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BILATERAL INVESTMENT TREATIES WITH AZERBAIJAN,  
BAHRAIN, BOLIVIA, CROATIA, EL SALVADOR, HONDURAS,  
JORDAN, LITHUANIA, MOZAMBIQUE, UZBEKISTAN AND  
A PROTOCOL AMENDING THE BILATERAL INVESTMENT  
TREATY WITH PANAMA

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OCTOBER 4 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany Treaty Docs. 106-47; 106-25; 106-26; 106-29; 106-28; 106-27; 106-30; 106-42; 106-31; 104-25; and 106-46]

The Committee on Foreign Relations, to which were referred the Treaty Between the Government of the United States of America and the Government of the Republic of Azerbaijan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on August 1, 1997, together with an Amendment to the Treaty set Forth in an Exchange of Diplomatic Notes Dated August 8, 2000, and August 25, 2000, (Treaty Doc. 106-47), the Treaty Between the Government of the United States of America and the Government of the the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on September 29, 1999 (Treaty Doc. 106-25), the Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Santiago, Chile, on April 17, 1998 (Treaty Doc. 106-26), the Treaty Between the Government of the United States of America and the Government of the Republic of Croatia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Zagreb on July 13, 1996 (Treaty Doc. 106-29), the Treaty Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at San Salvador on March 10, 1999 (Treaty Doc. 106-28), the Treaty Between the Government of the United States

of America and the Government of the Republic of Honduras Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Denver on July 1, 1995 (Treaty Doc. 106-27), the Treaty Between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Amman on July 2, 1997 (Treaty Doc. 106-30), the Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania for the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 14, 1998 (Treaty Doc. 106-42), the Treaty Between the Government of the United States of America and the Government of Mozambique Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on December 1, 1998 (Treaty Doc. 106-31), the Treaty Between the Government of the United States of America and the Government of the Republic of Uzbekistan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on December 16, 1994 (Treaty Doc. 104-25) and the Protocol Between the Government of the United States of America and the Government of the Republic of Panama Amending the Treaty Concerning the Treatment and Protection of Investments of October 27, 1982, signed at Panama City on June 1, 2000, (Treaty Doc. 106-46), having considered the same, reports favorably thereon with the understandings, declarations and provisos noted below, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of ratification.

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#### I. PURPOSE

These proposed treaties are part of a series of bilateral investment treaties being negotiated by the United States. The principal purposes of bilateral investment treaties are to promote the free flow of international investment, and to encourage and protect United States investment in developing countries.

The purpose of the protocol of amendment to the existing bilateral investment Treaty with Panama is to allow investors to use binding investor-state arbitration under the Treaty, a key protection sought in U.S. bilateral investment treaties. As explained below, this option was lost when Panama became a party to the International Convention on the Settlement of Investment Disputes.

## II. BACKGROUND

Ten bilateral investment treaties (BITs) were ordered reported by the Committee. Those concluded with Uzbekistan, Honduras, Croatia, Jordan, Bolivia, Mozambique, El Salvador, Bahrain and Azerbaijan are all based on the 1994 model BIT developed by the State Department. The treaty with Lithuania is based on the 1992 prototype model BIT, and is discussed separately below. A protocol of amendment to improve the existing BIT with Panama was also ordered reported.

The BITs before the Senate represent a continuation of the BIT program begun by the United States in the early 1980's. These are based on the State Department's model BIT, which has been revised and updated a number of times over the last two decades. The current model, dated 1994, incorporates the principles established earlier, but makes changes in language and format in order to capture best practices, reflect the legal and regulatory changes, and improve readability.

## III. SUMMARY

### A. GENERAL

The United States has concluded 45 BITs around the world. Thirty-one are in force. Overall, BIT program objectives are to protect U.S. investment abroad, to encourage the adoption of market-oriented economic policies and to support the development of international law standards.

BITs entitle U.S. companies to operate under the best conditions available to other foreign and domestic investors. They also establish clear limits on the expropriation of investments, and provide U.S. investors the right to transfer funds into and out of the treaty partner's territory using a market rate of exchange.

BITs also limit the treaty partner's ability to require U.S. investors to adopt inefficient and trade distorting practices. They give U.S. investors the right to engage the top managerial personnel of their choice regardless of nationality, and the right to submit disputes with the treaty partner's government to international arbitration. Disputes with treaty partners may also be raised by the U.S. Government, both through consultations and through arbitration.

All of these advantages supplement existing U.S. Government mechanisms and procedures for resolution of business disputes, such as dispute settlement at the World Trade Organization (WTO), consultations with foreign governments, and actions under Section 301 of the Trade Act of 1974.

The "model" BIT format has retained its fundamental appearance over time, but it has been reviewed and revised periodically in order to take account of operational experience and to make sure it is kept current with other agreements, customary international law, and the needs of investors. The last review was undertaken in 1994. Another review is planned for 2001.

BITs serve important U.S. general economic interests by bringing countries into the world trading system as comprehensively as possible. They are one element within a network of trade and invest-

ment obligations sought by the United States with other countries. Most important among these relationships is WTO membership.

The investment and trade regimes of aspiring WTO members are reviewed for compatibility with the WTO framework. BITs pave the way for WTO commitments and foreclose opportunities to circumvent WTO rules. Jordan joined the WTO in 1999, and Croatia has been approved for membership. Lithuania, Azerbaijan and Uzbekistan are in varying stages of negotiation for WTO membership. Overall, BITs supplement the broader WTO trade and investment framework.

#### B. KEY PROVISIONS

The following discussion refers mainly to the proposed BITs with Azerbaijan, Bahrain, Bolivia, Croatia, El Salvador, Honduras, Jordan, Mozambique and Uzbekistan. Lithuania and the Protocol to the existing BIT with Panama are discussed separately below.

