATT 1994

(xi) Declaration on Dispute Settlement pursuant to the Agreement on Implementation of Article VI of the GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures

(xii) Decision Regarding Cases Where Customs Administrations Have Reason to Doubt the Truth or Accuracy of the Declared Value

(xiii) Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires

(xiv) Decision on Institutional Arrangements for the GATS

(xv) Decision on certain Dispute Settlement Procedures for the GATS

(xvi) Decision on Trade in Services and the Environment

(xvii) Decision on Negotiations on Movement of Natural Persons

(xviii) Decision on Financial Services

(xix) Decision on Negotiations on Maritime Transport Services

(xx) Decision on Negotiations on Basic Telecommunications

(xxi) Decision on Professional Services

(xxii) Decision on Accession to the Agreement on Government Procurement

(xxiii)

(xxiv) Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes

(xxv) Understanding on Commitments in Financial Services

(xxvi) Decision on the Acceptance of and Accession to the Agreement Establishing the WTO

(xxvii) Decision on Trade and Environment

(xxviii) Decision on Organizational and Financial consequences Following from Implementation of the Agreement Establishing the WTO

(xxix) Decision on the Establishment of the Preparatory Committee for the WTO

(2) All other provisions in the WTO Agreement which relate to:

(a) governmental assistance to economic development and the treatment of developing countries, except for paragraphs (1) to (4) of the Decision of 28 November 1979 (L/4903) on Differential and more Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

(b) the establishment or operation of specialist committees and other subsidiary institutions;

(c) signature, accession, entry into force, withdrawal, deposit and registration.

(3) All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed as not applicable in paragraphs (1) or (2).

(4) Trade in nuclear materials may be governed by agreements entered into by the Meeting of Energy Ministers.

(B) Rules Governing the Application of Provisions of the WTO Agreement.

(1) In the absence of a relevant interpretation of the WTO Agreement adopted by the Ministerial Conference or the General Council of the World Trade Organization under paragraph 2 of article IX of the WTO Agreement concerning provisions applicable under Article 29(2), the Meeting of Energy Ministers may adopt an interpretation.

(2) requests for waivers under Article 29(2) and (6)(b) shall be submitted to the Meeting of Energy Ministers, which shall follow, in carrying out these duties, the procedures of paragraphs 3 and 4 of article IX of the WTO Agreement.

(3) Waivers of obligations in force in the WTO shall be considered in force for the purposes of Article 29 while they remain in force in the WTO.

(4) The provisions of article II of the GATT 1994 which have not been disapplied shall, without prejudice to Article 29(4), (5) and (7), be modified as follows:

(i) All Energy Materials and Products listed in Annex A and Energy-Related Equipment imported from or exported to any other Contracting Party shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation or exportation, in excess of those imposed on the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(6), or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing or exporting territory on the date referred to in Article 29(6), first sentence.

(ii) Nothing in article II of the GATT 1994 shall prevent any Contracting Party from imposing at any time on the importation or exportation of any product:

(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of article III of GATT 1994 in respect of the like domestic product or in respect of an article from which the

imported product has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of article VI of GATT 1994;

(c) fees or other charges commensurate with the cost of services rendered.

(iii) No Contracting Party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of the standstill obligations provided for in Article 29(6) or (7).

(iv) If any Contracting Party establishes, maintains or authorises, formally or in effect, a monopoly of the importation or exportation of any Energy Material or Product or in respect of Energy-Related Equipment, such monopoly shall not operate so as to afford protection on the average in excess of the amount of protection permitted by the standstill obligation provided for in Article 29(6) or (7). The provisions of this paragraph shall not limit the use by Contracting Parties of any form of assistance to domestic producers permitted by other provisions of this Protocol.

(v) If any Contracting Party considers that a product is not receiving from another Contracting Party the treatment which the first Contracting Party believes to have been contemplated by the standstill obligation provided for in Article 29(6) or (7), it shall bring the matter directly to the attention of the other Contracting Party. If the latter agrees that the treatment contemplated was that claimed by the first Contracting Party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such Contracting Party so as to permit the treatment contemplated in this Protocol, the two Contracting Parties, together with any other Contracting Parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.

