

3. ENHANCED STRUCTURAL ADJUSTMENT FACILITY TRUST - ESTABLISHMENT

1. The Fund adopts the Instrument to Establish the Enhanced Structural Adjustment Facility Trust that is annexed to this Decision.

2. The Fund is committed, if it appeared that any delay in payment by the Trust to lenders would be protracted, to consider fully and in good faith all such initiatives as might be necessary to assure full and expeditious payment to lenders.

Decision No. 8759-(87/176) ESAF, adopted
December 18, 1987

Annex

Instrument to Establish the Enhanced Structural Adjustment Facility Trust

Introductory Section

To help fulfill its purposes, the International Monetary Fund (hereinafter called the "Fund") has adopted this Instrument establishing the Enhanced Structural Adjustment Facility Trust (hereinafter called the "Trust"), which shall be administered by the Fund as Trustee (hereinafter called the "Trustee"). The Trust shall be governed by and administered in accordance with the provisions of this Instrument.

Section I. General Provisions

Paragraph 1. Purposes

The Trust shall assist in fulfilling the purposes of the Fund by providing loans on concessional terms (hereinafter called "Trust loans") to low-income developing members that qualify for assistance under this Instrument, in order to support programs to strengthen substantially and in a sustainable manner their balance of payments position and to foster growth.

Paragraph 2. Accounts of the Trust

The operations and transactions of the Trust shall be conducted through a Loan Account, a Reserve Account, and a Subsidy Account. The resources of the Trust shall be held separately in each Account.

Paragraph 3. Unit of account

The SDR shall be the unit of account for commitments, loans, and all other operations and transactions of the Trust, provided that commitments of resources to the Subsidy

Account may be made in currency.

Paragraph 4. Media of payment of contributions and exchange of resources

(a) Resources loaned or donated to the Trust shall be received in a freely usable currency, subject to the provisions of (c) below, and provided that resources may be received by the Subsidy Account in other currency.

(b) Payments by the Trust to lenders or donors shall be made in U.S. dollars or such other media as may be agreed between the Trustee and such lenders or donors.

(c) Loans or donations to the Trust may also be made in or exchanged for SDRs in accordance with such arrangements as may be made by the Trust for the holding and use of SDRs.

(d) The Trustee may exchange any of the resources of the Trust, provided that any balance of a currency held in the Trust may be exchanged only with the consent of the issuers of such currencies.

Section II. Trust Loans

Paragraph 1. Eligibility and conditions for assistance

(a) Any member eligible for assistance from the Structural Adjustment Facility shall be eligible for assistance from the Trust.

(b) This assistance shall be committed and provided under the same conditions and on the same terms as prescribed in paragraph 14 of the Regulations for the Administration of the Structural Adjustment Facility, subject to the provisions of this Section.

(c) Before approving a three-year arrangement, the Trustee shall be satisfied that the member is making an effort to strengthen substantially and in a sustainable manner its balance of payments position.

(d) Commitments under three-year arrangements may be made during the period from January 1, 1988 to November 30, 1989.

Paragraph 2. Amount of assistance

(a) An initial maximum limit on access to the resources of the Trust shall be established by the Trustee, as a proportion of members' quotas in the Fund, and provision shall be made for a limit up to which that maximum limit may be exceeded in exceptional circumstances. The maximum access limit and the exceptional maximum limit shall be subject to review from time to time by the Trustee in the light of actual utilization of resources available to the Loan Account,

and in any event not later than March 31, 1989.

(b) To the extent that a member has notified the Trustee that it does not intend to make use of the resources available from the Trust, the member shall not be included in the calculations of the access limits on Trust loans.

(c) The access for each member that qualifies for assistance from the Trust shall be determined on the basis of an assessment by the Trustee of the balance of payments need of the member and the strength of its adjustment program.

(d) The amount of resources committed to a qualifying member under a three-year arrangement and the amounts for the second- and third-year arrangements shall be reviewed at the time of consideration of each annual program. The amounts committed to a member shall not be reduced because of developments in its balance of payments, unless such developments are substantially more favorable than envisaged at the time of approval of the three-year arrangement and the improvement for the member derives in particular from improvements in the external environment.

