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TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH ANNEX

JUNE 20, 1996.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 103–38]

The Committee on Foreign Relations to which was referred the Treaty Between the Government of the United States of America and the Government of the Republic of Estonia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, done at Washington on April 19, 1994, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof as set forth in this report and the accompanying resolution of ratification.

I. PURPOSE

The principal purposes for entering into a bilateral investment treaty (BIT) are to: protect U.S. investment abroad where U.S. investors do not have other agreements on which to rely for protection, encourage adoption of market-oriented domestic policies that treat private investment fairly, and support the development of legal standards consistent with the objectives of U.S. investors. The BIT, therefore, is intended to ensure that United States direct investment abroad and foreign investment in the United States receive fair, equitable and non-discriminatory treatment.

II. BACKGROUND

The proposed treaty together with the annex, was signed on April 19, 1994. No bilateral investment treaty is currently in force between the United States and Estonia.

The proposed treaty and annex were transmitted to the Senate for advice and consent to ratification on September 27, 1994 (see

Treaty Doc. 103–38). The Committee on Foreign Relations held a public hearing on the proposed treaty together with the proposed annex and protocol on November 30, 1995.

III. SUMMARY

A. GENERAL

Bilateral investment treaties (BITs) are the result of a treaty program begun in 1982 as a successor to the Friendship, Commerce, and Navigation Treaties that formerly set the framework for U.S. trade and investment with foreign countries. The BIT is based on a U.S. model treaty.

All parties must agree to the basic guarantees of the model before the United States will enter into negotiations on a treaty. The six basic guaranties contained in the model are:

investors receive the better of national or most favored nation status;

expropriation of private property is limited and a remedy exists;

investors have the right to transfer funds into and out of the country without delay using a market rate of exchange;

inefficient and trade distorting practices such as performance requirements are prohibited;

investment disputes may be submitted to international arbitration; and

top managerial personnel of an investor's choice may be engaged regardless of nationality.

Since 1982, the United States has signed 37 BITs, and the Senate has given its advice and consent to ratification of 24 BITs. Twenty two BITs are currently in force. Treaties that have been ratified by the Senate, but have not entered into force, include treaties with: Russia, where the Duma has failed to ratify; and Ecuador, which was ratified by both countries, but the United States is delaying the exchange of instruments until Ecuador has fully implemented its obligations under the United States-Ecuador intellectual property rights agreement. There are currently 12 on-going negotiations for BITs with other countries.

B. COMPARISON TO THE MODEL

The following is an analysis of the major provisions of the proposed treaty. The analysis compares the provisions of the Treaty Between the United States of America and the Republic of Estonia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex (Treaty Doc. 103–38) (BIT), with those of the United States 1992 Model Bilateral Investment Treaty (Model), on which the former is based.

Preamble.—The preamble of the BIT is identical to that of the Model, except for adding separate paragraphs regarding earlier bilateral trade and investment agreements between Estonia and the United States. One paragraph notes the Parties' 1925 MFN agreement and 1925 friendship, commerce, and navigation (FCN) treaty; a second refers to the furthering of Article Three of the Parties' Bilateral Agreement Concerning the Development of Trade and Investment Relations of September 17, 1992. The State Department

informs Committee staff that these references were intended to underscore the long history of U.S. recognition of Estonia's independence from the Soviet Union.

Article I (definitions and general provisions).—The BIT follows the Model with respect to definitions except that the BIT adds definitions for "state enterprise" and "delegation." A "state enterprise" is defined as "an enterprise owned, or controlled through ownership interests, by a Party" (Art. I:1(f)). A "delegation" is defined to include "a legislative grant, and a government order, directive, or other act transferring to a state enterprise or monopoly, or authorizing the exercise by a state enterprise or monopoly of, governmental authority (Art. I:1(g)). The State Department informs Committee staff that the definitions were added in order to clarify and extend the requirements of the treaty because of the dominant role of state enterprises in the Estonian economy. According to State the negotiating agencies believe that this addition gives U.S. investors added protection. Similar language can be found in NAFTA.

The BIT follows the Model as to the right to deny treaty benefits to companies controlled by nationals or firms of third countries and the rule that any alternation of the form in which assets are invested or reinvested will not affect their character as investments (Arts. I:2, I:3).

Article II (treatment).—The BIT contained a provision almost identical to that in the Model setting forth each Party's obligation to provide the better of national or MFN treatment to investment and associated activity of the other Party and its right to exempt certain sectors from this obligation (Art. II:1). The BIT varies from the Model in that Parties agree to notify the other upon the latter's request of such laws and regulations. The State Department informs Committee staff that this language makes clear the point that a Party is free at any time to request information and can expect an answer.

The BIT also contains provision identical to the Model as to the minimum treatment to be accorded investments; prohibiting arbitrary or discriminatory impairment of investments; and requiring each Party to observe any obligation it may have entered into with respect to an investment (Art. II:3).

The BIT also follows the Model as to entry of nationals for investment purposes (Art. II:4); engaging top managerial personnel of choice (Art. II:5); prohibiting performance requirements (Art. II:6); providing effective means of asserting claims and enforcing rights (Art. II:7); making public all laws, regulations, administrative processes, and adjudicatory decisions pertaining to or affecting investments (Art. II:8); clarifying the application of the BIT on a national treatment basis in states, territories, and possessions of the United States (Art. II:9); removing from the scope of MFN treatment a Party's binding obligations under free trade areas or customs union and under any multilateral international agreement entered into under the auspices of the GATT subsequent to the signature of the BIT (Art. II:10).

The BIT adds a paragraph regarding state enterprises, stating that the BIT may not be construed to prohibit a Party from establishing or maintaining a state enterprise; that any such enterprise may not act inconsistently with Treaty obligations when exercising

governmental authority delegated to it; and that the enterprise must accord the better of national or MFN treatment in its sale of goods or services in the Party's territory (Art. II:2). As with Article I, the State Department informs Committee staff that the definitions were added in order to clarify and extend the requirements of the treaty because of the dominant role of state enterprises in the Estonian economy. According to State the negotiating agencies believe that this addition gives U.S. investors added protection.

The BIT adds another paragraph further defining what are to be considered "associated activities" for purposes of the BIT. It lists ten additional activities, including franchises and other licenses; access to registrations, licenses, permits, and other approvals; access to financial institutions, credit markets, and other funds; the import and export of equipment and automobiles; dissemination of commercial information; conducting market studies; the appointment of commercial representatives and the participation of such individuals in trade fairs and promotional events; marketing goods and services; and access to public utilities, public services, commercial rental space, raw materials, inputs, and services of all types at nondiscriminatory prices, if the prices are set or controlled by the government (Art. II:11). The State Department informs staff that this paragraph was added to provide additional concrete examples of the types of associated activities for which investors should receive the better of national or MFN treatment. This language was designed to avoid problems that U.S. businesses may face in emerging market economies, and its addition is seen as a plus for U.S. investors. Similar language can be found in BITs with NIS and Eastern European countries including the Czech Republic, Slovakia, Kazakstan, Kyrgystan, Moldova, and Poland, all of which are currently in force.

Article III (expropriation).—The BIT is identical to the Model's expropriation article, except for one provision as to transferability. This article prohibits expropriations of covered investments except if carried out for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the minimum treatment standards set forth in Article II (generally requiring "fair and equitable treatment") (Art. III:1); sets forth specific requirements as to compensation (Art. III:2); and establishes compensation based on the currency in which the fair market value of the expropriated investment is denominated (Art. III:3).

While the BIT contains the Model's obligation that compensation be freely transferable, it does not include the additional language contained in the Model that compensation be transferable "at the prevailing market rate of exchange on the date of expropriation" (Art. III.1).

Article IV (transfers).—The BLT is identical to the Model regarding transfers into and out of the territory of a Party. The obligation, which defines transfers to include, among other things, compensation paid under Article III, requires in part that transfers be made in a freely usable currency at the current market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

Article V (consultations).—The BLT is identical to the Model regarding the obligation of Parties to consult with respect to disputes and other matters arising under the Treaty.

Article VI (investor/state disputes).—The BLT is identical to the Model regarding provisions for consultation and arbitration in investor-State disputes. As in the Model, each Party consents to the submission of any investment dispute to binding international arbitration in the event that the dispute cannot be resolved amicably. Estonia is a Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It appears not to have entered into the Convention reciprocally—that is, with the declaration that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state—and thus would presumably recognize and enforce any foreign arbitral award that falls within the Convention's scope. Estonia is also a Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Unlike the Model, the BIT does not exempt from its investor/state dispute procedures those disputes arising under the export credit, guarantee, or insurance programs of the Export-Import Bank of the United States or under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of setting disputes. According to the State Department, EXIM, OPIC, and other relevant government agencies indicated prior to the negotiation of this Treaty that they saw no need to maintain such provision.

Article VII (interstate disputes).—The BIT is identical to the Model in providing for binding arbitration for interstate disputes in the event such a dispute has not been resolved through consultations or other diplomatic channels.

Unlike the Model, the BLT does not exempt from its interstate dispute procedures those disputes arising under the export credit, guarantee, or insurance programs of the Export-Import Bank of the United States or under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes. According to the State Department, EXIM, OPIC, and other relevant government agencies indicated prior to the negotiation of this Treaty that they saw no need to maintain such a provision.

Article VIII (preservation of rights).—The BIT is identical to the Model in allowing each Party to provide investments of the other Party treatment that is more favorable than that minimally required under the BIT, as a result of national laws, regulations, administrative procedures, or adjudications, international legal obligations, or other obligations assumed by either Party.

Article IX (exceptions).—The BIT is identical to the Model as to exceptions for measures necessary for public order, the fulfillment of certain international obligations, and protecting essential security interests. Like the Model, the BIT also allows Parties to prescribe special formalities for investments so long as the substance of treaty rights is not impaired. State Department officials have informed Committee staff that during negotiation of the BIT Parties agreed that this provision is self-judging.

Article X (taxation).—The BIT is identical to the Model with respect to each Party's tax policies as applicable to investments of the other Party and the application of the treaty to tax matters in limited areas. The Treaty, and the dispute settlement provisions, apply to tax matters in three areas, to the extent they are not subject to the dispute settlement provisions of a tax treaty, or, if so subject, have been raised under a tax treaty's dispute settlement procedures and are not resolved in a reasonable period of time. The Treaty could apply to tax matters in three areas: expropriation (Article III), transfers (Article IV), and the observance and enforcement of terms of an investment agreement or authorization (Article VI).

Article XI (extent of application).—Like the Model, the BIT clarifies that it fully applies to all political subdivisions.

Article XII (final provisions).—The BIT is identical to the Model as to its entry into force, its application to current and future investments, termination, and continued temporary application to investments made or acquired prior to the termination date. As the BIT does not contain a Protocol, it shortens the Model's language that "[t]he Annex (and Protocol, if any) form an integral part of the Treaty," to state that the Annex has this status.

Annex (sectoral exemptions).—The BIT is identical to the Model as to the sectors and matters in which the United States may make or maintain limited exceptions from its national treatment and MFN obligations, except for its coverage of financial services in the national treatment paragraph. Where the Model separately exempts banking, insurance, and primary dealership in United States government securities, the BIT formulates these sectors in terms of "banking, insurance, securities, and other financial services" and eliminates the Model's separate listing for primary dealership in United States government securities (Annex, paragraph 1).

The Annex contains a separate paragraph listing the sectors in which Estonia may make or maintain limited exceptions from its national treatment obligation (no exceptions from MFN are provided). These are: banking, including loan and saving institutions; government grants; government insurance and loan programs; ownership of real property; use of land and natural resources; and initial acquisition from the Republic of Estonia and its municipalities of state and municipal property in the course of denationalization privatization (Annex, paragraph 3).

IV. Entry Into Force and Termination

A. ENTRY INTO FORCE

The proposed treaty will enter into force 30 days after the date of the exchange of instruments of ratification. From the date of its entry into force, the BIT applies to existing and future investments.

B. TERMINATION

The proposed treaty will continue in force for ten years after ratification without termination. A Party may terminate the proposed treaty ten years after entry into force if the Party gives one year's written notice of termination to the other Party. If terminated, all

existing investments would continue to be protected under the BIT for ten years thereafter.