(vi) (a) The specific duties and charges included in the Tariff Record relating to the Contracting Parties members of the International Monetary Fund, and margins of preference in specific duties and charges

maintained by such Contracting Parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7). Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction;

Provided that the Conference concurs that such adjustments will not impair the value of the standstill obligation provided for in Article 29(6) or (7) or elsewhere in this Protocol, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(b) Similar provisions shall apply to any Contracting Party not a member of the Fund, as from the date on which such Contracting Party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV of GATT 1994.

(vii) Each Contracting Party shall notify the ECOWAS Executive Secretariat of the customs duties and charges of any kind applicable on the date of the standstill referred to in Article 29(6) first sentence. The Secretariat shall keep a Tariff Record of the customs duties and charges of any kind relevant for the purpose of the standstill on customs duties and charges of any kind under Article 29(6) or (7).

(5) The Decision of 26 March 1980 on "Introduction of a Loose-Leaf System for the Schedules of Tariff Concessions" (BISD 27S/24) shall not be applicable under Article 29(2). The applicable provisions of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 shall, without prejudice to Article 29(4), (5) or (6), apply with the following modifications:

(i) In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of article II of GATT 1994, the nature and level of any "other duties or charges" levied on any Energy Materials and Products listed in Annex A or Energy-Related Equipment with respect to their importation or exportation, as referred to in that provision, shall be recorded in the Tariff Record at the levels applying at the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7) respectively, against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

(ii) "Other duties or charges" shall be recorded in respect of all Energy Materials and Products and Energy-Related Equipment.

(iii) It will be open to any Contracting Party to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the date of the standstill referred to in Article 29(6), first sentence, or the relevant date under Article 29(7), for the item in question, as well as the consistency of the recorded level of any "other

duty or charge" with the standstill obligation provided for by Article 29(6) or (7), for a period of one year after the entry into force of this Protocol, or one year after the notification to the ECOWAS Executive Secretariat of the level of customs duties and charges of any kind referred to in Article 29(6), first sentence, or Article 29(7), if that is the later.

(iv) The recording of "other duties or charges" in the Tariff Record is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by sub-paragraph (iii) above. All Contracting Parties retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations.

(v) "Other duties or charges" omitted from a notification to the Secretariat shall not subsequently be added to it and any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the notification to the Secretariat.

(6) Where the WTO Agreement refers to "duties inscribed in the Schedule" or to "bound duties", there shall be substituted "the level of customs duties and charges of any kind permitted under Article 29(4) to (8)".

(7) Where the WTO Agreement specifies the date of entry into force of the WTO Agreement (or an analogous phrase) as the reference date for an action, there shall be substituted the date of entry into force of the Amendment to the trade-related provisions of this Protocol.

(8) With respect to notifications required by the provisions made applicable by Article 29(2):

(a) Contracting Parties which are not members of the WTO shall make their notifications to the ECOWAS Executive Secretariat. Such Secretariat shall circulate copies of the notifications to all Contracting Parties. Notifications to the Executive Secretariat shall be in one of the authentic languages of this Protocol. The accompanying documents may be solely in the language of the Contracting Party;

(b) such requirements shall not apply to Contracting Parties to this Protocol which are also members of the WTO which provides for its own notification requirements.

(9) Where Article 29(2) or (6)(b) applies, the Meeting of Energy Ministers shall carry out any applicable duties that the WTO Agreement assigned to the relevant bodies under the WTO Agreement.

(10) (a) Interpretations of the WTO Agreement adopted by the Ministerial Conference or the General Council of the WTO under paragraph 2 of article IX of the WTO Agreement insofar as they interpret provisions applicable under Article 29(2) shall apply.

