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

JUNE 20, 1996.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 104–14]

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 Trinidad and Tobago Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on September 26, 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 nondiscriminatory treatment.

II. BACKGROUND

The proposed treaty together with the proposed annex and protocol, was signed on September 26, 1994. No bilateral investment treaty is currently in force between the United States and Trinidad and Tobago.

The proposed treaty, annex and protocol were transmitted to the Senate for advice and consent to ratification on July 11, 1995 (see Treaty Doc. 104–14). 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 the ratification of 24 BITs. Twenty two BITs are currently in force. The Senate has ratified two treaties that have not entered into force with Russia, where the Duma has failed to ratify, and with 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

This memorandum compares the provisions of the Treaty Between the Government of the United States of America and the Government of the Republic of Trinidad and Tobago Concerning the Encouragement and Reciprocal Protection of Investment, with Annex (Treaty Doc. 104–14) (BIT), with those of the United States 1994 Model Bilateral Investment Treaty (Model), on which the former is based. The following is an analysis of the major provisions of the treaty to supplement the section-by-section analysis contained in Treaty Doc 104–14.

Preamble.—The preamble of the BIT is identical to that of the Model, which adds to the 1992 Model BIT the caption, "Agreeing that these [treaty] objectives can be achieved without relaxing health, safety and environmental measures of general application."

The Preamble establishes the goals of the treaty to include: greater economic cooperation, the stimulation of the flow of private capital and economic development, maximization of effective utilization of economic resources and the improvement of living standards, respect for internationally recognized worker rights, and the maintenance of health, safety and environmental measures of general application. The goals outlined are not legally binding but may be used to assist in interpreting the Treaty and in defining the scope of Party-to-Party consultation procedures pursuant to Article VIII.

Article I (definitions).—The BIT is generally identical to the Model, containing definitions for the following terms: company, company of a party, national, investment, covered investment (defined as "an investment of a national or a company of a Party in the territory of the other Party"), state enterprise, investment authorization, investment agreement, ICSID Convention, Centre (meaning "International Centre for the Settlement of Investment Disputes established by the ICSID Convention"), and UNCITRAL Arbitration Rules. The BIT adds a definition for the term "territory," which includes the territorial sea established in the international law as reflected in the 1982 United Nations Convention on the Law of the Sea (Art. I(1)). The definitional section for "territory" further adds that the BIT applies in the seas and seabed adjacent to the territorial sea in which either treaty partner has sovereign rights or jurisdiction in accordance with international law as reflected in the 1982 U.N. Convention. State Department negotiators informed Committee staff that this change was made at the request of the Government of Trinidad and Tobago. Similar language is contained in the BITs with Argentina and Romania, both of which are in force.

Article II (treatment).—The BIT is identical to the Model, requiring Parties to grant the better of most-favored-nation or national treatment to covered investments and to ensure that state enterprises do the same (Art. III:1), allowing Parties to adopt or maintain exceptions to these obligations for sectors enumerated in the BIT Annex and prohibiting Parties from requiring divestment of a covered investment at the time an exception becomes effective (Art. III:2(a)); exempting from the treatment obligation in paragraph one the procedures adopted in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) (Art. III:2(b)); requiring Parties to accord covered investments certain minimum treatment and prohibiting Parties from impairing investments through unreasonable or discriminatory measures (Art. III:3); requiring Parties to provide effective means of asserting claims and enforcing rights with respect to covered investments (Art. II:4); and requiring that Parties ensure that all laws, regulations, administrative processes of general application, and adjudicatory decisions pertaining to or affecting investments are promptly published or otherwise made publicly available (Art II:5).

Article III (expropriation).—The BIT is identical to the Model, prohibiting 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); setting forth specific requirements as to compensation (Art. III:2); and establishing compensation based on the currency in which the fair market value of the expropriated investment is denominated and operates to protect the investor from exchange rate risk (i.e., currency that is freely usable or not) (Art. III:3, Art. III:4). The term "freely usable" is not defined, although the State Department's Letter of Submittal indicates that the term refers to the International Monetary Fund standard, which currently includes the United States dollar, Japanese yen, German mark, French franc and British pound sterling.

Article IV (compensation due to war and other events).—The BIT is identical to the Model, requiring protection of investments during war or other civil conflicts. Parties must accord covered investments national and MFN treatment regarding any measures relating to losses that investments suffer due to war or other civil conflict or disturbance (Art. IV:2) and must accord restitution, or pay compensation in accord with the standards set forth in the expropriation article, in the event that covered investments suffer losses due to such events, where the losses result from requisitioning or unnecessary destruction of the investment (Art. IV:2).

Article V (transfers).—The BIT is identical to the Model, requiring Parties to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory and containing a non-inclusive list of transfers (Art. V:1). Transfers must be permitted in a freely usable currency at the market rate of exchange prevailing on the date of transfer (Art. V:2). Returns in kind are to be allowed (Art. V:3). In any event, Parties may prevent a transfer through the equitable, non-discriminatory and good faith application of law relating to bankruptcy, issuing and trading in securities; criminal offenses; or ensuring compliance with judicial orders or judgments (Art. V:4).

Article VI (performance requirements).—The BIT follows the Model in prohibiting specified performance requirements from being imposed as conditions for the establishment, acquisition, expansion, management, conduct or operation of a covered investment. Prohibited requirements include any commitment or undertaking in connection with the receipt of a governmental permission or authorization. The BIT deviates slightly from the Model, which states that performance requirements "do not include conditions for the receipt or continued receipt of an advantage." Instead the BIT contains a separate paragraph stating that nothing in the prohibition on performance requirements "shall preclude a Party from providing benefits and incentives conditioned upon such requirements" (Art. VI:2). This modification does not change the provision's meaning.

Article VII (entry and employment of aliens).—The BIT is identical to the Model as to entry of and sojourn of aliens for investment purposes (Art. VII:1) and engaging top managerial personnel of choice regardless of nationality (Art. VII:2). The Treaty replaces the Model's word with the word "employment" (Art. VII:1) A similar change was made in the BIT with Jamaica in order to reflect domestic law.

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

Article IX (investor/state disputes).—The BIT 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 (Art. IX:4). Trinidad and Tobago is a Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It has entered into the Convention reciprocally—that is, it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state. It has also entered into the Convention with a declaration that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law. Trinidad and Tobago is also a Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Article X (interstate disputes).—Except for amplifying a provision on expenses, 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 means. The BIT adds a statement that each Party "shall pay the costs of its representation in the arbitral proceedings" (Art. X:4). This modification does not change the prototype's meaning, but merely makes explicit what is understood by the Parties. Both the Model and the BIT provide that the cost of the arbitrators and the proceedings are to be paid for equally by the Parties. In lieu of a provision in the Model that notwithstanding this provision "the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties," the BIT provides that "the arbitral tribunal may, taking into account the circumstances of the case, at its discretion, reapportion such costs between the Parties if it determines that reapportionment is reasonable" (Art. X:4).

Article XI (preservation of rights).—The BIT is identical to the Model in allowing each Party to provide covered investments 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 XII (denial of benefits).—The BIT follows the Model as to the right to deny treaty benefits to companies controlled by nationals or firms of third countries where (1) the denying party does not maintain normal economic relations with the third country or (2) the company has no substantial business activities in the territory of the Party in which it is legally constituted or organized.

Article XIII (taxation).—The BIT is identical to the Model, stating that no Treaty provision will impose obligations with respect to taxation except that investors may institute dispute proceedings with respect to tax provisions of an investment agreement or authorization or with respect to tax matters that result in expropriations. Before requesting arbitration, claimants must refer the question of whether the tax matter involves an expropriation to the

competent tax authorities of both Parties. Arbitration may not be pursued if both Parties determine within nine months of the referral that the matter does not involve an expropriation.

Article XIV (measures not precluded).—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 XV (extent of application).—Like the Model, the BIT clarifies that the treaty applies to the political subdivision of the Parties and clarifies the national treatment obligation on states, territories and possessions of the United States—that is, they must provide covered investment treatment no less favorable than that accorded investments of United States nationals and companies from other U.S. states (Art. XV:1). As in the Model, a Party's BIT obligations apply to state enterprises in exercising any governmental authority delegated to it by the Party (Art. XV:2).

Article XVI (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 any termination date. As in the Model, the BIT Annex forms an integral part of the Treaty. The BIT adds a provision stating that the treaty may be amended by agreement between the Parties (Art. XVI:2). State Department negotiators have informed Committee staff that this provision was added merely to reiterate the international law rule that treaties may be amended by agreement between Parties. Any such amendment would have to be transmitted to the Senate for its advice and consent to ratification before the amendment could enter into force.

Annex (sectoral exemptions).—Both the United States and the Republic of Trinidad and Tobago have exempted listed sectors and matters from their MFN and national treatment obligations.

United States. The United States may adopt or maintain national treatment exceptions (but must accord MFN treatment) in the following sectors and matters: atomic energy, customhouse brokers, licenses for broadcast, common carrier, or aeronautical radio station; COMSAT; subsidies or grants, including government-sponsored loans, guarantees and insurance; state and local measures exempt from Article 1102 of the NAFTA; and landing of submarine cables (Annex, paragraph 1).

Both national treatment and MFN exceptions may be made with respect to fisheries, and air and maritime transport and related activities (Annex, paragraph 2).

In addition, the United States may adopt or maintain MFN and national treatment exceptions with respect to banking, insurance, securities and other financial services, provided that the exceptions do not result in treatment of covered investments that is less favorable than the treatment that the United States has agreed to accord to NAFTA parties (Annex, paragraph 3).

Trinidad and Tobago. The Republic of Trinidad and Tobago may adopt or maintain national treatment exceptions (but must accord

MFN treatment) as to the following: civil aviation; real property; subsidies or grants, including government-supported loans, guarantees, insurance and other similar measures; customs brokers and customs clerks; gambling, betting and lotteries (Annex, paragraph 4).

MFN exceptions may also be adopted or maintained, within the context of the CARICOM Enterprises Regime, in the following sectors: items in the sectors described in the previous paragraph; benefits granted under the Scheme for the Harmonization of Fiscal Incentives to Industry; and fiscal incentives in respect of agriculture, tourism and forestry (Annex, paragraph 5).

Other. The Annex also contains a reciprocal national treatment obligation with respect to covered investments in the leasing of minerals or pipeline rights-of-way on government land (Annex, paragraph 6).

Protocol.—Unlike the Model, the BIT contains a Protocol addressing issues related to (1) investments in real property in light of current laws and treatment accorded CARICOM states and (2) retroactivity of treaty obligations.

The Protocol provides, at paragraph 1, that with respect to Trinidad and Tobago's sectoral national treatment exception for real property, the Parties note that in accordance with that country's foreign investment legislation: (a) investment in land must be directly related to a trade or business activity; (b) a foreign investor may acquire land, the area of which does not exceed five acres, for residential purposes, without obtaining a license; and (c) a foreign investor may acquire land, the area of which does not exceed five acres, for the purposes of trade or business without obtaining a license. State Department negotiators informed Committee staff that this paragraph addressing the current legal regime with respect to real property in Trinidad and Tobago was added to make this sector's inclusion in the national treatment annex (Annex, paragraph 4) entry more transparent.

The Parties further note that these provisions may not apply to citizens of CARICOM states and clarify that the MFN obligations of the Treaty do not entitle covered investments of the United States to the treatment accorded to citizens of CARICOM states with respect to exemptions from these restrictions (Annex, paragraph 1).

The Parties further clarify that treaty obligations do not bind either Party with respect to any act which took place or any situation which ceased to exist before the Treaty enters into force (Annex, paragraph 1). This principle is set forth in Article 28 of the Vienna Convention on the Law of Treaties, which provides that a treaty does not bind a party in such cases unless a different intention appears from the treaty or is otherwise established. Similar language was used in BITs with Argentina and Romania.

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 ACTION

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

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 consideration of this 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	56	565	447	922
1993	123	693	529	873
1994	137	817	540	1203
1995	(1)	(1)	669	1054

[1] No data.

United States direct investment flows to Trinidad and Tobago

The chart above reflects the amounts of direct investment which flowed from the United States to Trinidad and Tobago 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 Trinidad and Tobago

The chart above reflects the total amount of U.S. direct investment accumulated 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 Trinidad and Tobago

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 includes the cost of the imported goods, shipping insurance and freight.

The most recent data from the Department of Commerce regarding U.S. establishments (either wholly or partially-owned by U.S. persons with capital investment of at least $3 million in 1989 and a value of at least $20 million between 1989 and 1993) indicates that there are at least 23 establishments. All such investments would be protected under the proposed treaty. The Committee recognizes the importance of Trinidad and Tobago as a United States market and believes that the protections contained in this treaty will prove useful to United States investors doing business in Trinidad and Tobago. The Committee notes that already Trinidad and Tobago imposes few restrictions on foreign investment and that private property is safe and the judicial system efficient.

Efforts to diversify experts and liberalize the trade regime in Trinidad and Tobago are beginning to pay off. In 1994 for the first year since the early 1980s, Trinidad and Tobago saw substantial growth in its economy. The Committee applauds these developments as growth in the economy of Trinidad and Tobago impacts the Caribbean region.

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 United States corporations doing business in Argentina and actions taken by the United States 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] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

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 continue 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-country. 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 procedure 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

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

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 addition, 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 businesses.

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. 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 ap-

propriate 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, annex, and protocol, see the analysis contained in the transmittal documents included in Treaty Doc. 104–14.

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 Trinidad and Tobago Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on September 26, 1994 (Treaty Doc. 104–14).

○