*Definitions (Article I).* The BITs under consideration generally define investment to include all forms of investment activity. BIT obligations apply to a “covered investment,” defined as “an investment of a national or company of a Party in the territory of the other Party.” A company is defined to include, *inter alia*, non-profit as well as commercial entities and both private and governmentally owned or controlled firms. A “company of a Party” is defined as a “company constituted or organized under the laws of that Party.” Because the definition does not require that the company be owned or controlled by nationals of a Party, the term “covered investment” may include firms that are owned or controlled by nationals or companies of countries that are not Party to the BIT. While these investments would appear generally to be entitled to the protections of the BIT, a BIT Party may, however, deny the company of the other Party to the treaty if third country nationals own or control the company and either (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 country in which it is organized or established (or in other words, is a shell company) (*see* Article XII of the BITs). The term “normal economic relations” is not defined in the BIT, but would appear to exclude at least those countries with which an embargo is maintained.

In addition, all of the BITs contain six basic commitments that the United States has viewed as critical to ensuring a favorable climate for its investors:

*Treatment (Article II).* Each treaty ensures covered investments the better of national or most-favored-nation (MFN) treatment. This obligation applies to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of covered investments. By covering the establishment of an investment, it prevents a Party from limiting entry on the basis of nationality. “National treatment” is defined as “treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies.” MFN treatment is defined as “treatment no less favorable than that it accords, in like situations, to investments in its territory of nationals or companies of a third country.” Parties may, however, enter exceptions to these obligation in sectors or with regard to matters listed in the treaty

Annex. In addition, the national and MFN treatment obligations do not apply to procedures provided for in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO), with respect to the acquisition or maintenance of intellectual property rights.

The Parties also agree to accord covered investments “fair and equitable treatment and full protection and security” and no less than the minimum treatment required by international law. In addition, Parties may not “impair in any way by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.”

*Expropriation (Article III).* Each BIT provides that Parties may not nationalize or expropriate a covered investment, either directly or through measures “tantamount” to an expropriation or nationalization, except 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 general principles of treatment provided for in the BIT’s treatment article (described above). The BIT thus provides that a taking includes both an expropriation and a nationalization and, by referring to actions that are “tantamount” to an expropriation or nationalization, covers not only transfers of title to the state but also so-called “creeping” expropriations—that is, taxation or regulatory action that effectively amounts to an expropriation of a covered investment without taking title. Standards for compensation are also set out, under which payment is to be made without delay, must be equivalent to the fair market value of the investment immediately before the expropriatory action was taken, and be fully realizable and fully transferable.

*Transfers (Article V).* The BIT requires each Party to permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory, thus ensuring that an investor may repatriate funds associated with investment activities. Transfers are expressly deemed to include contributions to capital; profits, dividends, capital gains, and proceeds from the sale or liquidation (or any partial sale or liquidation) of the investment; interest, royalty payments, and various fees; contract payments; compensation from expropriations; restitution for losses resulting from war or armed conflict, states of emergency, or other such political events; and payments arising out of an investment dispute. Transfers must be allowed to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer. According to the State Department, the term “freely usable currency” refers to International Monetary Fund terminology and currently includes the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling. Returns in kind must also be allowed as authorized in a written investment agreement or authorization between the BIT Party and a covered investment or national or company of the other Party. A Party may limit transfers, however, through the “equitable, nondiscriminatory and good faith application” of laws relating to bankruptcy, securities, criminal or penal offenses, or ensuring compliance with orders or judgments in adjudicatory proceedings.

*Performance requirements (Article VI).* The BITs prohibit Parties from imposing requirements on the establishment, acquisition, expansion, management, conduct, or operation of a covered investment that may impair the profitability and competitiveness of an investment. BIT Parties may not require a covered investment: (1) to achieve a particular level or percentage of local content, or to purchase, use or grant a preference to domestic products or services; (2) to limit imports of products or services in relation to a particular volume or value of production, exports, or foreign exchange earnings; (3) to export a particular type, level or percentage of products or services; (4) to limit sales of products or services in the host country territory to a particular volume or value of production, exports, or foreign exchange earnings; (5) to transfer technology, a production process, or other proprietary knowledge to a national or company in the host country except as an officially enforced remedy for a violation of competition laws; and (6) to carry out a particular type, level or percentage of research and development in the host country's territory. A Party may, however, impose conditions for the receipt or continued receipt of an advantage in its territory.

*Entry, sojourn, and employment of aliens (Article VII).* Each Party is required, subject to its laws relating to the entry and sojourn of aliens, to permit nationals of the other Party to enter and remain in order to establish, develop, administer, or advise on the operation of an investment to which they or their company has committed (or is about to commit) a substantial amount of capital or other resources. With regard to U.S. law, this provision allows foreign investors to obtain so-called "treaty investor" visas (*see* 8 U.S.C. §1101(a)(15)(E)), which requires an applicant to have invested, or to be "actively in the process of investing, a substantial amount of capital" to the U.S. enterprise that he or she intends to develop or direct. In addition, the BIT expressly requires covered investments to be allowed to engage top management personnel of their choice, regardless of nationality. This provision does not, however, exempt a Party national or third country national from host country immigration laws; nor does it provide for treatment of nationals of a third country that are so chosen.

*Dispute settlement (Articles IX and X).* In order to enforce treaty obligations, each BIT provides for both investor-state and state-state dispute settlement through binding third-party arbitration. Since such third-party dispute settlement may not take place without the consent of the state involved, the BIT Parties grant such consent before the fact in the treaty. With regard to investor-state dispute settlement, the consent granted in the BIT will satisfy the requirement for an agreement in writing under the Convention on the Settlement of Investment Disputes (ICSID Convention); the ICSID Additional Facility Rules, and the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

*Investor-state dispute settlement (Article IX).* Under each BIT, a national or a party to an investment dispute with the host state may submit the dispute for resolution under one of three options: (1) to a local court or administrative tribunal; (2) in accordance with any applicable, previously-agreed dispute settlement procedure; or (3) in accordance with the binding arbitral process pro-

vided for in the BIT. The investor thus is not required to exhaust local remedies before submitting a request to binding arbitration, but may not choose this option if he or she has submitted a dispute for resolution under either of the other two alternatives. An “investment dispute” is defined as “a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created, or recognized by this treaty with respect to a covered investment.”