(b) Amendments to the WTO Agreement under article X of the WTO Agreement that are binding on all members of the WTO (other than those under paragraph 9 of article X) insofar as they amend or relate to provisions applicable under Article 29(2), shall apply unless a Contracting Party requests the Meeting of Energy Ministers to disapply or modify such amendment. The Meeting of Energy Ministers shall take the decision by a three-fourths majority of the Contracting Parties and determine the date of the disapplication or modification of such amendment. A request for the disapplication or modification of such amendment may include a request that the application of the amendment be suspended pending the decision of the Meeting of Energy Ministers.

A request to the Meeting of Energy Ministers made under this paragraph shall be made within six months of the circulation of a notification from the ECOWAS Executive Secretariat that the amendment has taken effect under the WTO Agreement.

(c) Interpretations, amendments, or new instruments adopted by the WTO, other than the interpretations and amendments applied under paragraphs (a) and (b) shall not apply.

ANNEX E

INTERIM PROVISIONS FOR TRADE DISPUTE SETTLEMENT
(In accordance with Article 29(9))

(1) (a) In their relations with one another, Contracting Parties shall make every effort through co-operation and consultations to arrive at a mutually satisfactory resolution of any dispute about existing measures that might materially affect compliance with the provisions applicable to trade under Article 5 or 29, or about any measures that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.

(b) A Contracting Party may make a written request to any other Contracting Party for consultations regarding any existing measure of the other Contracting Party that it considers might affect materially compliance with provisions applicable to trade under Article 5 or 29, or any measure that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29. A Contracting Party which requests consultations shall to the fullest extent possible indicate the measure complained of and specify the provisions of Article 5 or 29 and of the WTO Agreement that it considers relevant. Requests to consult pursuant to this paragraph shall be notified to the Secretariat, which shall periodically inform the Contracting Parties of pending consultations that have been notified.

(c) A Contracting Party shall treat any confidential or proprietary information identified as such and contained in or received in response to a written request, or received in the course of consultations, in the same manner in which it is treated by the Contracting Party providing the information.

(d) In seeking to resolve matters considered by a Contracting Party to affect compliance with provisions applicable to trade under Article 5 or 29 as between itself and another Contracting Party, or to nullify or impair any benefit accruing to it directly or indirectly under the provisions applicable to trade under Article 29, the Contracting Parties participating in consultations or other dispute settlement shall make every effort to avoid a resolution that adversely affects the trade of any other Contracting Party.

(2) (a) If, within 60 days from the receipt of the request for consultation referred to in subparagraph (1)(b), the Contracting Parties have not resolved their dispute or agreed to resolve it by conciliation, mediation, arbitration or other method, either Contracting Party may deliver to the Executive Secretariat of ECOWAS a written request for the establishment of a panel in accordance with subparagraphs (b) to (f). In its request the requesting Contracting Party shall state the substance of the dispute and indicate which provisions of Article 5 or 29 and of the WTO Agreement are considered relevant. The Executive Secretariat of ECOWAS shall promptly deliver copies of the request to all Contracting Parties.

(b) The interests of other Contracting Parties shall be taken into account during the resolution of a dispute. Any other Contracting Party having a substantial interest in a matter shall have the right to be heard by the panel and to make written submissions to it, provided that both the disputing Contracting Parties and the Executive Secretariat of ECOWAS have received written notice of its interest no later than the date of establishment of the panel, as determined in accordance with subparagraph (c).

(c) A panel shall be deemed to be established 45 days after the receipt of the written request of a Contracting Party by the Executive Secretariat of ECOWAS pursuant to subparagraph (a).

(d) A panel shall be composed of three members who shall be chosen by the ECOWAS Executive Secretariat from the roster described in paragraph (7). Except where the disputing Contracting Parties agree otherwise, the members of a panel shall not be citizens of Contracting Parties which either are party to the dispute or have notified their interest in accordance with subparagraph (b), or citizens of states members of a Regional Economic Integration Organization which either is party to the dispute or has notified its interest in accordance with subparagraph (b).

