

RUSSIAN FEDERATION-UNITED STATES: TREATY CONCERNING
THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT*

[Done at Washington, June 17, 1992]

+Cite as 31 I.L.M. 794 (1992) +

Introductory Note

by
Heribert Golsong

1. The United States recently signed four bilateral investment treaties (BITs) with the Czech and Slovak Federal Republic (October 22, 1991), Kazakhstan (May 19, 1992), Romania (May 28, 1992) and the Russian Federation (June 17, 1992). The U.S.-Russian BIT is reproduced below. All four generally follow the wording of the U.S. model treaty with its emphasis not only on protection of existing or future investments, but also on free access of investments, except in fields especially listed as not falling under the treaty access provision. Nevertheless, there are specific clauses in these treaties which should be noted.

2. All four treaties carry similar provisions on the principle of non-discriminatory treatment governing the entry of investments. The differences are slight. The Romanian treaty (Article II (1)) follows word for word the U.S. model treaty in qualifying "non-discriminatory" by reference to national treatment coupled with most-favored-nation treatment. Exceptions to this undertaking for given sectors of the economy are listed in an Annex to the Treaty, as is done with respect to the other three BITs. Article II of the Russian treaty, however, does not specifically link non-discriminatory treatment of investments to "national" or "most-favored-nation" treatment. It is only with regard to the treatment "pursuant to any exception" that the U.S.-Russian BIT refers to "national" or "third country company" treatment. One has to look at the Protocol to the U.S.-Russian BIT (Paragraph 4 (a)) to find the endorsement of "national treatment."

It is noteworthy that in the U.S.-Russian treaty the United States has accepted, for a period of five years, the requirement of a special investment permission by the Russian Government for "large-scale investments that exceed the threshold amount set forth in the Russian Federation Law on Foreign Investments of July 4, 1991." It should be recalled that Article 16 of the Law requires that "enterprises into which foreign investors contributed in excess of the total of 100 million Rubles" be subject to an approval process by the Russian Government [31 I.L.M. 414 (1992)].

In its exceptions to the principle of unrestricted entry of an investment, contained in the Annex, the Russians list the "use of subsoil and natural resources." The Russian Government, however, confirms in a side letter to the BIT that the Russian law provides for national treatment of foreign investment making use of the subsoil, and that consequently Russia "intends to continue to accord national treatment to investments of nationals and companies of the U.S. with

[Reproduced from the text provided by the U.S. Department of State. The Introductory Note was prepared for International Legal Materials by Heribert Golsong, Counsel to Fulbright & Jaworski, Washington, D.C. and I.L.M. Corresponding Editor for International Investment.

[The Investment Incentive Agreement between the Russian Federation and the United States appears at 31 I.L.M. 777 (1992).]

respect to the use of subsoil and natural resources." This is a significant clarification, without which any U.S. investment in the oil and gas sector may have fallen outside the scope of the BIT. Kazakhstan follows a different approach in the U.S.-Kazakhstan BIT: only "ownership" of land with its subsoil and natural resources remains excluded from the commitment to extend "national" or "third country" treatment to an investment by a U.S. national or company. The "use" of such land with its subsoil and natural resources is not subject to an exception. The Romanian approach also differs. Romania reserves the right to make or maintain limited exceptions to national treatment, i.e., in the field of "ownership and exploitation of natural resources," but only to the extent that such exception is provided for in existing Romanian legislation. Likewise, the Czech and Slovak treaty maintains limited exceptions to the right of investment in the "use of land and natural resources."

3. In general terms and following the U.S. model treaty on this point, all four BITs provide that investments once performed under the BIT shall be treated fairly and equitably and, most importantly, shall enjoy "full protection and security." In line with the U.S. model treaty, three of the treaties add a third requirement, namely that an investment "shall in no case be accorded treatment less than that required by international law" (Article II (2) (a) of the Romania BIT, the Kazakhstan BIT, and the Czech and Slovak BIT), while the Russian treaty provides that the treatment shall not be "inconsistent with the norms and principles of international law." It appears that this clause may have slipped into the U.S. model treaty from Friendship, Commerce and Navigation (FCN) treaties concluded by the United States where the reference to "international law" had a different legal significance. [See I.C.J., Judgment in Case concerning *Electronica Sicula S.p.A. (ELS)*, United States v. Italy, at 28 I.L.M. 1111, 1136-37 (1989)].