Once three months have elapsed from the date the dispute arose, the disputing national or company may submit the dispute for settlement by binding arbitration to the International Center for the Settlement of Investment Disputes (ICSID); the ICSID Additional Facility, if ICSID itself is unavailable; in accordance with the UNCITRAL Arbitration Rules; or if both parties agree, to any other arbitration institution or in accordance with any other arbitration rules. Even though a national or company may have submitted the dispute for binding arbitration, it may nonetheless seek interim injunctive relief, not involving the payment of damages, before a host country judicial or administrative tribunal, before or during arbitral proceedings, to preserve its rights and interests. Two of the BITs (Croatia and Jordan) exhort the disputing parties initially to seek to resolve their dispute through consultations and negotiations.

Binding arbitration under any of these options is to be held in a country that is a party to the New York Convention (21 U.S.T 2517). An arbitral award is final and binding on the disputing parties, and the BIT Party involved must, without delay, carry out the provisions of the awards and provide for enforcement of the award in its territory.

In any investment proceeding, a BIT Party may not assert as a defense, counterclaim, right of set-off, or for any other reason, that indemnification has or will be received under an insurance or guarantee contract.

*State-state dispute settlement (Article X).* Any dispute concerning the interpretation or application of the BIT, that is not resolved through consultations or other diplomatic channels, is to be submitted, if either Party so requests, to a third-party arbitral panel for a binding decision in accordance with applicable rules of international law. Unless the Parties agree otherwise, the dispute is to be conducted according to United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules, except where modified by the Parties or by the arbitrator, without objection of the Parties. Each Party is to appoint an arbitrator within two months of the request; the two arbitrators then select a third arbitrator, who must be a third country national, as chairman. Submissions and hearings are generally to be completed within six months and the decision rendered within two months of the date of the final submission or close of hearings, whichever is later.

*Other provisions.* Covered investments are entitled to any treatment that is more favorable than that provided by the treaty if it is based on laws and regulations or administrative measures of a Party; international legal obligations; or obligations assumed by a Party, including those in an investment agreement (Article XI).

Generally, the BIT does not apply to tax matters (Article XIII). Treaty obligations apply to political subdivisions of a Party and to a state enterprise of a Party in the exercise of any regulatory, administrative or other governmental authority delegated to it by the Party (Article XV).

*Measures not precluded (Article XIV).* The 1994 model provides, at Article XVI:1, that the BIT “shall not preclude a Party from applying measures necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.” Some BITs, namely those with El Salvador, Mozambique, and Bahrain contain a variation of this language, stating that the BIT “shall not preclude a Party applying measures that it considers necessary” to achieve these objectives. The United States views language regarding “essential security interests” as requiring that “[a]ctions not arising from a state of war or national emergency \* \* \* have a clear and direct relationship to the essential security interests of the Party involved.” At the same time, the United States considers this language to be self-judging, though, in the words of the State Department, “each Party would expect the provisions to be applied by the other in good faith.” Where the alternative language is used, the Department has stated that the BIT “makes explicit the implicit understanding” that the provision is self-judging.

In addition, at Article XIV:2, Parties may prescribe special formalities applicable to covered investments, for example, a requirement investments be legally constituted under the Party’s laws and regulations or that transfers or currency or other monetary instruments be reported. Such formalities may not, however, impair the substance of other treaty rights.

*Duration (Article XVI).* The BITs will remain in force for 10 years and will continue after that period unless a Party terminates it at the end of the 10-year period, or any time thereafter upon one year’s written notice. The BITs apply to covered investments existing at the time the BIT enters into force as well as to those established or acquired after that time. As indicated below, however, the BITs do not apply to actions taken by the States prior to entry into force. Some of the Protocols state this expressly; even where they do not, the customary international law rule is that they do not apply retroactively. If the BIT is terminated, all other BIT articles will continue to apply to covered investments established or acquired before termination for 10 years after termination, except as those Articles apply to establishing or acquiring covered investments.

*Annexes and Protocols.* Each BIT contains an Annex listing exceptions that Parties may take to MFN and national treatment obligations and, in some cases, a Protocol with provisions clarifying or otherwise amplifying BIT provisions. These are considered integral parts of the BIT (see Article XVI:4 of the BITs).

*U.S. exceptions.* Exceptions taken by the United States generally reflect U.S. legislative requirements, some of them long-standing. Each BIT Annex contains a standard provision allowing the U.S. to adopt or maintain exceptions to its national treatment obligation toward covered investments in the following sectors or regarding



the following matters: atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COM-SAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from the national treatment obligation in the NAFTA investment chapter; and landing of submarine cables. The Annex also states that MFN treatment will be accorded in these areas.

Each BIT Annex also contains a provision allowing the U.S. to adopt or maintain exceptions to its MFN and national treatment obligations toward covered investments in certain sectors or regarding listed matters. Each BIT contains a U.S. exception for fisheries and air and maritime transport, and related activities. Financial services are also included, but coverage varies from treaty to treaty; in some cases the United States has reserved the right to adopt or maintain exceptions to its national treatment/MFN obligations with regard to specific financial services sectors, provided that the exceptions do not result in treatment under the BIT that is less favorable than the treatment that the United States accords under the NAFTA to other NAFTA Parties. The full NAFTA financial services exception applies with regard to Honduras, Nicaragua, Croatia, and Uzbekistan; an insurance-related NAFTA exception applies to Azerbaijan, Bolivia. The standard financial services exception applies to El Salvador, Jordan, Bahrain, Mozambique and, except for insurance, to Bolivia. The United States has also taken MFN exceptions with regard to one-way satellite transmissions of DTH (direct-to-home) and DBS (direct broadcast satellite) television services and of digital audio services in its BIT with Azerbaijan, Bolivia, El Salvador, Bahrain, and Mozambique. These financial services exceptions (along with recent insurance sector developments involving the BIT with Azerbaijan) and telecommunications exceptions will also be identified below.

Most of the treaties also include a specific provision in the Annex under which each Party agrees to grant national treatment to covered investment or investments with regard to leasing of minerals and pipeline rights-of-way on government lands. Variations with regard to this provision are contained in the treaties with Jordan and Uzbekistan and will be discussed below. The BIT with Croatia adds a national treatment obligation with regard to concession rights for exploration and exploitation of mineral resources on government lands. The BIT with Azerbaijan does not contain an explicit grant of national treatment in its Annex related to such rights-of-way on government lands; nor have the parties taken an exception from their national treatment obligations.

