

PROTOCOL

At the moment of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, this day concluded between Canada and the Republic of Kenya, the undersigned, duly authorized thereto have agreed that the following provisions shall form an integral part of the Agreement:

1. With reference to paragraph 4 of Article VII, it is understood that no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

2. With reference to paragraph 2 of Article X of this Agreement, it is understood that:

- (a) If a Convention or an Agreement for the Avoidance of Double Taxation comes into force after the date of signature of this Agreement, between Kenya and one of the countries specified in subparagraph (b), wherein provisions are made for a higher rate of Kenyan tax on dividends from substantial holdings than that provided for in subparagraph 2(a) of Article X, then the provisions of subparagraphs (c) and (d) shall apply instead of the provisions of paragraph 2 of Article X of this Agreement;
- (b) For the purposes of subparagraph (a) the countries specified are as follows: Belgium, the Federal Republic of Germany, France, Italy, Japan, the United Kingdom and the United States;
- (c) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed the lesser of