(e) The disputing Contracting Parties shall respond within ten working days to the nominations of panel members and shall not oppose nominations except for compelling reasons.

(f) Panel members shall serve in their individual capacities and shall neither seek nor take instruction from any government or other body. Each Contracting Party undertakes to respect these principles and not to seek to influence panel members in the performance of their tasks. Panel members shall be selected with a view to ensuring their independence, and that a sufficient diversity of backgrounds and breadth of experience are reflected in a panel.

(g) The Executive Secretariat of ECOWAS shall promptly notify all Contracting Parties that a panel has been constituted.

(3) (a) The Meeting of Energy Ministers shall adopt rules of procedure for panel proceedings consistent with this Annex. Rules of procedure shall be as close as possible to those of the WTO Agreement. A panel shall also have the right to adopt additional rules of procedure not inconsistent with the rules of procedure adopted by the Meeting of Energy Ministers or with this Annex. In a proceeding before a panel each disputing Contracting Party and any other Contracting Party which has notified its interest in accordance with subparagraph (2)(b), shall have the right to at least one hearing before the panel and to provide a written submission. Disputing Contracting Parties shall also have the right to provide a written rebuttal. A panel may grant a request by any other Contracting Party which has notified its interest in accordance with subparagraph (2)(b) for access to any written submission made to the panel, with the consent of the Contracting Party which has made it.

The proceedings of a panel shall be confidential. A panel shall make an objective assessment of the matters before it, including the facts of the dispute and the compliance of measures with the provisions applicable to trade under Article 5 or 29. In exercising its functions, a panel shall consult with the disputing Contracting Parties and give them adequate opportunity to arrive at a mutually satisfactory solution. Unless otherwise agreed by the disputing Contracting Parties, a panel shall base its decision on the arguments and submissions of the disputing Contracting Parties. Panels shall be guided by the interpretations given to the WTO Agreement within the framework of the WTO Agreement, and shall not question the compatibility with Article 5 or 29 of practices applied by any Contracting Party which is a member of the WTO to which it applies the WTO Agreement and which have not been taken by those other members to dispute resolution under the WTO Agreement.

Unless otherwise agreed by the disputing Contracting Parties, all procedures involving a panel, including the issuance of its final report, should be completed within 180 days of the date of establishment of the panel; however, a failure to complete all procedures within this period shall not affect the validity of a final report.

(b) A panel shall determine its jurisdiction; such determination shall be final and binding. Any objection by a disputing Contracting Party that a dispute is not within the jurisdiction of the panel shall be considered by the panel, which shall decide whether to deal with the objection as a preliminary question or to join it to the merits of the dispute.

(c) In the event of two or more requests for establishment of a panel in relation to disputes that are substantively similar, the ECOWAS Executive Secretariat may with the consent of all the disputing Contracting Parties appoint a single panel.

(4) (a) After having considered rebuttal arguments, a panel shall submit to the disputing Contracting Parties the descriptive sections of its draft written report, including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties. The disputing Contracting Parties shall be afforded an opportunity to submit written comments on the descriptive sections within a period set by the panel.

Following the date set for receipt of comments from the Contracting Parties, the panel shall issue to the disputing Contracting Parties an interim written report, including both the descriptive sections and the panel's proposed findings and conclusions. Within a period set by the panel a disputing Contracting Party may submit to the panel a written request that the panel review specific aspects of the interim report before issuing a final report. Before issuing a final report the panel may, in its discretion, meet with the disputing Contracting Parties to consider the issues raised in such a request.

The final report shall include descriptive sections (including a statement of the facts and a summary of the arguments made by the disputing Contracting Parties), the panel's findings and conclusions, and a discussion of arguments made on specific aspects of the interim report at the stage of its review. The final report shall deal with every substantial issue raised before the panel and necessary to the resolution of the dispute and shall state the reasons for the panel's conclusions.