V. COMMITTEE ACTIONS

V. The Committee on Foreign Relations held a public hearing on the proposed treaty and annex with Estonia on November 30, 1995. The hearing was chaired by Senator Thompson. The Committee considered the proposed treaty and annex with Estonia on March 27, 1996, and ordered the proposed treaty and annex favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty and annex.

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommended favorably the proposed treaty and, on balance, the Committee believes that the proposed treaty is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Several issues did arise in the course of the Committee's consideration of the BIT, and the Committee believes that the following comments may be useful to Senate in its consideration of the proposed treaty and to the State Department and the Office of the United States Trade Representative, which share jurisdiction over this treaty.

A. CURRENT INVESTMENT STATISTICS

[In millions of dollars]

	Direct investment	Stock	Exports	Imports
1992	0	0	0	0
1993	0	0	54	21
1994	(1)	(1)	33	33
1995	(2)	(2)	139	69

[1] Data suppressed to avoid disclosure of data on individual firms.
[2] No data.

United States direct investment flows to Estonia

The chart above reflects the amounts of direct investment which flowed from the United States to Estonia in the indicated calendar year, as published in the Commerce Department's "Survey of Current Business." Data for 1995 have not yet been released.

United States year-end stocks of direct investment in Estonia

The chart above reflects the total amount of U.S. direct investment acculumlated over time as of the end of each year cited, as published in the Commerce Department's "Survey of Current Business." The data are available only through 1994 and are valued at historical cost less depreciation and scrapping. They do not reflect the current market value of the businesses in which U.S. persons have invested.

United States trade with Estonia

The trade data in the chart above for 1994 and 1995 comes from the U.S. Bureau of Census' December 1995 press release. Those

through 1993 are taken from the International Monetary Fund's "Directions of Trade." The IMF received its trade data for this report from the Bureau of Census. The import data include the cost of the imported goods, shipping insurance and freight. Overall imports totaled $1.65 billion in 1994 and overall exports totaled $1 billion during that same period.

The Committee applauds the efforts of the people of Estonia to reintegrate into Western Europe. The ambitious program of market reforms and stabilization measures, which is reshaping the Estonian economy, is a clear indication of the will of the estonian people to create a private market-based economy. Although the austere measures of balanced budgets, flat tax, tight monetary policy and the establishment of a strong currency have meant a declining standard of living for many Estonians, the economic reforms are beginning to translate into economic growth for the country.

The shift from East to West in Estonia's foreign trade is a visible sign of Estonia's receptiveness to U.S. investment. The improved trade statistics cited above are a clear indication of the growing U.S. presence in the Estonian markets. In addition, Estonia has made membership in the E.U. a foreign policy priority as it tries to integrate itself as much as possible into European institutions. The Committee expects that the protections offered by this treaty in addition to the overall reforms will encourage U.S. investors to play a greater role in the transformation of the Estonian economy.

B. ENFORCEMENT

Following the hearing on the bilateral investment treaties, Senator Helms requested information regarding the utility of the bilateral investment treaty with Argentina. Specifically, Senator Helms requested that the State Department identify outstanding investment disputes with U.S. corporations doing business in Argentina and actions taken by the U.S. to address the BIT violations. Since its entry into force on October 24, 1994, two disputes have developed in Argentina. The following is excerpted from the State Department's response to Senator Helms:[1]

> We are aware of two investment disputes that have developed in Argentina recently.
>
> *1. CDSI*
>
> CDSI is a Maryland computer firm involved in a contract dispute with the Cordoba provincial government in Argentina. CDSI believes that Cordoba officials improperly reversed a contract award to a firm with which it had a subcontract, depriving it of the value of its investment.
>
> Department officials have discussed the case with CDSI representatives in Washington. Embassy officials are in regular contact with CDSI representatives in Buenos Aires.
>
> CDSI has informed us that, if the dispute is not resolved through ongoing negotiations, it may avail itself of the right to binding arbitration under the BIT. We will con-

[1] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

tinue to work with company and officials in Argentina to resolve this case. [State Department officials have informed Committee Staff that CDSI recently reached an agreement with the provincial government of Cordoba. According to State Department officials the parties are satisfied with the agreement.]