#### COMMENTS ON INDIVIDUAL BITS

The following list discusses individual treaties, matters that are not identified above, the particulars of each treaty partner's exceptions, and attached Protocols.

##### *Azerbaijan*

This BIT follows the 1994 model treaty in Articles I through XVI. *Annex.* As in the BIT with Bolivia (below), the United States had originally taken exceptions to its national treatment and MFN obligations with regard to banking, securities, and non-insurance fi-

nancial services; and for one-way satellite transmission of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services. It had also taken the earlier-described NAFTA-related exception for the insurance sector.

Azerbaijan has taken a national treatment exception for the ownership of land, its subsoil, water, plant and animal life, and other natural resources; ownership of real estate (during the transition period to a market economy); ownership or control of television and radio broadcasting and other forms of mass media; air transportation; preparation of stocks and bond notes issued by the Government of the Republic of Azerbaijan; fisheries; and construction of pipelines for transportation of hydrocarbons. It will accord MFN treatment to covered investments in these sectors.

Azerbaijan has also taken a national treatment/MFN exception with regard to banking, securities, and other financial services.

Subsequent to negotiation of the Annex, the Parties considered that there was ambiguity in Annex language regarding the application of the national treatment and MFN obligations of each Party to the insurance sector, particularly whether Azerbaijan had taken an exception for insurance services. Pursuant to an exchange of letters between the Parties, the above-described U.S. exception has been changed to include “insurance and other financial services” and the NAFTA-related exception has been removed. In addition, Azerbaijan’s financial services exception has been revised to read “banking, securities, insurance, and other financial services.”

#### *Bahrain*

This BIT follows the 1994 model in Articles I through XVI.

*Annex.* The United States has taken exceptions to its national treatment and MFN obligations with regard to banking, insurance, securities, and other financial services; and for one-way satellite transmission of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.

Bahrain has taken a national treatment exception with respect to the ownership or control of television and radio broadcasting and other forms of mass media: fisheries; and the initial privatization of exploration or drilling for crude oil. MFN treatment will be accorded to covered investments in these sectors.

Bahrain has also taken a national treatment/MFN exception with regard to air transportation; the purchase or ownership of land; and until January 1, 2005, the purchase or ownership of shares quoted on the Bahrain Stock Exchange.

#### *Bolivia*

This BIT follows the 1994 model.

*Annex.* As in the BIT with Azerbaijan, the United States has taken exceptions to its national treatment and MFN obligations with regard to banking, securities, and non-insurance financial services; and for one-way satellite transmission of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services. It has taken the above-described NAFTA-related exception for insurance.

Bolivia has taken a national treatment exception in the Annex regarding the acquisition and/or possession by foreigners of land or

subsoil within 50 kilometers of Bolivia's borders, insofar as required under Article 25 of the Bolivian Constitution; subsidies or grants; and the obligations of foreign construction and consulting companies participating in public sector tenders to associate with one or more Bolivian companies. Bolivia agrees to accord MFN treatment in these areas.

Bolivia has taken a national treatment/MFN exception with regard to air transport; transportation on interior navigable waterways; and limitations on foreign equity ownership of international passenger and freight land transportation companies to a maximum of 49 percent.

With regard to leasing of minerals and pipeline rights of way on government lands, each Party agrees to accord covered investments national treatment; for Bolivia, the obligation is subject to Article 25 of its Constitution; for the United States, the obligation is subject to the Mineral Lands Leasing Act.

*Protocol.* The BIT Protocol contains provisions under which: (1) the Parties confirm their understanding that advantages given to national suppliers in government procurement programs are not precluded by the prohibition on performance requirements in Article VI; (2) Bolivia confirms that Article 3 of the Bolivian Labor Law does not apply to top managerial personnel; (3) the Parties confirm that investor-state dispute provisions do not apply to government contract disputes unless they are investment-related; (4) the United States confirms the protections against burdens on interstate commerce by states under its federal system; and (5) Bolivia confirms that joint ventures may be established in Bolivia, including in the 50-mile perimeter described above, without any limitation on the respective capital contributions or proportionate shares of the joint venture partners.

### *Croatia*

This BIT follows the 1994 model with at least four modifications.

First, it adds to the definition of the term "investment" a sentence stating that "any change in form of an investment does not affect its character as an investment." Second, it adds a definition for the term "territory," which states that the term means:

the territory of the United States or the Republic of Croatia, including the territorial sea established in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea. This Treaty also applies in the seas, subsoil and seabed adjacent to the territorial sea in which the United States or the Republic of Croatia has sovereign rights or jurisdiction in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea (Article I(l)).

Third, it provides that in the event of an investment dispute between a Party and a national or company of another Party, the disputing parties should initially seek a resolution through consultation and negotiation.

Fourth, and unique to this treaty, the BIT contains a separate article dealing with subrogation (Article V).

If a Party or its designated agency makes a payment under an indemnity, guarantee, or contract of insurance given in respect of a covered investment, the other Party must recognize the assignment to the first Party or its designated agency of any right or claim of the indemnified national or company. The first party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the national or company (Article V:1).

Second, the first Party or its designated agency shall be entitled in all circumstances to the same treatment in respect of the rights or claims acquired by it by virtue of the assignment. The first Party or its designate agency will also be entitled to any payments received in pursuit of those rights or claims as the indemnified national or company was entitled to receive by virtue of the BIT regarding concerned covered investment (Article V:2). Provisions of this type are generally included in separate OPIC agreements. The Committee understands that Croatia requested such a provision so as to have a mutual agreement in place were Croatia to establish its own investment guarantee agency.

*Annex.* In the BIT Annex, the United States has taken the North American Free Trade Agreement (NAFTA) related exception for banking, insurance, securities, and other financial services.

Croatia has taken a national treatment exception with regard to the ownership and operation of broadcast or common carrier radio and television stations; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; and subsidies or grants, including government supported loans. It will accord MFN treatment in these sectors.

Croatia has also taken a national treatment/MFN exception with regard to fisheries, air and maritime transport, and related activities (including maritime services).

*Protocol.* As in the BITs with El Salvador, Mozambique, and Bahrain, the Protocol states that the BIT provisions “do not bind either party in relation to any act or fact which took place or any situation which ceased to exist before” the BIT enters into force.

#### *El Salvador*

This BIT follows the 1994 model, with a variation in the Article XIV security exception and another under Article VII, regarding the appointment of top management personnel (Article VII:2). Instead of model language, which requires Parties to permit covered investments to engage to engage top management personnel, regardless of nationality, the BIT with El Salvador contains a negative formulation providing that “[no] Party may require that a covered investment appoint to senior management positions individuals of any particular nationality.” The Committee understands that this provision, which follows language contained in the investment chapter of the NAFTA, was requested by El Salvador.

*Annex.* The United States has taken exceptions to its national treatment and MFN obligations with regard to banking, insurance, securities, and other financial services; and for one-way satellite transmission of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.

El Salvador has taken national treatment exceptions for small commerce, small industry, and small service providers, as defined in its law; traditional (artisan) fishing; and commercial fishing, and has stated that it will accord MFN status in these areas. It has taken a national treatment/MFN exception for notary public services.

*Protocol.* The Protocol contains: (1) an understanding regarding what may constitute a “commercially reasonable rate” for freely usable currency used to denominate fair market value in compensation for an expropriation; and (2) an understanding that the BIT provisions “do not bind either party in relation to any act or fact which took place or any situation which ceased to exist before” the BIT enters into force. The State Department has stated that this provision, which also appears in the treaties with Nicaragua, Croatian, Mozambique, and Bahrain, “explicitly states the standard under customary international law that applies in the absence of the Parties’ express intent to apply the treaty retroactively.”

#### *Honduras*

This BIT follows the 1994 model in Articles I through XVI.

*Annex.* In the BIT Annex, the United States has taken the NAFTA-related exception for banking, insurance, securities, and other financial services.

Honduras has taken a national treatment exception regarding properties on cays, reefs, rocks, shoals, or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras; small scale industry and commerce with total invested capital of no more than \$40,000; ownership, operation, and editorial control of broadcast radio and television; and ownership, operation, and editorial control of general interest periodicals and newspapers published in Honduras. It will grant MFN treatment in these areas.

*Protocol.* The Parties confirm their understanding that parties may prevent transfers under Article V:4(a) through the application of labor laws relating to the protection of preferential creditors’ rights. Honduras confirms that, with regard to its Article II treatment obligations and the exception noted above, it will not reject or unduly delay decisions on applications on grounds of nationality with regard to U.S. investor applications to possess or acquire real property in urban zones or in the above-described 40 km perimeter. Further, the Parties understand that with regard to rights reserved in the BIT’s Article XIV:1 security exception, the phrase “obligations with respect to the maintenance or restoration of international peace or security” means obligations under the U.N. Charter. Finally, the Protocol states that the understanding that nothing in the just-cited paragraph authorizes or has the intention of authorizing either Party to the BIT to take measures in the territory of the other Party with regard to taking action under either prong of the Article.

#### *Jordan*

The BIT with Jordan follows the 1994 model with two changes. As in the BIT with Croatia, it adds to the definition of investment the statement that “any change in the form of an investment does

not affect its character as an investment” and provides that, in the event of an investment dispute between a Party and a national or company of another Party, the disputing parties should initially seek a resolution through consultation and negotiation. Also, the BIT with Jordan uses the term “Contracting Party” instead of “Party.”

*Annex.* The United States has taken the standard national treatment/MFN exception for financial services and, unique to this group of treaties, for mineral leases on government land. Each Party agrees, however, to accord national treatment with regard to leasing of pipeline rights-of-way on government land. This result for mineral and pipeline leases was seemingly dictated by reciprocity requirements in the Mineral Lands Leasing Act and 10 U.S.C. §435 (regarding the Naval Petroleum and Oil Shale Reserve).

Jordan has taken national treatment exceptions for what would appear to be significant areas of investment: air transport; ownership of bus transport companies, ownership of construction contracting companies, but not including cross-border provision of construction services; small scale commerce with total invested capital of not more than \$50,000, as annually adjusted according to treaty provisions; ownership of banks and insurance companies; ownership of companies engaged in telecommunications systems operations, but not including telecommunications-related services; extraction concessions for minerals, including oil, natural gas, and oil shale; farming (not including animal husbandry) on large tracts of land; ownership of agricultural land; ownership of land in the Jordan valley; and ownership of land for non-business related purposes. MFN treatment will be accorded in these sectors.

*Protocol.* The Parties confirm their mutual understanding that, with regard to the language regarding change in form of an investment, either Party may require approvals or impose formal requirements in connection with such a change in form, provided that such approvals or formal requirements are otherwise consistent with the treaty. The Protocol also states that the requirement in the expropriation article that compensation be paid without delay (Article III:2) “does not necessarily mean instantaneous,” but rather indicates an intent that the Contracting Party “diligently and expeditiously carry out necessary formalities.”

#### *Mozambique*

This BIT generally follows the 1994 model, except for the variation in the language of the Article XIV security exception described above. Also, in an exchange of letters, as summarized by the State Department (*see* Treaty Doc. 106–31), “the Parties confirmed their mutual understanding that Mozambique will implement the provisions of its Law No. 19/97 of October 1 (Land Use and Development Law) and any other provision of law that relates to the same or substantially the same subject matter, in a manner that provides national treatment to covered investments.”

*Annex.* In the BIT Annex, the United States has taken the standard exception to its national treatment and MFN obligations with regard to banking, securities, insurance, and other financial services; and for one-way satellite transmission of direct-to-home (DTH)

and direct broadcast satellite (DBS) television services and of digital audio services. Mozambique has not taken any national treatment or MFN exceptions.

*Protocol.* In the only provision in this group of treaties that directly addresses environmental and public health issues, the Parties confirm a mutual understanding that the prohibition on performance requirements is not to be construed so as to prohibit them from requiring environmental impact statements, environmental management plans, or other such measures of public health and safety, provided all such measures are otherwise consistent with BIT provisions. With regard to the Article VII provision on the appointment of top managers, Mozambique confirms that the “the Treaty shall serve to satisfy the requirements for any and all authorizations necessary under its laws for engagement of foreign nationals as top managers.” The State Department notes that this provision was requested by the United States to satisfy requirements under the employment laws of Mozambique. Finally, the Protocol contains the provision regarding the non-retroactive application of the Treaty contained in the treaties with Croatia, El Salvador, and Bahrain, namely, that the that the Treaty provisions “do not bind either party in relation to any act or fact which took place or any situation which ceased to exist before” the BIT enters into force.

#### *Uzbekistan*

This BIT follows the 1994 model in Articles I through VI.

*Annex.* Unique to this group of treaties, the United States has taken a national treatment/MFN exemption for leasing of pipeline rights-of-way. Each Party agrees, however, to accord national treatment with regard to the leasing of minerals on government lands. This outcome was apparently required because of the reciprocity requirements of the Mineral Lands Leasing Act and 10 U.S.C § 7435, regarding Naval Petroleum and Oil Shale Reserves.

In the BIT Annex, the United States has taken the NAFTA-related exception for banking, insurance, securities, and other financial services.

Uzbekistan has taken an national treatment exception for production, processing, sale and storage of uranium and other fissionable materials; air and railway transport, and related activities; pipelines and related activities; customhouse brokers; subsidies or grants; broadcasting, including radio and television. It will accord MFN treatment in these sectors.

Uzbekistan has also taken a national treatment/MFN exception for the production and sale of hardware, ammunition, poisonous substances and toxic substances, for military use; and for the planting, cultivation, processing, production and sale of crops containing narcotic substances.

#### *Lithuania*

This BIT, which is the third signed between the United State and a Baltic country, is based on the 1992 model BIT developed by the State Department. The BITs with Estonia and Latvia, each of which is currently in force, are also based on the 1992 model.

The 1992 model contains broad definitions intended to capture all forms of investment and incorporates the six basic guarantees that have historically been key in the U.S. BIT program: (1) the better of national or most-favored-nation (MFN) treatment; (2) restrictions on and remedies for expropriation; (3) free transfer of investment-related funds into and out of the host country; (4) prohibitions on trade-distorting performance requirements; (5) investor-state dispute settlement, without a requirement that local remedies first be exhausted; and (6) the right to engage top managerial personnel of choice, regardless of nationality. All of these provisions are contained in the BIT with Lithuania.

The U.S.-Lithuania BIT differs from the 1992 model in several ways. First, it eliminates Article VIII of the model, which had excluded from the investor-state and state-state dispute settlement those disputes that arise under the export credit, guarantee or insurance programs of the U.S. Export-Import Bank, the Overseas Private Investment Corporation (OPIC) and other official programs. This exception, which was apparently intended to avoid potential duplication with respect to programs that may have their own dispute settlement mechanism, does not appear in the 1994 model. According to the State Department, the agencies involved indicated prior to the negotiation with Lithuania that the provision was not needed.

Second, the BIT with Lithuania includes definitions for the terms “state enterprise” and “delegation” (Article I:1 (f) and (g)), intended to clarify the scope of a provision in the treatment article. The provision in question, Article II:2(b), states that “[each Party shall ensure that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party’s obligations under this Treaty whenever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it. . . .” The term “delegation” is defined as “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.”

Third, the BIT includes a list of activities to be deemed associated with an investment at Article II:11, in addition to the model definition of “associated activities” contained in Article I:1(e). This provision makes clear that the former are entitled to the better of MFN or national treatment.

Unlike the 1994 model, the security/public policy exception in the 1992 model and the BIT with Lithuania (Article IX) includes among the rights reserved by the Parties the right to take “measures necessary for the maintenance of public order.” The State Department has noted that this language would include “measures taken pursuant to a Party’s police powers to ensure public health and safety.” Unlike the portion of the clause that reserves the right of each Party to take “those measures it regards as necessary for the protection of its own essential security interests,” the State Department does not appear to consider the public order exception to be self-judging.

The BIT applies to investments existing at the time the treaty enters into force. As in various other BITs currently before the



Committee, the Protocol to the BIT confirms the Parties' mutual understanding that BIT provisions "do not bind either party in relation to any act or fact which took place or any situation which ceased to exist before the date" the BIT enters into force—that is, that the BIT does not apply retroactively.

*Annex.* The United States has taken broader national treatment exceptions in the treaty Annex than it has with regard to the other BITs currently before the Committee. This exception applies to air transportation; ocean and coastal shipping; banking, insurance, securities, and other financial services; government grants; government insurance and loan programs; energy and power production; customs brokers; ownership of real property; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in COMSAT; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land or natural resources; mining on the public domain; maritime services and maritime-related services; and primary dealership in the U.S. government securities.

The United States has taken an MFN exception for mining on the public domain; maritime services and maritime-related services; one-way satellite transmission of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services; and primary dealership in U.S. government securities.

Lithuania has taken a national treatment exception with regard to ownership of land and resources that, in light of the other BITs currently before the Committee, is unique in its scope and detail. The exception applies to ownership of land under the objects belonging to the Republic of Lithuania by the right of exclusive ownership; land of national parks, national reservations, reserves, protective areas of the territory of biosphere monitoring; agricultural land; forestry land, with the exception of plots necessary for the operation of buildings and facilities designated for economic activities which have been provided for in approved planning documents; recreational forests and forest shelter belts, rivers and other water bodies exceeding one hectare in size as well as their protective bank area; land of resorts and communal recreational territories, separate communal recreational areas and objects; land of state-protected national geographical formations; monuments of nature, history, archaeology and culture as well as the surrounding protective areas; land of territories reserved, according to design projects, under communal roads and engineering service lines; objects of infrastructure of communal use in towns or other localities, and for other common needs of the community; land under public roads, railway lines, airports, sea and river ports, main pipelines and other engineering service lines of communal use as well as land necessary for their operation; land allotted, in accordance with the procedure established by law, under the free trade (economic) zones territory; land of protected territories where deposits of mineral resources and other natural resources have been found, with the exception of land which, according to planning documents, has been directly allotted for the construction of buildings and facilities required for the mining or use of said mineral resources; land of the Curonian Spit, the 15 km wide strip of coastal land of the Baltic

Sea and the Curonian Lagoon; land assigned to the frontier; and land of the territories assigned or reserved for the needs of the national defense as well as territories where land acquisition restrictions are established by laws or Government decrees for safety reasons.