(e) Any commitment shall be subject to the availability of resources to the Trust.

Paragraph 3. Disbursements

(a) Any disbursement shall be subject to the availability of resources to the Trust.

(b) Disbursements shall normally be made on the fifteenth and the last day of the month, provided that if these days are not business days of the Trustee, the disbursement shall be made on the preceding business day. Following a member's qualification for a disbursement, the disbursement shall be made on the first of these value dates for which the necessary notifications and payment instructions can be issued by the Trustee.

(c) No disbursement under a three-year commitment to a member shall be made after the expiration of the period specified in Section III, paragraph 3.

Paragraph 4. Terms of Loans

(a) Interest on the outstanding balance of a Trust loan shall be charged at the rate of one half of one percent per annum subject to the provisions of Section IV, paragraph 5, and provided that interest at a rate equal to the rate of interest on the SDR shall be charged on the amounts of any overdue interest on or overdue repayments of Trust loans.

(b) Trust loans shall be disbursed in a freely usable currency as decided by the Trustee. They shall be repaid, and interest paid, in U.S. dollars or other freely usable

currency as decided by the Trustee. The Managing Director is authorized to make arrangements under which, at the request of a member, SDRs may be used for disbursements to the member or for payment of interest or repayments of loans by the member to the Trust.

(c) Paragraph 7(3) of the Regulations for the Administration of the Structural Adjustment Facility shall not apply to Trust loans.

Paragraph 5. Modifications

Any modification of these provisions will affect only loans made after the effective date of the modification, provided that a modification of the interest rate shall apply to interest accruing after the effective date of the modification.

Section III. Borrowing for the Loan Account

Paragraph 1. Resources

The resources held in the Loan Account shall consist of:

- (a) the proceeds of loans made to the Trust for that Account; and
- (b) payments of principal and interest on Trust loans, subject to the provisions of Section V, paragraph 3.

Paragraph 2. Borrowing authority

The Trustee may borrow resources for the Loan Account on such terms and conditions as may be agreed between the Trustee and the respective lenders subject to the provisions of this Instrument.

Paragraph 3. Commitments

Commitments of loans to the Trust for the Loan Account shall extend through June 30, 1992. The commitment period with respect to a loan to the Trust may be extended by mutual agreement between the Trustee and the lender.

Paragraph 4. Drawings on Loan commitments

(a) Drawings on the commitments of individual lenders over time shall be made so as to maintain broad proportionality of these drawings relative to commitments.

(b) Calls on a lender's commitment shall be suspended temporarily if, at any time prior to December 31, 1991, the lender represents to the Trustee that it has a liquidity need for such suspension and the Trustee, having given this representation the overwhelming benefit of any doubt, agrees. The suspension shall not exceed three months, provided that

it may be extended for further periods of three months by agreement between the lender and the Trustee. No extension shall be agreed which, in the judgment of the Trustee, would prevent drawing of the full amount of the lender's commitment.

(c) Following any suspension of calls with respect to the commitment of a lender, calls will be made on that commitment thereafter so as to restore proportionality of calls on all lenders as soon as practicable.

Paragraph 5. Payments to Lenders

(a) The Trust shall make payments of principal and interest on its borrowing for the Loan Account from the payments into that Account of principal and interest made by borrowers under Trust loans. Payments of the authorized subsidy shall be made from the Subsidy Account in accordance with Section IV of this Instrument, and, as required, payments shall be made from the Reserve Account in accordance with Section V of this Instrument.

(b) The Trust shall pay interest on outstanding borrowing for Trust loans promptly after June 30 and December 31 of each year, unless the particular modalities of a loan to the Trust make it necessary for the Trustee to agree with the lender on interest payments at other times.

Section IV. Subsidy Account

Paragraph 1. Resources

The resources held in the Subsidy Account shall consist of:

- (a) the proceeds of donations made to the Trust for that Account;
- (b) the proceeds of loans made to the Trust for that Account; and
- (c) net earnings from investment of donated or borrowed resources held in that Account.