A panel shall issue its final report by providing it promptly to the Executive Secretariat of ECOWAS and to the disputing Contracting Parties. The Executive Secretariat of ECOWAS shall at the earliest practicable opportunity distribute the final report, together with any written views that a disputing Contracting Party desires to have appended, to all Contracting Parties.

(b) Where a panel concludes that a measure introduced or maintained by a Contracting Party does not comply with a provision of Article 5 or 29 or with a provision of the WTO Agreement that applies under Article 29, the panel may recommend in its final report that the Contracting Party alter or abandon the measure or conduct so as to be in compliance with that provision.

(c) Panel reports shall be adopted by the Meeting of Energy Ministers. In order to provide sufficient time for the Meeting of Energy Ministers to consider panel reports, a report shall not be adopted by the Meeting of Energy Ministers until at least 30 days after it has been provided to all Contracting Parties by the Executive Secretariat of ECOWAS. Contracting Parties having objections to a panel report

shall give written reasons for their objections to the Executive Secretariat of ECOWAS at least 10 days prior to the date on which the report is to be considered for adoption by the Meeting of Energy Ministers, and the Executive Secretariat of ECOWAS shall promptly provide them to all Contracting Parties. The disputing Contracting Parties and Contracting Parties which notified their interest in

accordance with subparagraph (2)(b) shall have the right to participate fully in the consideration of the panel report on that dispute by the Meeting of Energy Ministers, and their views shall be fully recorded.

(d) In order to ensure effective resolution of disputes to the benefit of all Contracting Parties, prompt compliance with rulings and recommendations of a final panel report that has been adopted by the Meeting of Energy Ministers is essential. A Contracting Party which is subject to a ruling or recommendation of a final panel report that has been adopted by the Meeting of Energy Ministers shall inform the Meeting of Energy Ministers of its intentions regarding compliance with such ruling or recommendation. In the event that immediate compliance is impracticable, the Contracting Party concerned shall explain its reasons for non-compliance to the Meeting of Energy Ministers and, in light of this explanation, shall have a reasonable period of time to effect compliance. The aim of dispute resolution is the modification or removal of inconsistent measures.

(5) (a) Where a Contracting Party has failed within a reasonable period of time to comply with a ruling or recommendation of a final panel report that has been adopted by the Meeting of Energy Ministers, a Contracting Party to the dispute injured by such non-compliance may deliver to the non-complying Contracting Party a written request that the non-complying Contracting Party enter into negotiations with a view to agreeing upon mutually acceptable compensation. If so requested the non-complying Contracting Party shall promptly enter into such negotiations.

(b) If the non-complying Contracting Party refuses to negotiate, or if the Contracting Parties have not reached agreement within 30 days after delivery of the request for negotiations, the injured Contracting Party may make a written request for authorization of the Meeting of Energy Ministers to suspend obligations owed by it to the non-complying Contracting Party under Article 5 or 29.

(c) The Meeting of Energy Ministers may authorize the injured Contracting Party to suspend such of its obligations to the non-complying Contracting Party, under provisions of Article 5 or 29 or under provisions of the WTO Agreement that apply under Article 29, as the injured Contracting Party considers equivalent in the circumstances.

(d) The suspension of obligations shall be temporary and shall be applied only until such time as the measure found to be inconsistent with Article 5 or 29 has been removed, or until a mutually satisfactory solution is reached.

(6) (a) Before suspending such obligations the injured Contracting Party shall inform the non-complying Contracting Party of the nature and level of its proposed

suspension. If the non-complying Contracting Party delivers to the Executive Secretariat of ECOWAS a written objection to the level of suspension of obligations proposed by the injured Contracting Party, the objection shall be referred to arbitration as provided below. The proposed suspension of obligations shall be stayed until the arbitration has been completed and the determination of the arbitral panel has become final and binding in accordance with subparagraph (e).

(b) The Executive Secretariat of ECOWAS shall establish an arbitral panel in accordance with subparagraphs (2)(d) to (f), which if practicable shall be the same panel which made the ruling or recommendation referred to in subparagraph (4)(d), to examine the level of obligations that the injured Contracting Party proposes to suspend. Unless the Meeting of Energy Ministers decides otherwise the rules of procedure for panel proceedings shall be adopted in accordance with subparagraph (3)(a).

