

ADDITIONAL PROTOCOL  
BETWEEN THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF ROMANIA  
TO THE TREATY CONCERNING  
THE RECIPROCAL ENCOURAGEMENT  
AND PROTECTION OF INVESTMENT OF MAY 28, 1992

Representatives of the Governments of the United States of America and Romania;

Desiring to make more effective the Treaty Between the Government of the United States of America and the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and Related Exchange of Letters, signed at Bucharest on May 28, 1992 (hereinafter "the Treaty");

Have discussed the intentions of the United States of America and Romania regarding the compatibility between Romania's obligations under the Treaty and obligations that arise from membership in the European Union;

Have acknowledged that Romania, in view of Article 307 of the Treaty Establishing the European Community and the terms of ongoing negotiations between Romania and the European Union relating to its future Act of Accession to the European Union, must, in order to complete the accession process, take all appropriate steps to eliminate incompatibilities between the Treaty Establishing the European Community and its other international agreements, including the Treaty;

Have concluded, as a result, that certain amendments to the Treaty are necessary in order to avoid such incompatibilities;

Have decided to conclude an Additional Protocol thereto; and

Have agreed upon the following articles:

**Article I**

As necessary for Romania to meet its obligations pursuant to measures adopted by the European Union, Article II, paragraph 5, of the Treaty shall not limit the ability of Romania to impose performance requirements:

- (a) in the agricultural sector that relate to the production, processing and trade of agricultural and processed agricultural products, that implement quotas, or that require the purchase or use of goods produced or services provided in the European Union or, with respect to goods produced or services provided, a particular level or percentage of content from a source in the European Union;  
or

- (b) in the audio-visual sector that relate to the production, distribution and exploitation of audio-visual works, that implement quotas, or that require the purchase or use of goods produced or services provided in countries of the Council of Europe or, with respect to goods produced or services provided, a particular level or percentage of content from a source in countries of the Council of Europe.

## Article II

The Parties acknowledge that the terms of the customs union or free trade area exception found at Article II, paragraph 9(a), of the Treaty shall apply to all obligations of a Party by virtue of its membership in an economic integration agreement that includes a free trade area or customs union (e.g., the European Union), including obligations owed to nationals or companies of any third country.

## Article III

Article V of the Treaty shall be amended by deleting the text of the existing article in its entirety and substituting the following text in its place:

“The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty. The Parties also agree to consult promptly whenever a Party believes that steps are necessary to assure compatibility between the Treaty and the Treaty Establishing the European Community with a view to assuring compatibility.”

## Article IV

A. The Annex to the Treaty shall be amended by adding the following additional paragraphs:

- “6. As necessary to meet its obligations pursuant to measures adopted by the European Union, the Government of Romania reserves the right to make or maintain exceptions to national treatment, as provided in Article II, paragraph I, in the sectors or matters it has indicated below:

Agriculture  
Audio-visual  
Securities, Investment Services and other Financial Services  
Fisheries  
Hydrocarbons  
Subsidies  
Transport (Air Carriers)  
Transport (Inland Waterways)  
Transport (Maritime)

7. As necessary to meet its obligations pursuant to measures adopted by the European Union, the Government of Romania reserves the right to make or maintain exceptions to most-favored-nation treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below:

Agriculture  
Audio-visual  
Hydrocarbons

8. Any exception by the Government of Romania exercised pursuant to paragraphs 6 or 7 above (*i.e.*, through any law or regulation adopted by, or any European Union measure directly applicable within, Romania) shall not apply, for the time period set forth below in subparagraph (a), to investments of nationals or companies of the United States that are existing in the relevant sector on the date this amendment takes effect or on the date the European Commission publishes its proposal to enact the relevant measure in its Official Journal, whichever date is later.

- (a) The time period referred to in this paragraph shall be ten years from the date the relevant law or regulation adopted by, or European Union measure directly applicable within, Romania takes effect, or twenty years from the date of entry into force of the Treaty, whichever date is later.
- (b) In no case, however, may an exception exercised pursuant to paragraphs 4 or 5 above apply to an existing investment, as defined in this paragraph, to the extent that it would require divestment, in whole or in part, of such an existing investment."

B. Paragraph 1 of the Annex to the Treaty shall be amended to reflect that the Government of the United States reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the new sectors or matters it has indicated below:

Fisheries  
Subsidies

C. Paragraph 2 of the Annex to the Treaty shall be amended to reflect that the Government of the United States reserves the right to make or maintain limited exceptions to most favored nation treatment, as provided in Article II, paragraph 1, in the new sectors or matters it has indicated below:

Fisheries

#### Article V

This Additional Protocol, which shall form an integral part of the Treaty, shall be subject to ratification.



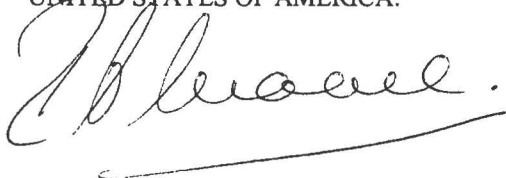
**Article VI**

This Additional Protocol shall enter into force upon the exchange of instruments of ratification, and shall remain in force so long as the Treaty shall remain in force.

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

DONE in duplicate at Brussels on the 22nd day of September, 2003 in the English and Romanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF  
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF  
ROMANIA:

