MEMORANDUM OF DETERMINATIONS

Expropriation Claim of Alliant Techsystems, Inc.
Belarus - Contracts of Insurance Nos. D955 and D956

I. Claim

By letters dated October 24, 1996, with two volumes of supporting documentation, Alliant Techsystems, Inc. ("Alliant" or the "Investor") applied for compensation under the expropriation coverage of OPIC Contracts of Insurance Nos. D955 and D956 (the "Contracts") for the maximum insured amounts, namely, $500,000 and $5,400,000, respectively (the "Claim"). The investment covered under Contract No. D955 is the value of services rendered to the foreign enterprise (Belconvers), whereas Contract No. D956 covered an investment in the form of equipment that Alliant consigned to Belconvers for the project, a demilitarization project in Belarus. As the actions of the foreign governing authority were directed at the project, and not the separate investments in it, OPIC has treated the two letters as relating to a single Claim.

In response to OPIC's requests for additional information, on February 11, 1997, Alliant* provided a third volume of documents and explanatory material relating to the first two volumes, and further details in correspondence dated March 5-17, 1997, thereby completing its application for compensation. The letters setting forth the Claim refer to a twelve-page "Chronology of Belconvers," with amendments, a supplement and a two-volume set of supporting documents. The letters and Chronology (with amendments and supplement) may be found at Tab A. They constitute a summary of the Claim as presented by Alliant. In addition, OPIC has considered additional information obtained during a visit to Minsk in December 1996, during which OPIC representatives met with American Embassy officers, Belarusian officials and the management of Belconvers.

OPIC's determination is that the Claim is valid and that compensation should be paid in the amount claimed, i.e., $5,900,000.

II. The Insurance Contracts

The Contracts (Tab B) were executed by OPIC on July 1, 1994. Under Contract D955, an OPIC Form 234 KGT 12-85 (Second Revision) with standard amendments for technical assistance agreements and projects in the Newly Independent States of the former Soviet Union ("NIS"), OPIC insured Alliant's investments in the form of agency, management and engineering services pursuant to agreements with Belconvers dated July 23, 1993. Under Contract No. D956, an OPIC Form 234 KGT 5-88 CP with standard NIS and other amendments,

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*/ "Alliant," as used throughout, includes not only Alliant Techsystems, Inc., but its wholly-owned subsidiaries, Alliant Techsystems Environmental Technologies B.V. and Global Environmental Solutions, Inc., each of which was signatory to one or more project-related agreements.

OPIC insured hardware and supplies necessary to disassemble, wash, cut apart or otherwise process munitions. The covered property was leased to Belconvers pursuant to an equipment lease and technology agreement, also dated July 23, 1993.

III. Factual Summary

In 1992, Alliant signed preliminary agreements (Tab E) with the Government of Belarus ("GOB") for the formation of a joint venture for the "utilization" of surplus munitions; i.e., the disassembly of munitions and processing of their components (e.g., metals and explosives) for sale abroad. The objective was to eliminate potentially hazardous surplus stocks of munitions held by the Belarusian military without environmental damage or expenditures from the state budget. Business plans and projections indicated that, by controlling the investment made in the facility, utilizing an inventory of munitions that would yield high value by-products, and selling them abroad for hard currency, Belconvers could be self-sustaining and profitable (Tab F).

In 1993, the foundation agreement and charter of the joint venture entity (Tab C) were signed, and the Belarusian and Western investors entered into a series of agreements with it for project implementation. The Belarusian partner was a military unit, the 43rd MRP, which had been given special authority to engage in commercial activity (Tab E). Alliant agreed to provide services (sales agency, management and engineering services) and specialized equipment for the project (Tab D).

One year later, in July 1994, President Lukashenko was elected. Customs authorities began to interfere with the export of by-products, on which the economic viability of the project depended (Tab A). The Belarusian Ministry of Defense ("MOD") officials who had supported the project were replaced, and minutes of meetings of the supervisory council ("SC") of Belconvers reflect that, as of May 1995, the expected assortment of munitions was not being provided, so that the projected volume of the highest value metal, brass, was not being produced (Tab G). At the same time, Alliant was informed of a presidential decree (Tab H) that would alter the entire basis of the project by bringing metal processing under the control of state companies, forbidding exports of metals without a license, annulling previous licenses and replacing the 43rd MRP with another entity that reported to the President's Control Service. Alliant protested these measures, but the GOB continued to adopt and, to some extent at least, implement measures that contradicted the understandings on which Alliant had invested in the joint venture. See Tabs N and V.

In October 1995, a fire and explosion occurred at the project, and four workers were killed. The workers were grinding and drying propellant that had been removed from projectiles. There is a strong evidence that, to speed up the drying process, the workers rewired the propellant grinder that had been supplied by Alliant so as to raise the temperature in the drying compartment. The equipment had been designed so that the temperature would remain at a safe level below the point at which there was risk of fire. As the equipment was rewired, a safe temperature was quickly exceeded and a fire broke out. The workers attempted to fight the fire

and were killed as the fire spread and an explosion occurred. The propellant grinder was also badly damaged, so that efficient processing of propellant was no longer possible.

The GOB seized upon the accident as a pretext to close down the project. Claims were made that Alliant's equipment was unsafe (Tab I), although it met U.S. and international standards, and the GOB refused to cooperate with Alliant's efforts to resume processing. Alliant cannot reasonably be faulted for the accident, approved generous compensation for the families of the workers involved, and took measures to design replacement equipment.

At the December 1995 meeting of the SC, Alliant was informed that a special team commissioned by President Lukashenko had been studying the project for many months and concluded that the project as envisioned should be terminated. By requiring that metal by-products be shipped to Belarusian enterprises instead of being exported and by restricting Belconvers to processing the least profitable, most labor intensive munitions and selling the lowest value by-products, the GOB would render the project uneconomic. (Tab J). Alliant again protested, and this time gave notice to OPIC of a potential claim and asked the American Embassy to intervene (Tab V).

These measures were similar to those that had been described to Alliant at the May 1995 supervisory council meeting (Tabs G, H). Evidently, the Investor had not persuaded the GOB to honor its original investment agreement. Throughout the first half of 1996, the Investor continued to attempt to implement the project and restructure it so as to recover at least a substantial proportion of its investment in services and equipment.

The MOD had both refused to resume shipments of munitions until all propellant stockpiled at the project site had been utilized (an impossible requirement to satisfy in view of the destruction of the propellant grinder) and rejected Alliant's offer to finance removal of the propellant to another location (Tab J). Belconvers was therefore unable to generate significant income, giving rise to concern about its financial situation, and even its ability to make severance payments to workers in the event of liquidation (Tab K). The joint venturers continued to discuss issues relating to resumption of full activities and to attempt to persuade the MOD to resume munitions supply so that the project could resume production (Tab K).

The MOD at least ostensibly favored continuation of project operations, but it became apparent that other agencies of the GOB, notably the Ministry of Economy and the Control Service of the President, were opposed to a self-sustaining demilitarization project with foreign participation. After meeting with opponents of the project , Alliant concluded that the foreign investors should concentrate on a restructuring proposal by which they would relinquish their role in the project but might recover a substantial part of their investment (Tab A). Restructuring of the project was discussed in various meetings held in May and June of 1996 between representatives of the GOB and the foreign investor. Details of these discussions and deliberations may be found in Alliant's application for compensation (Tab A), minutes of supervisory council meetings (Tab L) and GOB documents (Tabs M, N). The restructuring

discussions proved fruitless because the GOB was unwilling to commit to delivery of munitions in a quantity and assortment that would yield sufficient income to pay any significant percentage of the amounts that were due for the services and equipment that Alliant had supplied.

Accordingly, in July 1996, Alliant declared default and called a meeting of the SC to discuss the alternatives of a self-financing or other negotiated settlement of its claims (Tab O). A protocol of a Council of Ministers meeting documents the government's unchanged intent to proceed as earlier decided (Tab P). In August 1996, Alliant proposed that the project be taken over by the GOB but that utilization operations be conducted on a basis that would permit recovery of amounts due to Alliant. Alliant continued to pursue this option throughout August and September, but, in the end, the MOD would not agree to supply munitions adequate for self-financing of project operations, much less payment of accumulated debt (Tabs Q and R).

Having declared default and failed to achieve agreement on any restructuring proposal that might result in payment for the equipment that Alliant had leased to Belconvers, the Investor attempted to remove it, beginning with equipment that was not in use. Military officers prevented removal of even that equipment, and so Alliant did not make further attempts to repossess its equipment (Tab A).

As the project fell behind schedule and ceased to operate, customs authorities asserted claims for customs duties, which, under the circumstances, the Investor considered an attempt to take the equipment under color of law (Tab S).

The GOB had long been pressuring Alliant to revise the foundation agreement and charter of Belconvers so as to cede control to its Belarusian partner. A new law requiring that companies reregister under threat of dissolution created an opportunity for the GOB to impose new terms upon the Western shareholders that would give it control of the joint venture. Alliant attempted to reach a compromise, e.g., by accepting that the Belarusian partners would have a majority vote but requiring a supermajority for certain issues. The MOD declared Alliant's terms unacceptable and suspended all munitions deliveries to the project.

Alliant's proposals were made on advice of Belarusian counsel, and the GOB has not contended that they are inconsistent with law. Moreover, the 1993 foundation agreement (Tab C) provided that, in the event of a change of law, the parties would endeavor to preserve the original bargain. The GOB's attempt to use the reregistration requirement as leverage to wrest control is instead a breach of the original bargain.

Alliant has reminded Belconvers management that the equipment is leased, remains the property of Alliant, and would not be among the assets of Belconvers distributed in liquidation. Belconvers has not been liquidated, and Belconvers management continues to make new demands upon Alliant; e.g., that Alliant agree that disputes be relegated to local courts instead of being resolved in international arbitration (Tab T).

Alliant has responded to correspondence from Belconvers to preserve its legal remedies on behalf of itself and OPIC as subrogee, but, having been deprived of the fundamental benefits of its investment, has declined to incur additional expense or participate in further meetings.

IV. Determinations Under the Contracts

A. The actions taken by the Government of Belarus in relation to Alliant's insured investment in Belconvers constitute total expropriation within the meaning of the Contracts

The scope of expropriation coverage is determined by Article IV of Contract No. 955 and Article II of Contract No. 956. Each provides, in Section 4.01 and 2.01, respectively, that compensation is payable for total expropriation, subject to exclusions and limitations, if four requirements, discussed in detail below, are satisfied.

1. The acts are attributable to a foreign governing authority that is in de facto control of the part of the country in which the project is located.

The acts on which the Claim is based were actions taken by high officials and organs of the central government of Belarus, which is unquestionably in control of all the territory of Belarus.

The documentation submitted by Alliant established that the acts in question constituted acts of the President, the Prime Minister, the President's Control Group, the National Security Council, the Ministry of Defense, the Ministry of Economy, the Ministry of Foreign Economic Relations, the Customs Service, the Council of Ministers, and various commissions and committees established by some or all of them. See Tabs A, J, K, L, and M.

There is no question that the acts that are the basis of the Claim constituted official acts taken by the foreign governing authority.

Both Contracts contain an amendment (Section 10.02 of Contract No. D955, Section 8.02 of Contract No. D956) that defines foreign governing authority so as to exclude any entity in which the foreign governing authority has an ownership interest if the entity performs commercial functions directly related to the project. This exclusion does not apply to this Claim because even disregarding the actions of the MOD and the 43rd MRP, the two state entities that might be considered to have performed commercial functions directly related to the project, the actions of the President, other ministries and other instrumentalities of the Government of Belarus were sufficient to constitute expropriation.

2. The acts are violations of international law (without regard to the availability of local remedies) or material breaches of local law.

The conditions on which Alliant invested in the project were clear and agreed upon by representatives of the GOB, specifically, the MOD, whose participation had been approved by the Council of Ministers. The allocation of voting power in favor of the foreign investors was noted, questioned, but agreed upon by the cognizant GOB agency, the State Property Committee. This determination is based upon the foreign governing authority's high level policy decision to renege upon, frustrate, repudiate, or renegotiate under duress the critical elements of the arrangement that it had negotiated with the Investor, in violation of international and local law.

Immediately after the full investment had been made, the President of Belarus, his Control Group, and other agencies reconsidered the participation of foreign investors in demilitarization projects and decided to "liquidate" Alliant's participation, and, through a series of subsequent measures, accomplished that. The supply of input was cut off, processing was brought to a halt, export sales of output were restricted, income was cut by imposition of duties, project agreements were ignored, and attempts were made to renegotiate them under duress.

The GOB's taking of Alliant's investment without compensation violates not only customary international law but the obligation that it assumed in signing a bilateral investment treaty with the United States. Even though that treaty has not entered into force, the parties have an obligation under customary international law to refrain from acts that would defeat its object and purposes. The Restatement of the Law, Third, The Foreign Relations Law of the United States §312 (1987). Creation of a "stable framework for investment" is among the purposes of the Treaty Between the United States of America and the Republic of Belarus Concerning the Encouragement and Mutual Protection of Investment, which was signed in Minsk on January 1, 1994. The parties agreed that "investments shall at all times be accorded fair and equitable treatment" (Article II (3)) and specifically agreed that "investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization except: for a public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation (Article III(1)); and in accordance with due process of law and the general principles of treatment provided for in Article II(3)."

At the presidential, ministerial and council of ministers level, decisions were made that undermined the basis on which the investments were made and denied Alliant any possibility of recovering the economic value of its investment of technical assistance or its tangible covered property. These measures amount to conscious repudiation of an investment agreement made by the GOB with Alliant, without compensation. "A state is responsible under international law for injury resulting from ... a repudiation or breach by the state of a contract with a national of another state ... when the repudiation or breach is ... motivated by noncommercial considerations and compensation is not paid." The Restatement of the Law, Third, The Foreign Relations Law of the United States §312 (1987). Alliant was not merely the

victim of a commercial breach of contract by the MOD as supplier or the 43rd MRP as party to the project agreements. Rather, the GOB, at the highest levels, determined, as a political matter, that the demilitarization project should be terminated.

Further, as was noted in the minutes of a meeting of the SC of Belconvers, the general manager of the joint venture expressed the opinion that the GOB's interference in the joint venture, to the detriment of the foreign investors, violates the foreign investment law of Belarus. The Law of the Republic of Belarus "On Foreign Investments on the Territory of the Republic of Belarus" (1991) contains provisions that were materially breached by acts of the GOB toward the Investor. Article 34 (Legal Regime of Foreign Investments) contains a stabilization provision, whereby "in case the legislation of the Republic of Belarus becomes later on less favorable for investors, the legislation effective on the day the registration of the enterprise with foreign investment was made shall apply to the foreign investments for the period of five years." Thus, to the extent that changing customs law and company law were imposed on Belconvers, the law of Belarus was materially breached. Moreover, Article 35 (Guaranties Against Requisition, as well as Illegal Actions of State Bodies) contains not only a prohibition against requisition or "actions similar in their consequences" but provides for compensation in the event that state or local government takes action that infringes the rights of an investor.

3. The acts directly deprive the investor of fundamental rights in the insured investment (Contract No. D955) and directly prevent the Investor, as owner of the covered property, from exercising its right pursuant to the Agreement to take possession of and/or dispose of the covered property (Contract No. D956).

With respect to the project Agreements for agency, management and engineering services, acts of the GOB blocked input of valuable munitions and the exports of by-products on which the financial success of the project depended (and therefore its ability to pay for the goods and services invested by Alliant), and GOB entities refused permits and approvals, frustrating efforts by Alliant to keep the project going while withholding assistance themselves. Attempts were made to wrest voting control from the foreign investors and substitute a different Belarusian partner, in disregard of the terms of the foundation documents of the joint venture. Although Alliant's equity investment in Belconvers is not insured under the Contracts, allocation of control to the Western Shareholders was an essential condition of the insured investments. Control over decisions relating to project implementation and profitability was of obvious importance, and Alliant's prospects of recovering amounts owed under Project Agreements would have been impaired if the Belarusian party had obtained control of Belconvers.

With respect to the lease agreement for equipment, the MOD refused permission to withdraw certain equipment from the project site even though, under the terms of the Agreement, Alliant was entitled to remove all the equipment because Belconvers was in default in its lease payments. The MOD, and other GOB agencies, had been negotiating with the Investor to restructure project debt for goods and services that Alliant had provided, was on notice that Alliant intended to repossess the equipment, and frustrated its right to do so. The

negotiating record of the restructuring proposal is clear as to the GOB's determination to retain the equipment and benefit from the services that had been provided without allocating the means to pay for them.

4. The violations of law are not remedied and the expropriatory effect continues for six months.

The Investor has characterized the Claim as one based on a theory of "creeping" expropriation, i.e., a series of acts that, taken as a whole, have an expropriatory effect. In such a case, it is difficult to establish with certainty the date the expropriatory effect commences, a date relevant both to satisfaction of the requirement of section 4.01(d) of Contract No. D955 and 2.01(d) of Contract No. D956 that the effect have continued for six months and to computation of compensation pursuant to section 5.01 of Contract No. D955 and 3.01 of Contract No. D956.

The Investor gave notice of a potential expropriation claim on December 27, 1995. With respect to Contract D955, OPIC accepts December 1995 as the date on which the expropriatory effect commenced. It was at the December 1995 SC meeting that Alliant was first told of presidential action that threatened the viability of the project (Tab J). Alliant gave OPIC notice of a potential claim on December 27, 1995 (Tab W). It was not until February 1, 1996 that Alliant attempted to involve the American Embassy, but the GOB actions of which Alliant complained were those described at the December SC meeting. Alliant's letter to the American Embassy may also be found at Tab V.

Even if one considers that the expropriatory intent and effect dated only from the decisions reached by the President and Cabinet of Ministers on June 21, 1996, which confirmed at the highest level that the foreign investor would be denied any opportunity to recover its investment, the six month requirement has been satisfied.

With respect to Contract D956, a threat to Alliant's right to exert rights of possession or disposition of the covered property might be deemed to have arisen in May or June 1996 when the GOB both failed to offer terms on which even reduced lease payments might be made and employed delaying tactics against Alliant's efforts to remove the equipment. An expropriatory effect clearly commenced in August 1996 when Alliant representatives at the project site were denied permission to remove equipment that was, by the terms of the project Agreements (Tab D), Alliant's property. (See Tab R).

B. No exclusion applies

1. A preponderant cause of the loss was not unreasonable action attributable to the Investor.

Both Contracts provide that no compensation is payable if the preponderant cause is unreasonable actions attributable to the Investor (§4.03(a) of Contract No. D955 and §2.02 of Contract No. D956).

There is an issue as to whether the October 1995 accident, or alleged negligence by Alliant in the design, selection or installation of equipment, or in the training of Belconvers employees in its use, constitutes such unreasonable action.

As the investigation reports on the accident establish, the cause of the fire and explosion was the increase in temperature in the dry box that resulted from the unauthorized rewiring of one of the heaters, and fatalities resulted because the employees remained to fight the fire, consistent with Belarusian practice, instead of evacuating, consistent with U.S. practice.

Alliant's obligation under the Engineering Services Agreement (Tab D) was to provide training relative to the operation of equipment provided by Alliant to all employees involved in the "utilization" process. According to Alliant, that would include not only training in operation and maintenance, but any specialized safety precautions.

Training lasted at least a week, which Alliant considered adequate in view of the general experience of the personnel of the 43rd MRP. An Alliant representative remained to supervise the first day of operation as well. Although the processes involved are hazardous, the equipment is not complicated, and OPIC finds credible the Investor's statement that a week of training was adequate.

As noted above, the equipment met U.S. and international standards. There is no evidence of negligence on Alliant's part. Instead, the accident resulted from the unauthorized rewiring of the equipment. If safety violations at the project site (e.g. the lack of ready firefighting water, a blocked exit) contributed to the fatalities, they were violations of safety rules that only Belconvers management could enforce. Under the engineering services Agreement (Tab D), Belconvers assumed responsibility for the safety, actions and well-being of its employees and Alliant's equipment while engaged in munitions processing, with an exception for damages, injuries or costs resulting from the negligence of Alliant or its employees. Day-to-day management of Belconvers was the responsitility of the 43rd MRP, not Alliant. After the accident, Alliant investigated and sought ways to improve the safety of the equipment and the process, but corrective action is not an admission of negligence. Alliant was ready to resume operations with redesigned equipment, but the GOB did not permit it to do so.