4. The general provisions on expropriation and compensation for expropriation are identical in the four BITs. They conform to the wording of the U.S. model treaty and thus endorse the formula of prompt, adequate and effective compensation. There are, however, some additional elements which deserve special mention. The respective provisions require, in case of compensation, a free transfer of such compensation "at the market rate of exchange existing on the date of expropriation" (Article III (1) of the Russian BIT). Since at the time of signature of the BIT there was no single market rate of exchange in Russia, the U.S.-Russian treaty carries with it a side letter stating that in the absence of a unified rate of exchange in the Russian Federation at the time of ratification, the provision in question has to be renegotiated at the request of the United States. The same applies to a market rate for all other transfers, referred to in Article IV (2) of the Russian BIT. There is no corresponding provision in the Kazakhstan treaty (Kazakhstan belongs to the ruble area), nor in the other two treaties.

All four treaties contain a stipulation as to the right of the affected investor to have judicial or administrative recourse to the competent domestic authorities in order to determine whether the expropriation and any compensation therefore "conforms to the principles of international law" (Article III (2) of all four treaties). Why should the domestic authority assess the lawfulness of an expropriation and the compensation not according to the commitments under the BIT, but only under "principles of international law"? Is a treaty commitment tantamount to a "principle" of international law, other than by virtue of the principle "pacta sunt servanda"? It is against the standards of the BIT that arbitration proceedings governed by each of the four BITs have to assess the issue of expropriation and compensation, as well as any other issue of an alleged breach of the investment agreement or of the investment authorization, if any, and of "any right created by [the] Treaty with respect to an investment." By repeating references

to "principles of international law", such principles do not become clearer and less controversial in a global context. The essential provisions of the treaty are the legal standards defined in the treaty itself, which have to be interpreted in light of the object and purpose of the BIT to "codify" specific standards governing investments.

5. Another feature which is common to all four treaties is the agreement on dispute resolution between the investor and the host country by international arbitration. All four BITs provide a variety of arbitration mechanisms the investor may choose in case of need. The choice is straightforward in the case of the Czech and Slovak treaty between the International Centre for Settlement of Investment Disputes (ICSID) and the Additional Facility of ICSID if the Centre is not available. The other three BITs add the possibility of ad hoc arbitration or arbitration under the rules of the UN Commission on International Trade Law (UNCITRAL). The Russian BIT provides in this context that the Secretary-General of ICSID should be the designating authority in case of failing action or agreement between the parties as to the choice of one or more arbitrators, an arrangement that is a significant and much welcomed innovation. It goes without saying that ICSID arbitration can be utilized only if the non-U.S. party to the BIT has ratified the ICSID Convention. This is the case with respect to Romania (ratified October 12, 1975) and the Czech and Slovak Federal Republic (ratified April 8, 1992), while Russia has signed the ICSID Convention on June 16, 1992, but has not yet ratified it.

Two of the four BITs require the seat of an arbitration to be a place in a country which is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), a requirement that is without justification in the case of an ICSID arbitration, since the recognition and enforcement of an ICSID award is not governed by the New York Convention. The Czech and Slovak treaty, precisely for this reason does not carry a similar provision and the Romanian BIT, which offers the full range of choices, correctly limits the requirement for arbitration at a place governed by the New York Convention to arbitration under the "Additional Facility of ICSID" or under UNCITRAL or under any other ad hoc arrangement.

6. The four BITs signed by the United States with countries which had adhered to the socialist market ideology for so many years is yet another indication of the fundamental changes occurring in these countries. The preamble of the U.S.-Russian treaty highlights the change by pointing out that "the growth and performance of market economies rely primarily on the freedom of individual enterprise" and that "economic freedom for the individual includes the right freely to own, sell and otherwise use property." It is the object and purpose of the four BITs to support and strengthen the pursuit of an economic policy based on such beliefs.

7. The United States has signed BITs with 18 countries, nine of which (Bangladesh, Cameroon, Egypt, Grenada, Morocco, Panama, Senegal, Turkey and Zaire) are in force. The nine other countries are Argentina, Czech and Slovak Federal Republic, Congo, Haiti, Kazakhstan, Romania, Russia, Sri Lanka and Tunisia. It is expected that the number of BITs will increase significantly in the near future in view of ongoing negotiations.

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[Done at Washington on 17 June 1992]
 [Authentic texts: English and Russian]
 [Signatures]

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[Understanding regarding exceptions to national treatment for mass media companies; an integral part of the treaty]

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[Related understanding regarding the rate of exchange provided for in art. III]

TREATY BETWEEN THE UNITED STATES OF AMERICA
 AND THE RUSSIAN FEDERATION
 CONCERNING THE ENCOURAGEMENT
 AND RECIPROCAL PROTECTION OF INVESTMENT

The United States of America and the Russian Federation (hereinafter the "Parties"), desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement concerning the encouragement and reciprocal protection of investment will stimulate the flow of capital and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

Recognizing that the development of economic and business ties can contribute to the well-being of the peoples of each Party and promote respect for the internationally recognized rights of working people;

Convinced that the growth and performance of market economies rely primarily on the freedom of individual enterprise;

Believing that economic freedom for the individual includes the right freely to own, buy, sell, and otherwise use property; Have agreed as follows:

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ARTICLE I

1. For the purposes of this Treaty, the term
 - (a) "company of a Party" means any kind of corporation, company, association, enterprise (including cooperatives), or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain, or privately or governmentally owned;
 - (b) "national of a Party" means a natural person who is a national of a Party under its applicable law;
 - (c) "investment" means every kind of investment, in the territory of one Party owned or controlled by nationals or companies of the other Party, such as equity, debt, service and investment contracts, and includes, without limitation:
 - (i) any kind of property including moveable and immoveable property, tangible and intangible property, and including property rights such as mortgages, liens and pledges;
 - (ii) any interests in a company including shares of stock, management or operating rights, or interests in the assets of a company;
 - (iii) a claim to money or a claim to performance having economic value, and associated with an investment;

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102d CONGRESS }
2d Session

SENATE

TREATY DOC.
102-33

TREATY WITH THE RUSSIAN FEDERATION CONCERN-
ING THE ENCOURAGEMENT AND RECIPROCAL PRO-
TECTION OF INVESTMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND
THE RUSSIAN FEDERATION CONCERNING THE ENCOURAGE-
MENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH
PROTOCOL AND RELATED EXCHANGES OF LETTERS, SIGNED AT
WASHINGTON ON JUNE 17, 1992.



JULY 28, 1992.—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

59-118

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1992

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 28, 1992.*

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 United States of America and the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and related exchanges of letters, signed at Washington on June 17, 1992. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

This treaty creates a favorable legal framework for U.S. investment in Russia. By adopting the treaty's high standards for protection of U.S. investment, Russia seeks to encourage the U.S. private sector to invest in Russia. For the United States Government, the treaty serves the goals of aiding Russia's transition to a market economy and of strengthening our bilateral economic ties.

In addition, the treaty is fully consistent with U.S. policy toward international investment. A specific tenet, reflected in this treaty, is that U.S. investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the Parties also agree to international law standards for expropriation and expropriation compensation; free transfers of funds associated with investments; and the option of the investor to resolve disputes with the host government through international arbitration.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with protocol and related exchanges of letters, at an early date.

GEORGE BUSH.

(11)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 21, 1992.

S/S 9215076.

The PRESIDENT,
The White House.

MR. PRESIDENT: I have the honor to submit to you the Treaty Between the United States of America and the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and related exchanges of letters, signed at Washington on June 17, 1992. I recommend that this Treaty, with Protocol and exchanges of letters, be transmitted to the Senate for its advice and consent to ratification.

This is the first bilateral investment treaty (BIT) with a newly independent state of the former Soviet Union to be submitted for Senate consideration. The United States has also signed a BIT with Kazakhstan, and BIT negotiations are underway with several of the other newly independent states of the former Soviet Union.

This Treaty is an integral part of the U.S. effort to assist Russia in its transition to a market economy. It will create favorable conditions for U.S. investment in Russia and, by attracting U.S. private investment, will help further the development of the Russian private sector. The Treaty thus is a landmark in the reforming of Russia into a democratic, market-oriented economy able to join the West in a community of peace and prosperity.

In accomplishing this goal, the Treaty commits Russia to provide U.S. investment the following benefits. Within five years of entry into force of the Treaty, Russia will abolish its screening of U.S. investment (except in certain sectors), and will in the interim raise the screening threshold by more than 500 percent. Once established, U.S. investment and associated activities are ensured a level playing field; that is, national treatment, with a few enumerated exceptions. U.S. investment is guaranteed free transfers of associated funds as well as the highly prized right with regard to U.S. investments in Russia to international arbitration of disputes. The Treaty also guarantees U.S. investors freedom from performance requirements and the right to hire top managers of their choice.

The Soviet Union had previously signed investment protection agreements with a number of OECD countries, including Canada, Germany, and the United Kingdom. This Treaty, however, offers more comprehensive protections than those agreements.

The United States has also signed BITs with Argentina, Bangladesh, Cameroon, the Congo, the Czech and Slovak Federal Republic, Egypt, Grenada, Haiti, Kazakhstan, Morocco, Panama, Roma-

nia, Senegal, Sri Lanka, Tunisia, Turkey and Zaire; and a treaty containing the BIT elements with Poland. The Department of State and the Office of the United States Trade Representative jointly lead BIT negotiations, with assistance from the Departments of Commerce and Treasury.

THE U.S.-RUSSIA TREATY

SUMMARY OF KEY PROVISIONS

The Treaty with Russia satisfies the main BIT objectives, which are:

Investments of nationals and companies of either Party in the territory of the other Party (investments) receive the better of national treatment or most-favored-nation (MFN) treatment (nondiscriminatory treatment), both on and after establishment, subject to certain specified exceptions;

Investments are guaranteed freedom from performance requirements, which may include commitments to use local products or to export local goods;

Companies which are investments may hire top managers of their choice, regardless of nationality;

Expropriation can occur only in accordance with international law standards: in a nondiscriminatory manner; for a public purpose; and upon payment of prompt, adequate, and effective compensation;

Investments are guaranteed the unrestricted transfer of funds in a freely usable currency at a market rate of exchange; and

Nationals and companies of either Party, in investment disputes with the host government, have access to binding international arbitration, without first resorting to domestic courts. Described below are significant provisions in the U.S.-Russia Treaty which either differ from some past U.S. BITs or which warrant special mention.

RIGHT OF ESTABLISHMENT

The U.S. model BIT requires that investors of each Party enjoy the right to establish new investments in the territory of the other Party on a national treatment basis, subject to specified sectoral exceptions. As a result of these negotiations, the Russians have undertaken the obligation to revise their law and practice to meet this high standard.

The Russian foreign investment law, at present, requires that all foreign investment of over 100 million rubles receive the advance approval of the Council of Ministers. The Protocol states that this pre-approval or screening must be eliminated within five years of the Treaty's entry into force. Further, the Protocol provides that in no event shall such screening be used for the purpose of limiting competition, or discouraging or prohibiting U.S. investments in sectors not listed in the Annex). In addition, the Russian Government pledged to change its screening law within one year of the Treaty's entry into force and to apply it only to such large-scale investments as were originally intended by the law at the time of its

adoption. Thus, from the second through the fifth year that the Treaty is in force, U.S. investment up to approximately 56 million dollars will not be subject to screening, compared to the current screening threshold of 800 thousand dollars.

ASSOCIATED ACTIVITIES OF AN INVESTMENT

A level playing field is essential in order for investment in Russia to thrive. Accordingly, the BIT with Russia contains certain provisions—Article I, paragraph 1(e), and paragraph 3 of the Protocol—designed to resolve problems that U.S. businesses traditionally have faced in centrally-controlled, non-market economies. All U.S. investment treaties with the countries of Eastern Europe and the former Soviet Union include similar provisions.

These provisions secure for U.S. nationals and companies nondiscriminatory treatment with respect to an expanded and detailed list of activities associated with their investments. These include: receipt of registrations, licenses, and permits, which are to be issued expeditiously in any event; access to financial institutions and credit markets; access to their funds held in financial institutions; the importation and installation of business equipment; advertising and the conduct of market studies; the appointment of commercial representatives; direct marketing; and access to public utilities, commercial rental space, raw materials and services of all types, at nondiscriminatory prices. The right to nondiscriminatory treatment in these activities requires that Russia grant U.S. nationals and companies treatment no less favorable than that granted to local enterprises, including those that remain under state ownership or control.

TRANSFERS

An exchange of letters, at the time of signature of the BIT, forms an agreement between the two Governments and entered into force on June 17, 1992. The agreement gives the United States the right to initiate re-negotiation of the transfers provisions if a unified rate of exchange is not in effect in Russia when the BIT is submitted to the Russian Supreme Soviet for approval. Russia announced the introduction of a unified rate of exchange on July 1, 1992 but it is not fully in effect to date. Thus, if a unified rate is not in effect prior to submission of the Treaty to the Supreme Soviet, the United States has protected its right to initiate the re-negotiation of these provisions and seek appropriate protections for U.S. investors. This agreement is enclosed with this report for the information of the Senate.

EXPROPRIATION

Under the Treaty, the United States has secured Russia's commitment to be bound by the high standards of international law in matters of expropriation.

The U.S.-Russia Treaty, as do all U.S. BITs, ensures that any indirect or direct taking will result in prompt, adequate and effective compensation. The Treaty specifies that compensation shall include interest from the date of the expropriation until payment of the compensation. It states that such interest rate shall be at a com-

mercial rate established on a market basis, which does not fix a certain rate but rather allows for the selection of a commercially reasonable rate.

DISPUTE SETTLEMENT

Of utmost importance to U.S. investors, the Treaty ensures fair and just treatment in the event of an investment dispute by securing Russia's agreement to submit such disputes to international arbitration at the option of the U.S. investor.

This Treaty, as do all U.S. BITs, provides that an investment dispute between a Party and a national or company of the other Party, including a dispute involving an investment authorization or the interpretation of an investment agreement, may be submitted to international arbitration six months after the dispute arose. Exhaustion of local remedies is not required. The Treaty identifies several procedures for arbitration, at the investor's option: the International Centre for the Settlement of Investment Disputes ("ICSID"), upon Russia's adherence to the ICSID Convention, which Russia has signed but not yet ratified; the ICSID Additional Facility; or *ad hoc* arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

OTHER PROVISIONS

U.S. bilateral investment treaties allow for sectoral exceptions to national and MFN treatment. The U.S. exceptions are designed to protect governmental regulatory interests and to accommodate the derogations from national treatment and, in some cases MFN treatment, in existing federal and state law. In the Russian BIT negotiations, the Russian Government confirmed that its exceptions are also generally based on existing laws and regulations.

The Treaty guarantees, with some enumerated exceptions, that U.S. investments and associated activities in Russia will receive the better of national or MFN treatment. The Russian exceptions to national treatment generally relate to land and natural resources and other matters, for example, power production, state loans, banking and mass media. These exceptions, listed in the Annex, do not mean that the entire sector is closed to foreign investment; rather that some nationality-based restrictions may exist now or in the future. However, with regard to the Russian exceptions for mass media and natural resources, there are no current restrictions nor are any future restrictions presently contemplated, as noted in exchanges of letters.

In order to protect the United States against "free riders," this Treaty, consistent with the model BIT, does not oblige a Party to extend to the other Party's investments the advantages accorded to third-country investments by virtue of binding obligations that derive from full membership in a free trade area or customs union. In addition, this Treaty recognizes that the historical reality of Russia's intertwined relationships with the other former republics of the Soviet Union, while not formally either free trade areas or customs unions, are nevertheless relevant to Russia's MFN obligations to U.S. investments under the Treaty.

IX

The definition of investment in the Treaty includes all investments "owned or controlled" by nationals or companies of a Party in the territory of the other Party. In response to the Russian Government's request for a definition of what constitutes "control" of an investment, the Protocol (paragraph 2) sets forth three illustrative criteria to be used in determining direct or indirect control: equity or other financial interest in the investment; influence over management or operation of the investment; and influence over the composition of the investment's board of directors or other managing body. The Protocol also recognizes that the question of control will depend on the facts of each case.

Article XIII, paragraph 1, stipulates that the Treaty shall apply to investments existing at the time of entry into force as well as to investments made thereafter. With respect to this Article, paragraph 9 of the Protocol states that "* * * the Parties note that, according to customary international law on the law of treaties, unless a different intention appears from the treaty or is otherwise established, its 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 of the entry into force of the treaty with respect to that Party."

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

Respectfully submitted,

LAWRENCE S. EAGLEBURGER.

Enclosure: As stated.