Paragraph 2. Donations

The Trustee may accept donations of resources for the Subsidy Account on such terms and conditions as may be agreed between the Trustee and the respective donors, subject to the provisions of this Instrument. To the extent possible, annual contributions should be made before May 30 of each year.

Paragraph 3. Borrowing

The Trustee may, in exceptional circumstances, borrow resources for the Subsidy Account from official lenders on

such terms and conditions as may be agreed between the Trustee and the lenders; in order

- (a) to prefinance an amount that is firmly committed to be donated to the Trust for the Subsidy Account; repayment of principal and any payments of interest on such borrowing shall be contingent upon the receipt by the Subsidy Account of the Trust of the donation that has been prefunded;
- (b) that the Subsidy Account may benefit from net investment earnings on the proceeds of a loan extended at a concessional interest rate; repayment of principal and any payment of interest on such borrowing shall be made exclusively from the proceeds of liquidation of the investment and the earnings thereon.

Paragraph 4. Authorized subsidy

The Trustee shall draw upon the resources available in the Subsidy Account to pay the difference, with respect to each interest period, between the interest due by the borrowers and the interest due on resources borrowed for Trust loans.

Paragraph 5. Calculation of subsidy

(a) The amount of the subsidy shall be determined by the Trustee in the light of (i) the objective of ensuring that the Enhanced Structural Adjustment Facility is a highly concessional facility and, to the extent possible, of reducing the rate of interest charged on Trust loans to 0.5 percent, (ii) the rate of interest on resources available to the Loan Account, and (iii) the availability and prospective availability of resources to the Subsidy Account.

(b) The Trustee shall keep the operation of the Subsidy Account under review. If at any time it determines that resources available or committed are likely to be insufficient to reduce the rate of interest on Trust loans to 0.5 percent throughout the operation of the Trust, the Trustee shall seek such additional resources as may be necessary to achieve this objective.

(c) Should adequate additional resources not be forthcoming to reduce the rate on Trust loans to 0.5 percent, the Trustee shall recalculate the subsidy with a view to reducing that interest rate to the lowest feasible rate that could be applied throughout the remaining life of the Trust. The rate of interest charged on all outstanding loans by the Trust shall be adjusted accordingly in the succeeding interest periods. Borrowers shall be notified promptly of such adjustments. Further recalculations and adjustments shall be made in subsequent interest periods, as necessary in light of developments with respect to the rate of interest

on resources available to the Loan Account and to the availability of resources to the Subsidy Account.

(d) If the interest due to lenders for an interest period has exceeded the interest due by borrowers together with the authorized subsidy under paragraph 4 of this Section for that period, and payment to lenders of that difference has been made from the Reserve Account in accordance with Section V, paragraph 2, an amount equivalent to that difference shall be added to the interest due by borrowers for the succeeding interest period. Payment of that amount shall be made to the Reserve Account in accordance with Section V, paragraph 3. The additional interest due shall not be taken into account in the calculation of the authorized subsidy for that same interest period.

Paragraph 6. Termination arrangements

Upon completion of the subsidy operations authorized by this Instrument, the Fund shall wind up the affairs of the Subsidy Account. Any resources remaining in the Subsidy Account shall be used first to reduce to the fullest extent possible, in accordance with this Instrument, to 0.5 percent the interest rate paid by borrowers, by means of payments to borrowers. Any resources remaining after that subsidization shall be distributed to donors and lenders that have contributed to the subsidy operation, in proportion to their contributions. For the purposes of this distribution, account will be taken of donations, the net earnings from investment of the proceeds of concessional loans extended to the Subsidy Account under paragraph 3(b) above, and the subsidy element of concessional loans extended to the Trust under Section III; the subsidy element associated with such loans shall be calculated as the difference, if positive, between the SDR rate of interest and the interest on such loans, applied to the amount of the loans during the period they were outstanding.