The accident may have served as a pretext for GOB action against the project, but the project would have resumed operation and succeeded if the GOB had not reached a decision independent of the accident to eliminate Western participation.

2. The provision of Contract No. D956 (§ 2.03) that neither sums payable under the lease agreement nor the proceeds from the sale of covered property are covered is inapplicable.

The Claim is not based on defaulted lease payments or sale of covered property but the loss of the covered property itself.

3. The exclusion of §4.03(b) of Contract No. D955 for action taken by the foreign governing authority in its capacity or through its powers as a purchaser, supplier, creditor, shareholder, director or manager of the foreign enterprise is inapplicable.

Alliant had no dispute with its Belarusian joint venture partner (the 43rd MRP), nor any dispute with the Belarusian management of the foreign enterprise. The acts that formed the basis of the claim were actions taken by the President, his Control Group, the Council of Ministers and other organs of government.

This Claim is not based solely, or even primarily, upon actions taken by MOD as supplier. Rather, by a whole series of actions, the foreign governing authority undermined all of the known pre-conditions for the success of a project, of which the foreign governing authority was aware from having approved the project and participated in its management, and took control of the project from the Investor. The powers of the foreign governing authority as a shareholder, director or manager were limited by the terms of the foundation agreement and charter of the foreign enterprise and are also not the basis of the Claim.

There is no equivalent provision in Contract No. D956, under which the preponderant amount of compensation is claimed.

C. The amount of Compensation payable under Contract No. D955 is $500,000

1. The book value of the insured investment is $4,661,948.

Contract No. D955 covers the accrued and unpaid amounts due for services performed by the Investor under its Agreements with the foreign enterprise. Section 5.01 of the Contract provides that OPIC shall pay compensation in the amount of the book value of the insured investment, subject to adjustments and limitations. As amended by Section 10.03, Section 5.01 of Contract No. D955 provides that "the term 'book value' as used in Article V shall mean ninety percent of the sum of accrued but unpaid royalties and/or fees under the Agreements." Compensation is based on financial statements maintained for the foreign enterprise.

The Agreements provided for payment on the basis of the Investor's cost, and Alliant has provided detailed accounting records of the services provided to Belconvers during the period from April 1993 through March 1996, as well as a summary of payments due under each of the Agreements by calendar year (Tab U).

The fees accrued and unpaid as of December 1995 under the two Agreements covered by Contract No. D955 far exceed the limit of liability under that Contract. According to the summary of annual payments due under the Agreements, as of the end of 1995, $3,067,437 had been accrued under the engineering services agreement and $2,819,830 under the sales agency agreement. These amounts include a 10% interest surcharge that OPIC would not cover and are offset by small payments under the two Agreements (in the aggregate, $172,119). These factors reduce the total accrued but unpaid fees to $5,179,942. OPIC insured 90% of that amount, or $4,661,948.

By amendment in Section 10.04 the standard adjustment for investments of property, non-insured contributions and start-up expenses were deleted. No adjustments are required for special accounting rules or other compensation. The Investor has certified that it has received no other compensation.

2. The limitations (§5.04) reduce compensation payable to $500,000.

The limitation contained in Section 5.04(a) of the Contract, namely, that compensation shall not exceed the Current Insured Amount (§8.06) on the date the expropriatory effect commences, has a substantial impact upon compensation payable, inasmuch as the Current Insured Amount as of December 1995 was only $500,000.