Lithuania has also taken a national treatment exception with regard to the production and sale of narcotic drugs and psychotropic substances which are not used for legitimate medicinal purposes; the growth, reproduction and sale of cultures containing narcotic drugs or psychotropic substances which are not used for legitimate medicinal purposes; and the organization of lotteries. Lithuania has taken no MFN exceptions.

*Protocol of Amendment to Panama BIT*

The International Center for the Settlement of Investment Disputes (ICSID) was established in the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the Convention). The United States is a party to the Convention (17 U.S.T. 1270). ICSID provides a forum for binding arbitration of disputes between private investors and host governments, where the disputants consent in writing to submit the dispute to ICSID.

ICSID's jurisdiction is restricted, however, to investment-related disputes arising between Convention parties or their nationals. To accommodate others, however, ICSID's Administrative Council created a so-called "Additional Facility" to deal with disputes where one or both disputants are unable to overcome the Convention's restrictions on ICSID jurisdiction.

The United States was a party to the ICSID Convention at the time the U.S.-Panama BIT (entered into force May 30, 1991, 21 I.L.M. 127, 1982) was concluded, but Panama was not. This state of affairs is reflected in the BIT, which provides for submission of investor-state disputes only to the ICSID Additional Facility.

When Panama became a party to the ICSID Convention in 1996, however, at that point, both the U.S. and Panama enjoyed status as ICSID Contracting States. Thus, the Additional Facility was no longer available as a forum for investor-state disputes. The BIT text, however, does not include the option of using ICSID facilities available to Contracting States. The proposed Protocol of amendment before the Committee is intended to introduce that option into the Treaty.

*Existing U.S.-Panama BIT Provisions*

Article VII(3) of the U.S.-Panama BIT is the provision that currently provides for the use of the ICSID Additional Facility for investor-state disputes. Article VII(3)(a) of the BIT as concluded generally provides that a national or company may submit a dispute to the ICSID Additional Facility for conciliation or arbitration once six months have passed since the date the dispute arose. Under Article VII(3)(b), each Party consents to submission of an investment dispute to the Additional Facility for settlement by conciliation or binding arbitration. Article VII(3)(c) provides that conciliation or binding arbitration of such disputes is to be carried out in accordance with the Regulations and Rules of the Additional Facility. Ar-

title VII(3)(d) requires each Party to provide for the enforcement within its territory of Additional Facility arbitral awards.

*Changes Proposed under the Protocol*

Article I of the Protocol amends the text of Article VII(3) to provide for the ICSID and other possible fora in investor-state disputes arising under the BIT if the investor so chooses, and makes other changes to the BIT related to the use of ICSID and the enforcement of arbitral agreements and awards.

BIT Article VII(3)(a) is amended to provide that at any time after six months from the date the dispute arose, the national or company may choose to consent in writing to the submission of the dispute to ICSID, for settlement either by conciliation or binding arbitration; the Additional Facility, if ICSID is not available, for settlement either by conciliation or binding arbitration; or in accordance with the UNCITRAL Rules, for settlement by binding arbitration.

Once the disputing national or company has so consented, either disputing party may institute proceedings before ICSID, the Additional Facility, or in accordance with UNCITRAL Rules, provided that the dispute has not, for any reason, been submitted for resolution in accordance with any applicable dispute settlement procedure previously agreed to by the parties to the disputes, and the disputing investor has not brought the dispute before the courts, administrative tribunals or agencies of the competent jurisdiction of either Party. This language regarding previous submission of the dispute to another forum parallels language in the BIT.

Article VII(3)(b) of the BIT is amended to provide that each Party consents to the submission of an investment dispute in accordance with the choice of fora (listed above) of the company or national concerned. In addition, the amended paragraph provides that: (1) submission of the dispute under amended paragraph (3)(a) will satisfy the requirements of the ICSID Convention and the Additional Facility rules for written consent of the parties to the dispute; and (2) Article II of the New York Convention for an agreement in writing.

Article VII(3)(c) is amended to add a requirement that the Rules and Regulations of ICSID be used if the dispute is submitted to the Center in accordance with paragraph (3)(a). Article VII(3)(d) is expanded to require each Party to provide for enforcement within its territory of arbitral awards rendered under Article VII (as opposed to Additional Facility awards only). Enforcement of international arbitral awards in the United States is generally subject to federal law, namely, the New York Convention, as implemented by the Federal Arbitration Act (FAA), 9 U.S.C. sections 201–210 (the Act). The Act also generally applies to arbitral agreements and awards involving interstate and foreign commerce.

A new Article VII(3)(e) provides that an arbitration submitted under the Additional Facility or under UNCITRAL Rules is to be held in a state that is a party to the New York Convention. This provision would appear to facilitate the use of Convention-based enforcement in the United States, since the United States has agreed to implement the Convention on the basis of reciprocity, that is, with respect to awards made only in the territory of other Contracting States.

Article VII(5) is amended to account for an ICSID Convention provision that allows the Parties to consider a company organized under one Party's laws to be a national of the other Party if it is controlled by nationals of the latter. This provision would allow, for example, a U.S. subsidiary in Panama controlled by U.S. nationals or a U.S. firm to bring an investment dispute against Panama in its own name rather than requiring it to rely on the U.S. parent to do so.

Finally, Article II of the Protocol provides that the Protocol will form an integral part of the BIT, and will enter into force upon an exchange of notes confirming that the Parties have completed their domestic legal requirements for entry into force of the Protocol. It also provides that the Protocol will remain in force as long as the BIT is in force. If the BIT is terminated, the Protocol will continue to be effective for ten additional years, as provided in Article XIII(4) of the BIT.