Section V. Reserve Account

Paragraph 1. Resources

The resources held in the Reserve Account shall consist of:

- (a) transfers by the Fund from the Special Disbursement Account in accordance with Decision No. 8760-(87/176), adopted December 18, 1987;
- (b) net earnings from investment of resources held in the Reserve Account;
- (c) net earnings from investment of any resources held in the Loan Account pending the use of these resources in operations; and
- (d) payments of overdue principal or interest or

interest thereon under Trust loans, and payments of interest under Trust loans to the extent that payment has been made to a lender from the Reserve Account.

Paragraph 2. Use of resources

The resources held in the Reserve Account shall be used by the Trustee to make payments of principal and interest on its borrowing for Trust loans, to the extent that the amounts available from receipts of repayments and interest from borrowers under Trust loans, together with the authorized subsidy under Section IV, paragraph 4, are insufficient to cover the payments to lenders as they become due and payable.

Paragraph 3. Payments to the Reserve Account

Any payments of overdue principal or interest or interest thereon under Trust loans, and any payment of interest under Trust loans to the extent that payment has been made to a lender from the Reserve Account, shall be made to the Reserve Account.

Paragraph 4. Review of resources

If resources in the Reserve Account are, or are determined by the Trustee likely to become, insufficient to meet the obligations of the Trust that may be discharged from the Reserve Account as they become due and payable, the Trustee shall review the situation in a timely manner.

Paragraph 5. Reduction of resources and Liquidation

(a) Whenever the Trustee determines that amounts in the Reserve Account of the Trust exceed the amount that may be needed to cover the total liabilities of the Trust to lenders that are authorized to be discharged by the Reserve Account, the Trustee shall retransfer such excess amounts to the Fund's Special Disbursement Account.

(b) Upon liquidation of the Trust, all amounts in the Reserve Account remaining after discharge of liabilities authorized to be discharged by the Reserve Account shall be transferred to the Special Disbursement Account.

Section VI. Transfer of Claims

Paragraph 1. Transfers by Lenders

(a) Any lender shall have the right to transfer at any time all or part of any claim to any member of the Fund, to the central bank or other fiscal agency designated by any member for purposes of Article V, Section 1 ("other fiscal agency"), or to any official entity that has been prescribed as a holder of SDRs pursuant to Article XVII, Section 3 of the Fund's Articles of Agreement.

(b) The transferee shall, as a condition of the transfer, notify the Trustee prior to the transfer that it accepts all the obligations of the transferor relating to the transferred claim with respect to renewal and new drawings, and shall acquire all the rights of the transferor with respect to repayment of and interest on the transferred claim.

Paragraph 2. Transfers among electing Lenders

(a) Any lender to the Loan Account ("electing lenders") may inform the Trustee that it stands ready, upon request by the Trustee, to purchase claims on the Trust from any other electing lender, provided that the holdings of claims so acquired shall at no time exceed the amount communicated to the Trustee and subject to the other provisions of this Section. A list of electing lenders and the amounts communicated by them shall be established separately by the Trustee. This list may be extended and the amounts therein increased in accordance with communications received subsequently.

(b) An electing lender shall have the right to transfer temporarily to other electing lenders part or all of any claim arising from its loans to the Trust under Section III, if the electing lender represents to the Trustee that it has a liquidity need to make such transfer and the Trustee, having given this representation the overwhelming benefit of any doubt, agrees.

(c) The Trustee shall allocate each transfer by an electing lender under this provision to all other electing lenders in proportion to the amounts by which the respective maximum holdings listed in the attachment exceed actual holdings of claims acquired under this provision; provided, however, that no allocation shall be made to an electing lender if it represents to the Trustee that it has a liquidity need for exclusion from an allocation and the Trustee agrees, in which case allocations to the remaining electing lenders shall be adjusted accordingly.

(d) The purchaser of any claim transferred under this provision shall assume, as a condition of the transfer, any obligation of the transferor, relating to the transferred claim, with respect to the renewal of drawings on loans to the Trust and to new drawings on loans in the event a renewal, having been requested, is not agreed by the transferor.