The insolvency limitation (§5.04(b)) should not be applied, under the circumstances of this Claim. Financial projections, on which OPIC relied, indicated that the project would be profitable (Tab D), the minutes of the SC of the foreign enterprise establish that the project was initially profitable (although only because the Investor deferred (Tab G) payment of debt), and there is no reason to believe that there would have been any change in the commercial viability of the project, if it had proceeded as planned. The project was adversely affected even at early stages by GOB actions that OPIC ultimately determined to constitute expropriatory action. As of February 1996, Alliant became concerned about the ability of Belconvers even to pay its workers if it were liquidated (Tab K), and so insolvency was very likely an issue by December 1995. Thus, application of the insolvency limitation as of March 1996 would, in effect, reduce compensation on account of the impact that expropriatory action had upon the financial condition of the foreign enterprise. Therefore, that limitation will not be applied.

The remaining limitation (Section 5.04(c)) relates to the self-insurance requirement of §9.01.3, which has clearly been satisfied, inasmuch as the compensation payable is far less than the book value of the insured investment.

D. The amount of compensation payable under Contract No. 956 is $5,400,000

1. Compensation is payable on the basis of insured investment in the covered property, valued at original cost, subject to adjustments and limitations.

Contract No. 956 covers the equipment that the Investor provided to the foreign enterprise under lease. The "insured investment" is ninety percent of the Investor's interest in the covered property (Section 1.01). In the event of expropriation, Section 3.01 of the Contract provides for compensation on the basis of historical cost of the insured investment. Historical cost is defined as the least of the original cost, the fair market value, or the reasonable cost to replace the expropriated covered property.

The Investor has supplied detailed information as to the original cost of the equipment, including the invoice price, labor, travel, and general and administrative costs directly associated with furnishing the covered property to the foreign enterprise (Tab U). The equipment is highly specialized and was custom-designed for the project, and installation cost was a substantial component of the original cost. In the case of new, unique equipment, neither fair market value nor replacement cost should differ significantly from original cost, and so original cost is the appropriate measure of historical cost.

Alliant has presented cost information as to the equipment showing expenditures of $7,253,852 through the first quarter of 1996. Taking August 1996 as the date of expropriation, the entire amount was due and payable as of the date the expropriatory effect commenced.

As was the case with respect to its billing for services, Alliant added 10% interest to these amounts in determining its total cost. Disallowing the interest element leaves other expenditures of $6,594,411, of which 90% constitutes the book value of the insured investment ($5,934,970).

2. An adjustment is required to reflect the abnormal deterioration in the physical condition of certain covered property.

The propellant grinder (valued at $488,952) was badly damaged in a fire and explosion that occurred in October 1995. Section 3.01 of the Contract provides that historical cost may be adjusted to realizable value of covered property that has experienced permanent reduction in value. Even assuming that the propellant grinder should be written off entirely, the book value of the insured investment would be $5,494,913.

3. Compensation is limited to the Current Insured Amount, i.e. $5,400,000.

Pursuant to Section 3.02 of the Contract, compensation shall not exceed the Current Insured Amount (§6.06) on the date the expropriatory effect commences. As noted above, OPIC deems August 1996 to be the relevant date. The Current Insured Amount under Contract No. 956 was $5,400,000 as of July 1, 1995 and through termination of the Contract on June 30, 1997, and so that amount determines the amount of compensation payable.

E. The Investor has complied with its duties under the Contracts.

1. The representations made in connection with the Contracts were true and complete when made and the investment was made as described.

There is no reason to believe that any representation made in connection with the Contract was not true and complete when made, and the Investor has so represented in the Settlement Agreement (Tab W). The Claim and supporting documents demonstrate that the Investor made the investment and attempted to implement the project as described to OPIC.

2. The Investor has remained at all times the beneficial owner of the investment, eligible for OPIC insurance, and has continued to bear the loss of at least 10% of its investment.

The Investor has provided a certificate as to its beneficial ownership of the investment and its continuing eligibility, and the cost data (Tab U) establish that the Investor has borne more than 10% of the loss.

3. The Investor notified OPIC promptly of the acts that gave rise to the Claim and has kept OPIC informed as to all relevant developments.

The Investor notified OPIC promptly of the October 1995 accident and subsequent adverse actions taken by the foreign governing authority, and developments through the date of the Claim and thereafter. Written notice pursuant to the Contracts was provided in a letter dated December 27, 1995 (Tab V).

