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INVESTMENT TREATY WITH JORDAN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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

MAY 23, 2000.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 23, 2000.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith 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, I transmit also, for the information of the Senate, the report of the Department of State with respect to this Treaty.

The bilateral investment treaty (BIT) with Jordan was the second such treaty between the United States and a country in the Middle East. The Treaty will protect U.S. investment and assist Jordan in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthen the development of its private sector.

The Treaty is fully consistent with U.S. policy toward international and domestic investment. A specific tenet of U.S. policy, reflected in this Treaty, is that U.S. investment abroad and foreign investment in the United States should receive national treatment. Under this Treaty, the Parties also agree to customary international law standards for expropriation. The Treaty includes detailed provisions regarding the computation and payment of prompt, adequate, and effective compensation for expropriation; free transfer of funds related to investments; freedom of investments from specified performance requirements; fair, equitable, and most-favored-nation treatment; and the investor's freedom to choose to resolve disputes with the host government through international arbitration.

In recommend that the Senate consider this Treaty as soon as possible, and give its advice and consent to ratification of the Treaty at an early date.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 1, 2000.

THE PRESIDENT: I have the honor to submit to you 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. I recommend that this Treaty, with Annex and Protocol, be transmitted to the Senate for its advice and consent to ratification.

The bilateral investment treaty (BIT) with Jordan is the second such treaty signed between the United States and a country in the Middle East. The Treaty is based on the view that an open investment policy contributes to economic growth. This Treaty will assist Jordan in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thereby strengthening the development of its private sector. It is U.S. policy, however, to advise potential treaty partners during BIT negotiations that conclusion of such a treaty does not necessarily result in increases in private U.S. investment flows.

To date, 31 BITs are in force for the United States—with Albania, Argentina, Armenia, Bangladesh, Bulgaria, Cameroon, the Republic of the Congo, the Democratic Republic of the Congo (formerly Zaire), the Czech Republic, Ecuador, Egypt, Estonia, Georgia, Grenada, Jamaica, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Mongolia, Morocco, Panama, Poland, Romania, Senegal, Slovakia, Sri Lanka, Trinidad & Tobago, Tunisia, Turkey, and Ukraine. In addition to the Treaty with Jordan, the United States has signed, but not yet brought into force, BITs with Azerbaijan, Bahrain, Belarus, Bolivia, Croatia, El Salvador, Honduras, Lithuania, Mozambique, Nicaragua, Russia, and Uzbekistan.

The Office of the United States Trade Representative and the Department of State jointly led this BIT negotiation, with assistance from the Departments of Commerce, Treasury, and Energy.

THE U.S.-JORDAN TREATY

The Treaty with Jordan is based on the 1994 U.S. prototype BIT and satisfies the U.S. principal objectives in bilateral investment treaty negotiations:

—All forms of U.S. investment in the territory of Jordan are covered.

—Covered investments receive the better of national treatment or most-favored-nation (MFN) treatment both while they are being established and thereafter, subject to certain specified exceptions.

—Specified performance requirements may not be imposed upon or enforced against covered investments.

—Expropriation is permitted only in accordance with customary international law standards.

—Parties are obligated to permit the transfer, in a freely usable currency, of all funds related to a covered investment, subject to exceptions for specified purposes.

—Investment disputes with the host government may be brought by investors, or by their covered investments, to binding international arbitration as an alternative to domestic courts.

These elements are further described in the following article-by-article analysis of the provisions of the Treaty:

Title and Preamble

The Title and Preamble state the goals of the Treaty. Foremost in the encouragement and protection of investment. Other goals include economic cooperation on investment issues; the stimulation of economic development; higher living standards; promotion of respect for internationally-recognized worker rights; and maintenance of health, safety, and environmental measures. While the Preamble does not impose binding obligations, its statement of goals may assist in interpreting the Treaty and in defining the scope of Party-to-Party consultations pursuant to Article VIII.

Article I (Definitions)

Article I defines terms used throughout the Treaty.

Company, Company of a Contracting Party

The definition of "company" is broad, covering all types of legal entities constituted or organized under applicable law, and includes corporations, trusts, partnerships, sole proprietorships, branches, joint ventures, and associations. The definition explicitly covers not-for-profit entities, as well as entities that are owned or controlled by the state. "Company of a Contracting Party" is defined as a company constituted or organized under the laws of that Contracting party (hereinafter, "Party.")

National

The Treaty defines "national" as a natural person who is a national of a Party under its own laws. Under U.S. law, the term "national" is broader than the term "citizen." For example, a native of American Samoa is a national of the United States, but not a citizen.

Investment, Covered Investment

The Treaty's definition of investment is broad, recognizing that investment can take a wide variety of forms. Every kind of investment is specifically incorporated in the definition; moreover, it is explicitly noted that investment may consist or take the form of any of a number of interests, claims, and rights. The Treaty provides that any change in the form of an investment does not affect its character as an investment.

The Treaty provides an illustrative list of the forms an investment may take. Establishing a subsidiary is a common way of making an investment. Other forms that an investment might take include equity and debt interests in a company; contractual rights; tangible, intangible, and intellectual property; and rights conferred pursuant to law, such as licenses and permits. Investments as defined by the Treaty generally excludes claims arising solely from trade transactions, such as a sale of goods across a border that does not otherwise involve an investment.

The Treaty defines "covered investment" as an investment of a national or company of a Party in the territory of the other Party. An investment of a national or company is one that the national or company owns or controls, either directly or indirectly. Indirect ownership or control could be through other, intermediate companies or persons, including those of third countries. Control is not specifically defined in the Treaty; ownership of over 50 percent of the voting stock of a company would normally convey control, but in many cases the requirement could be satisfied by less than that proportion, or by other arrangements.

The broad nature of the definitions of "investment," "company," and "company of a Contracting Party" means that investments can be covered by the Treaty even if ultimate control lies with non-Party nationals. A Party may, however, deny the benefits of the Treaty in the limited circumstances described in Article XII.

State Enterprise, Investment Authorization, Investment Agreement

The Treaty defines "state enterprise" as a company owned, or controlled through ownership interests, by a Party. Purely regulatory control over a company does not qualify it as a state enterprise.

The Treaty defines an "investment authorization" as an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party.

The Treaty defines an "investment agreement" as a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (1) grants rights with respect to natural resources or other assets controlled by the national authorities and (2) the investment, national, or company relies upon in establishing or acquiring a covered investment. This definition thus excludes agreements with subnational authorities (including U.S. States) as well as agreements arising from various types of regulatory activities of the national government, including, in the tax area, rulings, closing agreements, and advance pricing agreements.

ICSID Convention, Centre, UNCITRAL Arbitration Rules

The "ICSID Convention," "Centre," and "UNCITRAL Arbitration Rules" are explicitly defined to make the text brief and clear.

Article II (Treatment and Protection of Investment)

Article II contains the Treaty's major obligations with respect to the treatment of covered investments.

Pargraph 1 generally ensures the better of national or MFN treatment in both the entry and post-entry phases of investment. It thus prohibits, outside of exceptions listed in the Annex, "screening" on the basis of nationality during the investment process, as well as nationality-based post-establishment measures. For purposes of the Treaty, "national treatment" means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of its own nationals or companies. For purposes of the Treaty, "MFN treatment" means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of nationals or companies of a third country. The Treaty obliges each Party to provide whichever of national treatment or MFN treatment is the most favorable. This is defined by the Treaty as "national and MFN treatment." Paragraph 1 explicitly states that the national and MFN treatment obligation will extend to state enterprises in their provision of goods and services to covered investments.

Paragraph 2 states that each Party may adopt or maintain exceptions to the national and MFN treatment standard with respect to the sectors or matters specified in the Annex. Further restrictive measures are permitted in each sector. (The specific exceptions are discussed in the section entitled "Annex" below.) In the Annex, Parties may take exceptions only to the obligation to provide national and MFN treatment; there are no sectoral exceptions to the rest of the Treaty's obligations. Finally, in adopting any exception under this provision, a Party may not require the divestment of a preexisting covered investment.

Paragraph 2 also states that a Party is not required to extend to covered investments national and MFN treatment with respect to procedures provided for in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights. This provision clarifies that certain procedural preferences granted under intellectual property conventions, such as the Patent Cooperation Treaty, fall outside the BIT. This exception parallels those in the Uruguay Round's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the north American Free Trade Agreement (NAFTA).

Pargraph 3 sets out a minimum standard of treatment based on standards found in customary international law. The obligations to accord "fair and equitable treatment" and "full protection and security" are explicitly cited, as is each Party's obligation not to impair, through unreasonable and discriminatory means, the management, conduct, operation, and sale or other disposition of covered investments. The general reference to international law also implicitly incorporates other fundamental rules of customary international law regarding the treatment of foreign investment. However, this provision does not incorporate obligations based on other international agreements.

Paragraph 4 requires that each Party provide effective means of asserting claims and enforcing rights with respect to covered investments.

Pargraph 5 ensures the transparency of each Party's regulation of covered investments.

Article III (Expropriation and Compensation Therefor)

Article III incorporates into the Treaty customary international law standards for expropriation. Article III also includes detailed provisions regarding the computation and payment of prompt, adequate, and effective compensation.

Paragraph 1 describes the obligations of the Parties with respect to expropriation and nationalization of a covered investment. These obligations apply to both direct expropriation and indirect expropriation through measures "tantamount to expropriation or nationalization" and thus apply to "creeping expropriations"—a series of measures that effectively amounts to an expropriation of a covered investment without taking title.

Paragraph 1 further bars all expropriations or rationalizations except those that are for a public purposes; carried out in a nondiscriminatory manner; in accordance with due process of law; in accordance with the general principles of treatment provided in Article II(3); and subject to "prompt, adequate and effective compensation."

Paragraphs 2, 3, and 4 more fully describe the meaning of "prompt, adequate and effective compensation." The guiding principle is that the investor should be made whole.

Article IV (Compensation for Damages Due to War and Similar Events)

Paragraph 1 entitles investments covered by the Treaty to national and MFN treatment with respect to any measure relating to losses suffered in a Party's territory owing to war or other armed conflict, civil disturbances, or similar events. Paragraph 2, by contract, creates an unconditional obligation to pay compensation for such losses when the losses result from requisitioning or from destruction not required by the necessary of the situation.

Article V (Transfers)

Article V protects investors from certain government exchange controls that limit current and capital account transfers, as well as limits on inward transfers made by screening authorities and, in certain circumstances, limits on returns in kind.

In paragraph 1, each Party agrees to "permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory." Paragraph 1 also provides a list of transfers that must be allowed. The list is non-exclusive, and is intended to protect flows to both affiliated and non-affiliated entities.

Pargraph 2 provides that each Party must permit transfers to be made in a 'freely unsable currency" at the market rate of exchange prevailing on the date of transfer. "Freely usable" is a term by the International Monetary Fund; at present there are five "freely usable" currencies: the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling.

In paragraph 3, each Party agrees to permit returns in kind to be made where such returns have been authorized by an investment authorization or written agreement between a Party and a covered investment or a national or company of the other Party.

Paragraph 4 recognizes that, notwithstanding the obligations of paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of laws relating to bankruptcy, insolvency, or the protection of the rights of creditors; securities; criminal or penal offenses; or ensuring compliance with orders or judgments in adjudicatory proceedings.

Article VI (Performance Requirements)

Article VI prohibits either Party from mandating or enforcing specified performance requirements as a condition for the establishment, acquisition, expansion, management, conduct, or operation of a covered investment. The list of prohibited requirements is exhaustive and covers domestic content requirements and domestic purchase preferences, the "balancing" of imports or sales in relation to exports or foreign exchange earnings, requirements to export products or services, technology transfer requirements, and requirements relating to the conduct of research and development in the host country. Such requirements are major burdens on investors and impair their competitiveness.

The last sentence of Article VI makes clear that a Party may, however, impose conditions for the receipt or continued receipt of benefits and incentives.

Article VII (Entry, Sojourn, and Employment of Aliens)

Paragraph 1 requires each Party to allow, subject to its laws relating to the entry, sojourn, and employment of aliens, the entry into its territory of the other Party's nationals for certain purposes related to a covered investment and involving the commitment of a "substantial amount of capital." This paragraph serves to render nationals of Jordan eligible for treaty-investor visas under U.S. immigration law. It also affords similar treatment for U.S. nationals entering Jordan. The requirement to commit a "substantial amount of capital" is intended to prevent abuse of treaty-investor status; it parallels the requirements of U.S. immigration law.

The reference to employment laws in paragraph 1(a) was added at the request of Jordan to confirm the Parties understanding that employment laws of general applicability are not inherently inconsistent with the Treaty. This change does not modify the Parties obligations under paragraph 1(b), which prohibits labor certification requirements and numerical restrictions on the entry of treaty-investors.

Paragraph 2 requires that each Party allow covered investments to engage top managerial personnel of their choice, regardless of nationality. This provision does not require that such personnel be granted entry into a Party's territory. Such persons must independently qualify for an appropriate visa for entry into the territory of the other party. Nor does this provision create an exception to U.S. equal employment opportunity laws.

Article VIII (Consultations)

Article VIII provides for prompt consultation between the Parties, at either Party's request, on any matter relating to the interpretation or application of the Treaty or to the realization of the Treaty's objectives. A Party may thus request consultations for any matter reasonably related to the encouragement or protection of covered investment, whether or not a Party is alleging a violation of the Treaty.

Article IX (Settlement of Disputes Between One Contracting Party and a National or Company of the Other Contracting Party)

Article IX sets for the several means by which disputes brought against a Party by an investor (specifically, a national or company of the other Party) may be resolved.

Article IX procedures apply to an "investment dispute," which is any dispute arising out of or relating to an investment authorization, an investment agreement, or an alleged breach of rights conferred, created, or recognized by the Treaty with respect to a covered investment. The Treaty provides that the parties to the dispute should initially seek a resolution through consultation and negotiation.

In the event that an investment dispute cannot be settled amicably, paragraph 2 gives an investor an exclusive (with the exception in paragraph 3(b) concerning injunctive relief, explained below) choice among three options to settle the dispute. These three options are: (1) submitting the dispute to the courts or administrative tribunals of the Party that is a party to the dispute; (2) invoking dispute-resolution procedures previously agreed upon by the national or company and the host country government; or (3) invoking the dispute-resolution mechanisms identified in paragraph 3 of Article IX.

Under paragraph 3(a), the investor can submit an investment dispute to binding arbitration 3 months after the dispute arises, provided that the investor has not submitted the claim to a court or administrative tribunal of the Party or invoked a dispute resolution procedure previously agreed upon. The investor may choose among the International Centre for Settlement of Investment Disputes (ICSID) (Convention Arbitration), the Additional Facility of ICSID (if Convention Arbitration is not available), ad hoc arbitration using the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or any other arbitral institution or rules agreed upon by both parties to the dispute.

Before or during such arbitral proceedings, however, paragraph 3(b) provides that an investor may seek, without affecting its right to pursue arbitration under this Treaty, interim injunctive relief not involving the payment of damages from local courts or administrative tribunals of the Party that is a party to the dispute for the preservation of its rights and interests. This paragraph does not alter the power of the arbitral tribunals to recommend or order interim measures they may deem appropriate.

Paragraph 4 constitutes each Party's consent to the submission of investment disputes to binding arbitration in accordance with the choice of the investor.

Paragraph 5 provides that any non-ICSID Convention arbitration shall take place in a country that is a party to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards. This provision facilitates enforcement of arbitral awards.

In addition, in paragraph 6, each Party commits to enforcing arbitral awards rendered pursuant to this Article. The Federal Arbitration Act (9 U.S.C. 1 et seq.) satisfies the requirement for the enforcement of non-ICSID Convention awards in the United States. The Convention on the Settlement of Investment Disputes Act of 1966 (22 U.S.C. 1650–1650a) provides for the enforcement of ICSID Convention awards.

Paragraph 7 ensures that a Party may not assert as a defense, or for any other reason, that the investor involved in the investment dispute has received or will receive reimbursement for the same damages under an insurance or guarantee contract.

Paragraph 8 provides that, for the purposes of this article, the nationality of a company in the host country will be determined by ownership or control, rather than by place of incorporation. This provision allows a company that is a covered investment to bring a claim in its own name.

Article X (Settlement of Disputes Between the Contracting Parties)

Article X provides for binding arbitration of disputes between the United States and Jordan concerning the interpretation or application of the Treaty that are not resolved through consultations or other diplomatic channels. The article specifies various procedural aspects of such arbitration proceedings, including time periods, selection of arbitrators, and distribution of arbitration costs between the Parties. The article constitutes each Party's prior consent to such arbitration.

Article XI (Preservation of Legal Rights)

Article XI clarifies that the Treaty does not derogate from any obligation a Party might have to provide better treatment to the covered investment than is specified in the Treaty. Thus, the treaty establishes a floor for the treatment of covered investments. A covered investment may be entitled to more favorable treatment through domestic legislation, other international legal obligations, or a specific obligation (e.g., to provide a tax holiday) assumed by a Party with respect to that covered investment.

Article XII (Denial of Benefits)

Article XII(a) preserves the right of each Party to deny the benefits of the Treaty to a company owned or controlled by nationals of a non-Party country with which the denying Party does not have normal economic relations, e.g., a country to which it is applying economic sanctions. For example, at this time the United States does not maintain normal economic relations with, among other countries, Cuba and Libya.

Article XII(b) permits each Party to deny the benefits of the Treaty to a company of the other Party if the company is owned or controlled by non-Party nationals and if the company has no substantial business activities in the Party where it is established. thus, the United States could deny benefits to a company that is a subsidiary of a shell company organized under the laws of Jordan if controlled by nationals of a third country. However, this provision would not generally permit the United States to deny benefits to a company of Jordan that maintains its central administration or principal place of business in the territory of, or has a real and continuous link with, Jordan.

Article XIII (Taxation)

Article XIII excludes tax matters generally from the coverage of the BIT, on the basis that tax matters should be dealt with in bilateral tax treaties. However, Article XIII does not preclude a national or company from bringing claims under Article IX that taxation provisions in an investment agreement or authorization have been violated. In addition, the dispute settlement provisions of Article IX and X apply to tax matters in relation to alleged violations of the BIT's expropriation article.

Under paragraph 2, a national or company that asserts in a dispute that a tax matter involves expropriation may submit that dispute to arbitration pursuant to Article IX(3) only if (1) the investor has first referred to the competent tax authorities of both Parties the issue of whether the tax matter involves an expropriation, and (2) the tax authorities have not both determined, within 9 months from the time of referral, that the matter does not involve an expropriation. The "component tax authority" of the United States is the Assistant Secretary of the Treasury for Tax Policy, who will make such a determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.

Article XIV (Measures Not Precluded by the Treaty)

The first paragraph of Article XIV reserves the right of a Party to take measures for the fulfillment of its international obligations with respect to maintenance or restoration of international peace or security, as well as those measures it regards as necessary for the protection of its own essential security interests.

International obligations with respect to maintenance or restoration of peace or security would include, for example, obligations arising out of Chapter VII of the United Nations Charter. Measures permitted by the provision on the protection of a Party's essential security interests would include security-related actions taken in time of war or national emergency. Actions not arising from a state of war or national emergency must have a clear and direct relationship to the essential security interests of the Party involved. Measures to protect a Party's essential security interests are self-judging in nature, although each Party would expect the provisions to be applied by the other in good faith.

The second paragraph permits a Party to prescribe special formalities in connection with covered investments, provided that these formalities do not impair the substance of any Treaty rights. Such formalities could include reporting requirements for covered investments or for transfers of funds, or incorporation requirements.

Article XV (Application of the Treaty to Political Subdivisions and State Enterprises of the Contracting Parties)

Paragraph 1(a) makes clear that the obligation of the Treaty are applicable to all political subdivisions of the Parties, such as provincial, State, and local governments.

Paragraph 1(b) recognizes that under the U.S. federal system, States of the United States may, in some instances, treat out-of-State residents and corporations in a different manner than they treat in-State residents and corporations. The Treaty provides that the national treatment commitment, with respect to the States, means treatment no less favorable than that provided by a State to U.S. out-of-State residents and corporations.

Paragraph 2 extends a Party's obligations under the Treaty to its state enterprises in the exercise of any delegated governmental authority. This paragraph is designed to clarify that the exercise of governmental authority by a state enterprise must be consistent with a Party's obligations under the Treaty.

Article XVI (Entry Into Force, Duration, and Termination)

Paragraph 1 stipulates that the Treaty enters into force 30 days after exchange of instruments of ratification. The Treaty remains in force for a period of 10 years and continues in force thereafter unless terminated by either Party as provided in paragraph 2. Paragraph 2 permits a Party to terminate the Treaty at the end of the initial 10 year period, or at any later time, by giving 1 year's written notice to the other Party. Paragraph 1 also provides that the Treaty applies to covered investments existing at the time of entry into force as well as to those established or acquired thereafter. The Treaty does not state an intention by the Parties to apply the Treaty's provisions retroactively. Thus, under customary international law, the Treaty does not apply to disputes with respect to acts or facts which took place before the Treaty came into force or to any situation which ceased to exist before the date of entry into force of the Treaty.

Paragraph 3 provides that, if the Treaty is terminated, all investments that qualified as covered investments on the date of termination (i.e., 1 year after the date of written notice of termination) continue to be protected under the Treaty for 10 years from that date as long as these investments qualify as covered investments. A Party's obligations with respect to the establishment and acquisition of investments would lapse immediately upon the date of termination of the Treaty.

Paragraph 4 stipulates that the Annex and Protocol shall form an integral part of the Treaty.

Annex

U.S. bilateral investment treaties allow for exceptions to national and MFN treatment, where the Parties' domestic regimes do not afford national and MFN treatment, or where treatment in certain sectors or matters is negotiated in and governed by other agreements. Future derogations from the national treatment obligations of the Treaty are generally permitted only in the sectors or matters listed in the Annex, pursuant to Article II(2), and must be made on an MFS basis unless otherwise specified therein.

Under a number of statutes, many of which have a long historical background, the U.S. federal government or States may not necessarily treat investments of nationals or companies of Jordan as they do U.S. investments or investments from a third country. Paragraphs 1 and 2 of the Annex list the sectors or matters subject to U.S. exceptions.

The U.S. exceptions from its national treatment obligation are: atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees, and insurance; State and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; and landing of submarine cables.

The U.S. exceptions from its national and MFN treatment obligation are: fisheries; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; and mineral leases on government land.

Paragraph 3 of the Annex lists Jordan's exceptions from its national treatment obligation, which are: 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 no more than US $50,000 (or its equivalent in national currency), as adjusted annually for the first five years that the treaty is in force by the annual percentage change in the GDP deflator of the United States of America; ownership of banks and insurance companies; ownership of companies engaged in telecommunications systems operations; but not including activities such as maintenance, equipment production, equipment and spare parts sales, or other telecommunications related services; extraction concessions for minerals, including oil, natural gas, and oil shale; farming (not including animal husbandry) on large tracts of land (greater than 500 acres or its equivalent in dunums); ownership of agricultural land; ownership of land in the Jordan valley; and ownership of land for non-business related purposes.

Paragraph 3 also provides that Jordan will accord MFN treatment in the sectors and matters listed in Paragraph 3 of the Annex. Jordan takes no other exceptions from its national and MFN treatment obligation.

Paragraph 4 of the Annex ensures that national treatment is granted by each Party in all leasing of pipeline rights-of-way on government lands. In so doing, this provision partially affects the implementation of the Mineral Lands Leasing Act (MLLA) (30 U.S.C. 181 et seq.) and 10 U.S.C. 7435, regarding Naval Petroleum Reserves, with respect to nationals and companies of Jordan. The Treaty provides for resort to binding international arbitration to resolve disputes, rather than denial of pipeline rights-of-way to investors of the other Party, as is the current process under the statute. U.S. domestic remedies, would, however, remains available for use in conjunction with the Treaty's provisions.

The MLLA and 10 U.S.C. 7435 direct that a foreign investor be denied access to leases for minerals on on-shore federal lands, leases of land within the Naval Petroleum and Oil Shale Reserves, and rights-of-way for oil or gas pipelines across on-shore federal lands, if U.S. investors are denied access to similar or like privileges in the foreign country.

Jordan's extension of national treatment in pipeline rights-of-way will meet the objectives of the MLLA and 10 U.S.C. 7435 concerning such rights-of-way. Jordan was informed during negotiations that, were it to include either the leasing of minerals or pipeline rights-of-way on Government lands in its list of treatment exemptions, the United States would (consistent with the MLLA and 10 U.S.C. 7435) exclude the corresponding sector from the national and MFN treatment obligations of this Treaty. Accordingly, Jordan's inclusion in its national treatment exceptions of mineral leases led the U.S. to exclude mineral leases from its national and MFN treatment obligations, while Jordan's decision not to include pipeline rights-of-way led to the Parties' agreement to accord national treatment to covered investments in that sector.

The listing of a sector or matter in the Annex does not necessarily signify that domestic laws have entirely reserved it for nationals. And, pursuant to Article II(2), any additional restrictions or limitations that a Party may adopt with respect to listed sectors or matters may not compel the divestiture of existing covered investments.

Finally, listing a sector or matter in the Annex exempts a Party only from the obligation to accord national or MFN treatment. Both Parties are obligated to accord to covered investments in all sectors—even those listed in the Annex—all other rights conferred by the Treaty.

Protocol

Paragraph 1 of the Protocol confirms the Parties mutual understanding that either Party may require approvals or impose formal requirements in connection with a change in the form of an investment, as contemplated by Article 1(d), provided that such approvals or formal requirements are otherwise consistent with the Treaty. A Party may, for example, require the filing of Articles of Incorporation as a condition of a change of an investment to a corporate form.

Paragraph 2 of the Protocol clarifies that the term "without delay" as used in Article III(2) does not necessarily mean instantaneous. The intent is that the Party diligently and expeditiously carry out necessary formalities.

The other U.S. Government agencies that participated in negotiating the Treaty join me in recommending that it be transmitted to the Senate at an early date.

Respectfully submitted.

MADELEINE ALBRIGHT.

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

The Government of the United States of America and the Government of the Hashemite Kingdom of Jordan (hereinafter the Contracting "Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Recognizing that the development of economic and business ties can promote respect for internationally recognized worker rights;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

Have agreed as follows:

ARTICLE I
DEFINITIONS

For the purposes of this Treaty,

(a) "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

(b) "company of a Contracting Party" means a company constituted or organized under the laws of that Contracting Party;

(c) "national" of a Contracting Party means a natural person who is a national of that Contracting Party under its applicable law;

(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

(i) a company;

(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

(iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

(iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including;

copyrights and related rights,

industrial property rights,

patents,

rights in plant varieties,

utility models,

industrial designs or models,

rights in semiconductor layout design,

indications of origin,

trade secrets, including know-how,

confidential business information,

trade and service marks, and

trade names; and

(vi) rights conferred pursuant to law, such as licenses and permits;

any change in the form of an investment does not affect its character as an investment;

(e) "covered investment" means an investment of a national or company of a Contracting Party in the territory of the other Contracting Party;

(f) "state enterprise" means a company owned, or controlled through ownership interests, by a Contracting Party;

(g) "investment authorization" means an authorization granted by the foreign investment authority of a Contracting Party to a covered investment or a national or company of the other Contracting Party;

(h) "investment agreement" means a written agreement between the national authorities of a Contracting Party and a covered investment or a national or company of the other Contracting Party that (i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;

(i) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

(j) "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and

(k) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE II
TREATMENT AND PROTECTION OF INVESTMENT

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Contracting Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment"). Each Contracting Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments.

2. (a) A Contracting Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in the Annex to this Treaty. In adopting such an exception, a Contracting Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.

(b) The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

3. (a) Each Contracting Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Contracting Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.

4. Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.

5. Each Contracting Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

ARTICLE III
EXPROPRIATION AND COMPENSATION THEREFORE

1. Neither Contracting Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") 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 Article II(3).

2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken ("the date of expropriation"); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid -- converted into the currency of payment at the market rate of exchange prevailing on the date of payment -- shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

ARTICLE IV
COMPENSATION FOR DAMAGES DUE TO WAR AND SIMILAR EVENTS

1. Each Contracting Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.

2. Each Contracting Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

(a) requisitioning of all or part of such investments by the Contracting Party's forces or authorities, or

(b) destruction of all or part of such investments by the Contracting Party's forces or authorities that was not required by the necessity of the situation.

ARTICLE V
TRANSFERS

1. Each Contracting Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) compensation pursuant to Articles III and IV, and payments arising out of an investment dispute;

(f) earnings of a national of one Contracting Party earned in the territory of the other Contracting Party in connection with a covered investment of that national; and

(g) other forms of income.

2. Each Contracting Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Each Contracting Party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Contracting Party and a covered investment or a national or company of the other Contracting Party.

4. Notwithstanding paragraphs 1 through 3, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

ARTICLE VI
PERFORMANCE REQUIREMENTS

Neither Contracting Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a governmental permission or authorization):

(a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;

(b) to limit imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;

(c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;

(d) to limit sales by the investment of products or services in the Contracting Party's territory in relation to a particular volume or value of production, exports or foreign exchange earnings;

(e) to transfer technology, a production process or other proprietary knowledge to a national or company in the Contracting Party's territory, except pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws; or

(f) to carry out a particular type, level or percentage of research and development in the Contracting Party's territory.

Such requirements do not include conditions for the receipt or continued receipt of an advantage.

ARTICLE VII
ENTRY, SOJOURN AND EMPLOYMENT OF ALIENS

1. (a) Subject to its laws relating to the entry, sojourn and employment of aliens, each Contracting Party shall permit to enter and to remain in its territory nationals of the other Contracting Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Neither Contracting Party shall, in granting entry under paragraph 1(a), require a labor certification test or other procedures of similar effect, or apply any numerical restriction.

2. Each Contracting Party shall permit covered investments to engage top managerial personnel of their choice, regardless of nationality.

ARTICLE VIII
CONSULTATIONS

The Contracting Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty or to the realization of the objectives of the Treaty.

ARTICLE IX
SETTLEMENT OF DISPUTES BETWEEN ONE CONTRACTING PARTY AND A NATIONAL OR COMPANY OF THE OTHER CONTRACTING PARTY

1. For purposes of this Treaty, an investment dispute is a dispute between a Contracting Party and a national or company of the other Contracting 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. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation.