(e) Transfers of claims under this provision shall be made in exchange for freely usable currency and shall be reversed in the same media within three months, provided that such transfers may be renewed, by agreement between the transferor and the Trustee, for further periods of three months up to a total of one year. Notwithstanding the above, the transferor shall reverse a transfer under this provision not later than the date on which the transferred claim is

due to be repaid by the Trust.

(f) Interest on claims transferred under this Section shall be paid by the Trust to the transferor in accordance with the provisions of the transferor's lending agreement with the Trust. The transferor shall pay interest to the transferee(s) on the amount transferred, so long as the transfer remains outstanding, at a daily rate equal to that set out in Rule T-1 of the Fund's Rules and Regulations; such interest shall be payable three months after the date of a transfer or of its renewal, or on the date the transfer is reversed, whichever is earlier.

Section VII. Administration of the Trust

Paragraph 1. Trustee

(a) The Trust shall be administered by the Fund as Trustee. Decisions and other actions taken by the Fund as Trustee shall be identified as taken in that capacity.

(b) Subject to the provisions of this Instrument, the Fund in administering the Trust shall apply the same rules as apply to the operation of the General Resources Account of the Fund.

(c) The Trustee, acting through its Managing Director, is authorized:

- (i) to make all arrangements, including establishment of accounts in the name of the International Monetary Fund, which shall be accounts of the Fund as Trustee, with such depositories of the Fund as the Trustee deems necessary; and
- (ii) to take all other administrative measures that the Trustee deems necessary to implement the provisions of this Instrument.

Paragraph 2. Separation of assets and accounts, audit and reports

(a) The resources of the Trust shall be kept separate from the property and assets of all other accounts of the Fund, including other administered accounts, and shall be used only for the purposes of the Trust in accordance with this Instrument.

(b) The property and assets held in the other accounts of the Fund shall not be used to discharge liabilities or to meet losses arising out of the administration of the Trust. The resources of the Trust shall not be used to discharge liabilities or to meet losses arising out of the administration of the other accounts of the Fund.

(c) The Fund shall maintain separate financial records

and prepare separate financial statements for the Trust.

(d) The audit committee selected under Section 20 of the Fund's By-Laws shall audit the financial transactions and records of the Trust. The audit shall relate to the financial year of the Fund.

(e) The Fund shall report on the resources and operations of the Trust in the Annual Report of the Executive Board to the Board of Governors and shall include in that Annual Report the report of the audit committee on the Trust.

Paragraph 3. Investment of resources

(a) Any balances held by the Trust and not immediately needed in operations shall be invested.

(b) Investments may be made in any of the following: (i) marketable obligations issued by an international financial organization and denominated in SDRs or in the currency of a member of the Fund; (ii) marketable obligations issued by a member or by a national official financial institution of a member and denominated in SDRs or in the currency of that member; and (iii) deposits with a commercial bank, a national official financial institution of a member, or an international financial institution that are denominated in SDRs or in the currency of a member. Investment which does not involve an exchange of currency shall be made only after consultation with the member whose currency is to be used, or, when an exchange of currencies is involved, with the consent of the issuers of such currencies.

Section VIII. Period of Operation and Liquidation

Paragraph 1. Period of operation

The Trust established by this Instrument shall remain in effect for as long as is necessary, in the judgment of the Fund, to conduct and to wind up the business of the Trust.

Paragraph 2. Liquidation of the Trust

(a) Termination and liquidation of the Subsidy Account shall be made in accordance with the provisions of Section IV, Paragraph 6.

(b) All other resources, if any, shall be used to discharge any liabilities of the Trust, other than those incurred under Section IV, and any remainder shall be transferred to the Special Disbursement Account of the Fund.

Section IX. Amendment of the Instrument

The Fund may amend the provisions of the Instrument, except this Section and Section I, paragraphs 1 and 2; Section III, paragraphs 4 and 5; Section IV, paragraphs 4

and 6; Section V; Section VI; Section VII, paragraph 2(a)
and (b); Section VIII, paragraph 2(b).