(c) The arbitral panel shall determine whether the level of obligations proposed to be suspended by the injured Contracting Party is excessive in relation to the injury it experienced, and if so, to what extent. It shall not review the nature of the obligations suspended, except insofar as this is inseparable from the determination of the level of suspended obligations.

(d) The arbitral panel shall deliver its written determination to the injured and the non-complying Contracting Parties and to the Executive Secretariat of ECOWAS within 60 days of the establishment of the panel or within such other period as may be agreed by the injured and the non-complying Contracting Parties. The Secretariat shall present the determination to the Meeting of Energy Ministers at the earliest practicable opportunity, and no later than the meeting of the Meeting of Energy Ministers following receipt of the determination.

(e) The determination of the arbitral panel shall become final and binding 30 days after the date of its presentation to the Meeting of Energy Ministers, and any level of suspension of benefits allowed thereby may thereupon be put into effect by the injured Contracting Party in such manner as that Contracting Party considers equivalent in the circumstances, unless prior to the expiration of the 30 days period the Meeting of Energy Ministers decides otherwise.

(f) In suspending any obligations to a non-complying Contracting Party, an injured Contracting Party shall make every effort not to affect adversely the trade of any other Contracting Party.

(7) Each Contracting Party may designate two individuals who shall, in the case of Contracting Parties which are also member of the WTO, if they are willing and able to serve as panellists under this Annex, be persons whose names appear on the indicative list of governmental and non-governmental individuals, referred to in article 8 of the Understanding on Rules and Procedures Governing the Settlement of

Disputes contained in Annex 2 to the WTO Agreement or who have in the past served as panellists on a GATT or WTO dispute settlement panel. The Executive Secretariat of ECOWAS may also designate, with the approval of the Meeting of Energy Ministers, not more than ten individuals, who are willing and able to serve as panellists for purposes of dispute resolution in accordance with paragraphs (2) to (4). The Meeting of Energy Ministers may in addition decide to designate for the same purposes up to 20 individuals, who serve on dispute settlement rosters of other international bodies, who are willing and able to serve as panellists. The names of all of the individuals so designated shall constitute the dispute settlement roster. Individuals shall be designated strictly on the basis of objectivity, reliability and sound judgement and, to the greatest extent possible, shall have expertise in international trade and energy matters, in particular as relates to provisions applicable under Article 29. In fulfilling any function under this Annex, designees shall not be affiliated with or take instructions from any Contracting Party. Designees shall serve for renewable terms of five years and until their successors have been designated. A designee whose term expires shall continue to fulfil any function for which that individual has been chosen under this Annex. In the case of death, resignation or incapacity of a designee, the Contracting Party shall have the right to designate another individual to serve for the remainder of that designee's term, the designation by the Director being subject to approval of the Meeting of Energy Ministers.

(8) Notwithstanding the provisions contained in this Annex, Contracting Parties are encouraged to consult throughout the dispute resolution proceeding with a view to settling their dispute.

(9) The Meeting of Energy Ministers may appoint or designate other bodies or fora to perform any of the functions delegated in this Annex to the Executive Secretariat of ECOWAS.

(10) Where a Contracting Party invokes Article 29(9)(b), this Annex shall apply, subject to the following modifications:

(a) the complaining party shall present a detailed justification in support of any request for consultations or for the establishment of a panel regarding a measure which it considers to nullify or impair any benefit accruing to it directly or indirectly under Article 29;

(b) where a measure has been found to nullify or impair benefits under Article 29 without violation thereof, there is no obligation to withdraw the measure; however, in such a case the panel shall recommend that the Contracting Party concerned make a mutually satisfactory adjustment;

(c) the arbitral panel provided for in paragraph (6)(b), upon the request of either party, may determine the level of benefits that have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;