2. Mi-Jack

Mi-Jack, based in Illinois and Texas, owns about 30% of a company that purchased the right to operate one of five terminals at the Port of Buenos Aires. (The rest of the equity is not owned by Americans.) Mi-Jack is operating the dock in accordance with regulations, fees, and labor rules specified by the Government of Argentina in the tender.

At some point after this tender process began, the Argentine federal government transferred adjacent dock property to the Buenos Aires provincial government. The provincial government leased the property to a company which began operating a sixth terminal, without the conditions imposed on other dock operators by the federal government. Mi-Jack maintains that this unequal treatment is a BIT violation, and has requested USG assistance.

Department and other agency officials have discussed the case with Mi-Jack. Our Ambassador recently urged the Argentine Minister of Economy and the Governor of the Province of Buenos Aires to address the issues Mi-Jack has raised and resolve the dispute.

The Committee believes that the value of the proposed treaty depends upon the extent to which it is enforced. The Committee refers to the two cases in Argentina, cited above, as examples of how the proposed treaty can be a useful tool both to business and U.S. embassies in protecting the interests of U.S. business directly investing in-county. The Committee believes that the treaty should serve as more than a diplomatic tool. The Committee notes that local remedies and domestic enforcement of arbitral awards are essential steps in enforcing the guarantees provided in the proposed treaty and believes that the President should communicate, at the time of the exchange of the instruments of ratification, the importance of a domestic enforcement regime to the ultimate success of the proposed treaty. Such an indication would add credence to the U.S. position that BITs provide genuine protections to investors, and are not merely rhetorical endorsements of market economies.

C. PROTECTING U.S. BUSINESSES INVESTING ABROAD

Although a BIT provides certain legal protections designed to give investors recourse in the case of unfair treatment, the role of the U.S. State Department and other government agencies such as USTR remains essential to the protection of U.S. citizens doing business abroad.

Issues regarding the role of the State Department and U.S. posts abroad in assisting U.S. investors were raised during the Committee's consideration of the BIT. After the November 30, 1995 hearing, Senator Helms requested a description of the general proce-

dure at U.S. embassies, and in Washington, for assisting U.S. investors when potential BIT violations, or investment disputes, including expropriated property claims, in countries not a Party to a BIT, are brought to the attention of the Embassy by the investors. State Department's response to this inquiry, in a letter dated December 18, 1995,[2] is reproduced below:

> An important responsibility of all U.S. diplomatic posts abroad is to assist U.S. investors and property owners in the resolution of disputes with the host government. Where disputes arise, U.S. posts and the Department provide a range of services to the U.S. claimant.
>
> These services include:
>
> (1) advising the U.S. claimant of local legal counsel which may be available to handle similar disputes;
>
> (2) assisting the U.S. claimant in contacting host government officials which may be in a position to facilitate a resolution of his claim;
>
> (3) directly encouraging host government officials to negotiate a resolution of the claim; (such contacts may be on behalf of a single claimant or multiple claimants where there are a number of outstanding claims);
>
> (4) occasionally, where the circumstances warrant, the U.S. may decide to directly espouse a claim or claims; and
>
> (5) in addition, where a BIT is in force, other options (e.g. binding investor-state arbitration) may be brought to the attention of the investor and/or local officials.
>
> Given the wide variety of circumstances associated with investment disputes around the globe, the range of resources available at individual diplomatic posts, the variety of assistance being requested by individual investors, and the diversity of host country investment regimes, a good deal of discretion is necessary to tailor individual responses to the particular circumstances of the case.
>
> For example, the approach taken in the case of a country which has a well functioning judicial system and demonstrated effectiveness in adjudicating disputes may be quite different from that taken with respect to cases where some or all of these conditions do not prevail. The investor's preferences also guide our response. The current approach to providing assistance to U.S. claimants in investment disputes permits us the flexibility needed to tailor a response that reflects both the conditions prevalent in the host country and the investor's own strategy.
>
> Action on investment disputes is coordinated through constant routine communication among Embassy and Washington offices. This is supplemented by periodic formal requests from the Department for information on investment disputes and by the Posts' preparation of the Investment Climate Statements for each country. In addi-

[2] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

tion, the Department chairs the Interagency Staff Coordinating Group on Expropriations ("Expropriation Group"), which is comprised of representatives from the Office of the United States Trade Representative, the Overseas Private Investment Corporation, the Department of Commerce, and the Department of Treasury. This group meets periodically to discuss expropriation and related issues.