2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

(a) to the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) in accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b), and that three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:

(i) to the Centre, if the Centre is available; or

(ii) to the Additional Facility of the Centre, if the Centre is not available; or

(iii) in accordance with the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

(b) a national or company, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3(a), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

4. Each Contracting Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under paragraph 3(a)(i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3(a)(iv). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an "agreement in writing."

5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

7. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

8. For purposes of Article 25(2)(b) of the ICSID Convention and this Article, a company of a Contracting Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Contracting Party.

ARTICLE X
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties concerning the interpretation or application of the Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Contracting Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Contracting Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except to the extent these rules are (a) modified by the Contracting Parties or (b) modified by the arbitrators unless either Contracting Party objects to the proposed modification.

2. Within two months of receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairman, who shall be a national of a third state. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply <u>mutatis mutandis</u> to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the arbitral panel shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman and other arbitrators, and other costs of the proceedings, shall be paid for equally by the Contracting Parties. However, the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Contracting Parties.

ARTICLE XI
PRESERVATION OF LEGAL RIGHTS

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favorable than that accorded by this Treaty:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Contracting Parties;

(b) international legal obligations; or

(c) obligations assumed by a Contracting Party, including those contained in an investment authorization or an investment agreement.

ARTICLE XII
DENIAL OF BENEFITS

Each Contracting Party reserves the right to deny to a company of the other Contracting Party the benefits of this Treaty if nationals of a third country own or control the company and:

(a) the denying Contracting Party does not maintain normal economic relations with the third country; or

(b) the company has no substantial business activities in the territory of the Contracting Party under whose laws it is constituted or organized.

ARTICLE XIII
TAXATION

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:

(a) Articles III, IX and X will apply with respect to expropriation; and

(b) Article IX will apply with respect to an investment agreement or an investment authorization.

2. A national or company, that asserts in an investment dispute that a tax matter involves an expropriation, may submit that dispute to arbitration pursuant to Article IX(3) only if:

(a) the national or company concerned has first referred to the competent tax authorities of both Contracting Parties the issue of whether the tax matter involves an expropriation; and

(b) the competent tax authorities have not both determined, within nine months from the time the national or company referred the issue, that the matter does not involve an expropriation.

ARTICLE XIV
MEASURES NOT PRECLUDED BY THIS TREATY

1. This Treaty shall not preclude a Contracting Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude a Contracting Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Contracting Party, or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XV
APPLICATION OF THIS TREATY TO POLITICAL SUBDIVISIONS AND STATE ENTERPRISES OF THE CONTRACTING PARTIES

1. (a) The obligations of this Treaty shall apply to the political subdivisions of the Contracting Parties.

(b) With respect to the treatment accorded by a State, Territory or possession of the United States of America, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.

2. A Contracting Party's obligations under this Treaty shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Contracting Party.

ARTICLE XVI
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2. It shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

2. A Contracting Party may terminate this 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 Contracting Party.

3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.

4. The Annex and Protocol shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Amman this second day of July, 1997, in the English and Arabic languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN:

ANNEX

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; and landing of submarine cables.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below:

fisheries; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; and minerals leases on government land.

3. The Government of the Hashemite Kingdom of Jordan may adopt or maintain exceptions to the obligations to accord national treatment to covered investments in the sectors and with respect to the matters specified below:

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 no more than US $50,000 (or its equivalent in national currency), as adjusted annually for the first five years that the treaty is in force by the annual percentage change in the GDP deflator of the United States of America; ownership of banks and insurance companies; ownership of companies engaged in telecommunications systems operations, but not including activities such as maintenance, equipment production, equipment and spare parts sales, or other telecommunications related services; extraction concessions for minerals, including oil, natural gas and oil shale; farming (not including animal husbandry) on large tracts of land (greater than 500 acres or its equivalent in dunums); ownership of agricultural land; ownership of land in the Jordan valley; and ownership of land for non-business related purposes.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

4. Notwithstanding paragraphs 1 and 3, each Party agrees to accord national treatment to covered investment in the following sectors:

leasing of pipeline rights-of-way on government land.

PROTOCOL

1. With respect to Article I(d), the Contracting Parties confirm their mutual understanding that either Contracting Party may require approvals or impose formal requirements in connection with a change in the form of an investment, provided that such approvals or formal requirements are otherwise consistent with this Treaty.

2. With regard to Article III(2), the term "without delay" does not necessarily mean instantaneous. The intent is that the Contracting Party diligently and expeditiously carry out necessary formalities.

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