4. The Investor has not entered into any agreement with the foreign governing authority without OPIC's prior written consent.

The Investor attempted to negotiate a restructuring of the project and new terms for recovery of its investment, but those efforts did not result in any agreement. OPIC was kept informed of the Investor's attempts to negotiate a solution.

5. The Investor implemented the investment and the project in all material respects in compliance with laws and procedures of the foreign governing authority.

An early demand of the foreign governing authority was that Belconvers conform its foundation documents to Belarusian legislation, implying some breach of law. The specific demand was that the foreign enterprise be restructured so that there would be only one class of stock, with the result that the foreign investors would lose majority control.

The original foundation documents had been approved by the foreign governing authority, which was aware of the agreed allocation of voting power and specifically agreed to it. The minutes of meetings of the SC of the foreign enterprise establish that Belarusian legislation was unclear as to whether the agreed allocation of control was impermissible. Subsequent to the date of the Investor's application for compensation under the Contracts, Belarusian company law was amended so as to require reregistration of companies, and, in that context, the foreign governing authority made a renewed effort to pressure the Investor to cede majority voting power to its local partner. Even under the new law, however, the allocation of control to which the foreign governing authority originally agreed remained obtainable by contract.

The foreign governing authority has also alleged breaches of local law by the MOD, in agreeing to the joint venture terms, and has characterized the participation of the 43rd MRP as illegal, whether under law existing at the time of the venture or as subsequently amended. As a matter of fairness in dealing with a foreign investor, it is noteworthy that participation of the 43rd MRP in the joint venture was approved by the Council of Ministers (Tab E) and that even GOB officials who are antagonistic toward Alliant have not insisted on replacement of the 43rd MRP (Tab N). Belarusian law and practice seem unclear in this respect and the foreign governing authority should be estopped from asserting illegality as the basis for renegotiating arrangements that the foreign governing authority itself had negotiated and approved. It would be inappropriate for OPIC to deny a claim on such a basis.

6. The Investor observed applicable laws relating to acceptable conditions of work with respect to occupational health and safety.

The October 1995 accident raised questions as to compliance with worker safety standards at the project. There may have been technical breaches of local law with respect to worker training certificates, inspections, approvals, etc., but under the project Agreements, the foreign enterprise, not the Investor, was responsible for obtaining necessary permits and for safety. The Investor provided equipment that met U.S. and international safety standards and trained the workers with respect to safe operation of the equipment, which was the limit of the Investor's responsibility both under the project agreements and under the OPIC insurance contracts.

7. The Insured retained legal title to the consigned equipment throughout the duration of the equipment lease, and legal title remains with the Insured.

OPIC issued Contract No. D956 with an amendment (section 8.07) that recited the Investor's representation (with the understanding that the representation was material) that the Investor would retain legal title to the covered property through the term of the lease agreement and upon its termination.

In 1995, the Investor entered into a new agreement with the foreign enterprise under which, subject to certain U.S. Government approvals, the Investor agreed to transfer title upon termination of the lease. The Investor should have obtained OPIC's consent to replace the original Agreements with a new one, but OPIC's review of the new agreement established that the only major substantive difference related to the potential transfer of title to the equipment. Alliant agreed to take action that, if taken, would have breached one of its OPIC Contracts. As events unfolded, there was no breach because the foreign enterprise did not make lease payments, the lease agreement was not performed, the required approvals were not sought, and title remained with the Investor. Indeed, the Supervisory Council's review of the 1995 agreement during its May 30-31, 1996 meeting (Tab L) implied some doubt that it had entered into force. Recent correspondence (relating specifically to customs duties potentially applicable to the leased equipment) refers to the 1993 Agreement. (See Tab S and T.) Therefore, the Investor has not breached its duty with respect to transfer of title to the equipment.

IV. Conclusion

For the foregoing reasons, OPIC concludes that the Claim of the Investor is valid and that the Investor is entitled to compensation in the amount of five million nine hundred thousand dollars ($5,900,000).

OVERSEAS PRIVATE INVESTMENT CORPORATION

By: Mildred O. Callear
Mildred O. Callear
Its: Acting President

Date: June 4, 1997