#### IV. ENTRY INTO FORCE AND TERMINATION

##### A. ENTRY INTO FORCE

In general, the BITs enter into force thirty days after the date of exchange of instruments of ratification. They remain in force for a period of ten years, and continue in force thereafter unless terminated. The Protocol to the BIT with Panama would enter into force upon an exchange of notes confirming that the Parties have completed their respective domestic legal requirements, and remain in force as long as the BIT is in force.

##### B. TERMINATION

In general, a BIT party may terminate the treaty at the end of the initial ten year period or at any time thereafter by giving one year's written notice to the other party. For ten years thereafter, treaty provisions shall continue to apply, except insofar as the establishment or acquisition of covered investments is concerned. The Protocol amending the BIT with Panama contains similar provisions in the event of BIT termination.

#### V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Treaties on September 13, 2000 (a transcript of the hearing and questions for the record may be found in Senate hearing 106-660 entitled, "Consideration of Pending Treaties"). The Committee considered the Treaties on September 27, 2000, and ordered them favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Treaties subject to the declarations and provisos indicated below in the resolutions of ratification.

#### VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Treaties. On balance, the Committee believes that the proposed Treaties are in the interest of the United States and

urges the Senate to act promptly to give its advice and consent to ratification.

#### A. SCOPE OF CONSENT TO ARBITRATION

Some members of the Committee have expressed concern over the possibility that recent developments in international trade, such as the North American Free Trade Agreement may make it more difficult for the United States to protect itself from exposure to unforeseen claims under investor-state dispute resolution provisions.

Specifically, in the NAFTA context, claims have been made which test the limits of United States consent to arbitration. In three of the four NAFTA Chapter 11 arbitrations commenced against the United States to date, the United States has objected to the jurisdiction of the arbitration tribunal on various grounds, including that the claims presented fall outside the scope of the United States' consent to arbitration as set forth in NAFTA Chapter 11, that the claims presented are inadmissible, and that the claimant's allegations, even if true, could not give rise to liability under the provisions of NAFTA Chapter 11.

To defend itself from such claims in NAFTA Chapter 11 arbitration cases, the United States has the right under the agreement to raise objections in accordance with the procedural rules that govern the arbitration. Under NAFTA, claimants may choose from among three sets of arbitration rules: the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention); the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (ICSID); and the UNCITRAL Arbitration Rules. Each of these sets of rules allows for objections to the jurisdiction or competence of the tribunal.

The Committee understands that, in the event that a claim were brought against the United States pursuant to the dispute settlement provisions of any of the Bilateral Investment Treaties now under consideration, the United States would be free to object to the tribunal's jurisdiction and competence in the same manner as it is now able to do in arbitrations brought under NAFTA Chapter 11. In addition, the same three sets of arbitration rules which may be used in the NAFTA context would also be available for arbitrations which may be brought under investor-state dispute settlement provisions of the Bilateral Investment Treaties now under consideration by the Committee. The Committee understands that, unlike the situation with NAFTA, to date no claim has been brought against the United States under any Bilateral Investment Treaty. (The Committee also has been informed that U.S. firms have brought at least 12 cases against foreign states under existing Bilateral Investment Treaties).

Because the United States will have the right, pursuant to its Bilateral Investment Treaties, to raise objections to investor-state claims which are outside the scope of the United States' consent to arbitration and to excessive claims of jurisdiction or competence by arbitral tribunals which may be asked to hear them, the Committee currently believes that, on balance, United States interests are adequately protected by these Treaties.

## B. SITUATION IN CROATIA

The Committee expresses its concern over reports that more than 30 United States citizens are encountering discrimination in Croatia because of Croatian laws and regulations which bar restitution or payment of compensation for wrongfully expropriated properties to persons who are not Croatian citizens or residents of Croatia. The Committee has been assured by the Executive Branch that such cases will be resolved both through revisions to domestic Croatian law ordered by Croatia's Constitutional Court, and within the context of Croatia's preparations to become a member state of the European Union.

Even after taking due note of these assurances, the Committee will remain concerned about and attentive to developments with regard to this problem until it is resolved. The Committee urges the Executive Branch to employ all appropriate measures to ensure that the rights of United States citizens in Croatia are safeguarded, and that the Croatian Sabor acts by the end of 2000 to conform its Law on Compensation for Property Taken During Yugoslav Communist Rule to the requirements of the Croatian Constitutional Court.

## VII. TEXT OF THE RESOLUTIONS OF RATIFICATION

*Agreement with Azerbaijan*

*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 Azerbaijan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on August 1, 1997, together with an Amendment to the Treaty set Forth in an Exchange of Diplomatic Notes Dated August 8, 2000, and August 25, 2000 (Treaty Doc. 106-47), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Bahrain*

*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 State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on September 29, 1999 (Treaty Doc. 106–25), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Bolivia*

*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 Bolivia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Santiago, Chile, on April 17, 1998 (Treaty Doc. 106–26), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the

United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Croatia*

*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 Croatia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Zagreb on July 13, 1996 (Treaty Doc. 106–29), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOR.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with El Salvador*

*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 El Salvador Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at San Salvador on March 10, 1999 (Treaty Doc. 106–28), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOR.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:



SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Honduras*

*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 Honduras Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Denver on July 1, 1995 (Treaty Doc. 106–27), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Jordan*

*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 Hashemite Kingdom of Jordan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Amman on July 2, 1997 (Treaty Doc. 106–30), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOR.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Lithuania*

*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 Lithuania for the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 14, 1998 (Treaty Doc. 106–42), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISOR.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Mozambique*

*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 Mozambique Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, and a related exchange of letters, and Protocol, signed at Washington on December 1, 1998 (Treaty Doc. 106–31), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Trea-

ty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Agreement with Uzbekistan*

*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 Uzbekistan Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, signed at Washington on December 16, 1994 (Treaty Doc. 104–25), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

*Protocol Amending Agreement with Panama*

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Protocol Between the Government of the United States of America and the Government of the Republic of Panama Amending the Treaty Concerning the Treatment and Protection of Investments of October 27, 1982, signed at Panama City on June 1, 2000, (Treaty Doc. 106–46).