In addition to assisting individual U.S. investors when they have an investment dispute, we engage in activities that could help prevent investment disputes. Officials in Washington and in our Embassies also examine investment practices in other nations and work to discourage other governments from passing legislation that might disadvantage U.S. investors and lead to investment disputes. The results of these examinations are included in the annual Investment Climate Statement, a report which is widely used by both U.S. officials and investors. We also engage in negotiations with other governments on BITs and multilateral disciplines that help protect the interests of U.S. investors.

In the past year or two, we have reached a point where a significant number of BITs have entered into force and, thus, apply to U.S. investment. At this time, we are reviewing ways to even better inform our posts about the obligations contained in these BITs, in order to assist U.S. investors and monitor compliance with these obligations by our BIT treaty partners.

The Committee supports the efforts of the State Department and U.S. foreign posts to educate businesses and ensure that the investment climate in these countries remains open and fair for U.S. businesses. The Committee supports the BIT as a tool for both businesses and U.S. diplomats to ensure fair investment environments where U.S. companies are doing business.

In addition, Senator Helms requested an assessment of the utility of developing procedures at the State Department to ensure consistently timely response when investors bring foreign investment problems to the attention of U.S. Posts and the Department. The State Department's response to this inquiry, was also included in the dated December 18, 1995 letter, as reproduced below:

> It is current State Department policy and practice to respond in a timely manner when investors bring investment problems to the attention of embassies. Any lapse in such practice can and should be brought to the attention of the Office of Investment Affairs in Washington, which will ensure that a response is forthcoming.
>
> While a timely response should be a constant, we believe that the nature of that response should vary from case to case. Investors benefit from the freedom our diplomats enjoy to pursue solutions tailored to the investor's problems. In some countries, a quiet call from an Embassy officer to a government official can help an investor. Elsewhere, if the government has not been responsive, we may directly approach senior government officials.

The following examples illustrate the variety and complexity of individual circumstances.

A company informed us of an investment dispute, but specifically requested that we not take any action as negotiations continued.

In a country undergoing civil strife, investors are pursuing arbitration through an international financial institution.

In one country, we have had to develop specialized procedures and increase Embassy staffing to deal with a very large number of claims.

Supplanting our existing flexible process for assisting U.S. claimants with a "one size fits all" policy would not likely work to the benefit of investors. Investors gain when we are free to fashion a response that takes into consideration the facts unique to that dispute, the investor's strategy for obtaining resolution to the dispute, the resources available to the USG to promote a quick resolution to the dispute, and the broader economic and political context within which we and the investor must work to achieve the desired outcome.

As described in the previous question, American diplomats and Department employees use a wide variety of strategies to assist U.S. citizens in investment disputes abroad. Required procedures could have significant resource implications without increasing the effectiveness of these strategies. Furthermore, we do not believe that a procedure developed in Washington which may not reflect either the unique conditions existing in a particular country or the experiences of our diplomats or businessmen is in the interests of either U.S. investors or the United States.

The Committee agrees that a "one size fits all" approach to addressing how best to protect U.S. investors faced with disputes with foreign governments would not be useful. However, the Committee supports the development by State and USTR of flexible procedures that ensure that all U.S. investors, large and small, will be given timely assistance when they raise investment issues with the U.S. State Department, both at the missions and in Washington. The Committee expects that such procedures would ensure appropriate coordination between U.S. missions and the State Department and the Office of the U.S. Trade Representative in Washington.

VII. Explanation of Proposed Treaty and Protocol

For a detailed article-by-article explanation of the proposed bilateral investment treaty and annex, see the analysis contained in the transmittal documents included in Treaty Doc. 103–38.

VIII. Text of the Resolution of Ratification

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Treaty Between the Government of the United States of America and

the Government of the Republic of Estonia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, done at Washington on April 19, 1994 (Treaty Doc. 103–38).

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