WASHINGTON, *June 17, 1992.*

His Excellency, YEGOR T. GAYDAR,
Prime Minister, Russian Federation.

DEAR MR. PRIME MINISTER: In connection with the signing on this date of the Treaty Between the United States and the Russian Federation Concerning the Encouragement and Mutual Protection of Investment (the "Treaty"), I have the honor to confirm the following understanding reached by our Governments (the "Parties") with respect to the rate of exchange provided for in Article III, paragraph 1, and Article IV, paragraph 2, of the Treaty:

If there is not a unified rate of exchange in effect in the Russian Federation by the time the Russian Party submits this Treaty for ratification, then the Parties agree, at the request of the United States Party, to re-negotiate these provisions.

I have the further honor to propose that this letter, and your letter of confirmation in reply, shall constitute an agreement between our Governments.

Sincerely yours,

JULIUS L. KATZ,
Acting United States Trade Representative.

X

DEPARTMENT OF STATE,
OFFICE OF LANGUAGE SERVICES,
TRANSLATING DIVISION,
JUNE 17, 1992.

LS No. 138718A, JS/AO, Russian.

DEAR MR. AMBASSADOR: I have the honor to confirm receipt of your letter of this date, which reads as follows:

[The text of the Russian translation of this letter agrees in all substantive respects with the original English.]

I have the honor to confirm that the aforementioned understanding is shared by my Government and that this letter and your letter of this date constitute an agreement between our governments.

Respectfully,

YEGOR T. GAYDAR.

TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE RUSSIAN FEDERATION
CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENT

The United States of America and the Russian Federation (hereinafter the "Parties"), desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement concerning the encouragement and reciprocal protection of investment will stimulate the flow of capital and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

Recognizing that the development of economic and business ties can contribute to the well-being of the peoples of each Party and promote respect for the internationally recognized rights of working people;

Convinced that the growth and performance of market economies rely primarily on the freedom of individual enterprise;

Believing that economic freedom for the individual includes the right freely to own, buy, sell, and otherwise use property;

Have agreed as follows:

ARTICLE I

1. For the purposes of this Treaty, the term
- (a) "company of a Party" means any kind of corporation, company, association, enterprise (including cooperatives), or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain, or privately or governmentally owned;
- (b) "national of a Party" means a natural person who is a national of a Party under its applicable law;
- (c) "investment" means every kind of investment, in the territory of one Party owned or controlled by nationals or companies of the other Party, such as equity, debt, service and investment contracts, and includes, without limitation:
- (i) any kind of property including moveable and immoveable property, tangible and intangible property, and including property rights, such as mortgages, liens and pledges;
 - (ii) any interests in a company including shares of stock, management or operating rights, or interests in the assets of a company;
 - (iii) a claim to money or a claim to performance having economic value, and associated with an investment;

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- (iv) Intellectual property which includes, inter alia, rights relating to:
literary and artistic works, including sound recordings,
inventions in all fields of human endeavor,
industrial designs,
integrated circuit layout designs,
know-how, trade secrets, and confidential business information, and
trademarks, service marks, and trade names; and
- (v) any right conferred by law or contract relating to an investment, or by virtue of any licenses and permits pursuant to law;
- (d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or returns in kind, such as in the form of goods or services;
- (e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity

shares and other securities; and the purchase of foreign exchange for imports. "Associated activities" also include, without limitation:

- (i) the granting of franchises or rights under licenses;
- (ii) the receipt of registrations, licenses, permits and other approvals necessary for the conduct of commercial activity (which shall in any event be issued expeditiously, as provided for in the legislation of the Parties);
- (iii) access to financial institutions in any currency, and to credit and currency markets;
- (iv) access to funds held in financial institutions;
- (v) the importation and installation of equipment necessary for the normal conduct of business affairs, including, but not limited to, office equipment and automobiles, and the export of any equipment and automobiles so imported;
- (vi) the dissemination of commercial information;
- (vii) the conduct of market studies;
- (viii) the appointment of commercial representatives, including agents, consultants, and distributors (i.e., mediators in the distribution of products which they

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themselves did not produce), and the serving as the same, and their participation in trade fairs and other promotional events;

(ix) the marketing of goods and services, including through internal distribution and marketing systems, as well as by advertising and direct contact with nationals and companies; and

(x) payment for goods and services in local currency;

(f) "investment agreement" means an agreement between a Party (or its agencies or instrumentalities) and a national or company of the other Party concerning an investment;

(g) "nondiscriminatory treatment" means treatment that is at least as favorable as the better of national treatment or most-favored-nation treatment;

(h) "national treatment" means treatment that is at least as favorable as the better of the most favorable treatment accorded by a Party to state enterprises or to other companies or nationals of that Party in like circumstances;

(i) "most-favored-nation treatment" means treatment that is at least as favorable as that accorded by a Party to companies or nationals of third countries in like circumstances.

2. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

3. Each Party reserves the right to deny to a company of the other Party the advantages of this Treaty if (a)(i) nationals of any third country control such company and (ii) that company has no substantial business activities in the territory of the other Party, or (b) such company is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

ARTICLE II

1. Each Party shall permit and treat investment, and activities associated therewith, on a nondiscriminatory basis, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exception to national treatment shall, except as stated

otherwise in the Annex, not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

2. (a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security, and shall in no case be accorded treatment inconsistent with the norms and principles of international law.

(b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposition of investments. For purposes of dispute resolution under Articles VI and VII, a particular measure may be found to be arbitrary or discriminatory notwithstanding the fact that a party to the dispute has had or exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.

(c) Each Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Party.

3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering, or advising

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on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are owned or controlled by nationals or companies of the other Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

5. Neither Party shall impose any measure as a condition of establishment, expansion, or maintenance of investments, which requires or enforces commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments and authorizations relating thereto and investment agreements.

7. Each Party shall make public in the customary form all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

8. The treatment accorded by the United States of America to investments and associated activities under the provisions

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of this Article shall in any State, Territory, or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities 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.

9. The obligations to accord most-favored-nation treatment under this Treaty shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in any existing or future free trade area or customs union.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a nondiscriminatory 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, paragraph 2. Compensation shall be

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equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be paid without delay; include interest from the date of expropriation at a commercial rate established on a market basis; be fully realizable; and be freely transferable at the market rate of exchange existing on the date of expropriation.

2. Consistent with Article VI, paragraph 3, a national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law, and to decide all other matters relating thereto.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or other similar situations shall be accorded nondiscriminatory treatment by such other Party as regards restitution, indemnification, compensation, or any other measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute (as defined in Article VI); (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an existing investment. Companies or nationals of each Party shall be permitted to convert such transfers into the freely convertible currency of their choice.
2. Transfers shall be made in a freely convertible currency and, except as provided in Article III, paragraph 1, at the market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, either Party may:

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(a) maintain laws and regulations requiring reports of currency transfer and imposing income taxes by such means as a withholding tax applicable to dividends or other transfers; and

(b) protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

The 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.

ARTICLE VI

1. For the purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement; (b) the interpretation or application of any authorization granted by a Party's foreign investment authority; or (c) the existence and consequences of an alleged breach of any right conferred or created by this Treaty with respect to an investment.

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2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third party procedures. Subject to paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures; any dispute-settlement procedures, including those relating to expropriation, specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

3. (a) At any time after six months from the date on which the dispute arose, a national or company of a Party may choose to consent in writing to the submission of an investment dispute to the International Centre for the Settlement of Investment Disputes (the "Centre"), in the event that the Russian Federation becomes a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States done at Washington, March 18, 1965 (the "Convention"); or to the Additional Facility of the Centre, if either Party is not a party to the Convention; or pursuant to the Arbitration Rules of the United Nations Commission on

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International Trade Law ("UNCITRAL Rules"); or pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute. Once the national or company concerned has so consented, either party to the dispute may institute such proceeding provided:

- (i) the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute-settlement procedures; and
- (ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the

Party that is a party to the dispute.

If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute for settlement by conciliation or binding arbitration:

- (i) to the Centre and to the Additional Facility of the Centre; and
- (ii) to an arbitral tribunal established under the UNCITRAL Rules, as those Rules may be modified by mutual agreement of the parties to the dispute (the Appointing Authority referenced therein to be the Secretary-General of the Centre).

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(c) Conciliation or arbitration of disputes under subparagraph (b)(i) of this paragraph 3 shall be done applying the provisions of the Convention and the Regulations and Rules of the Centre, or of the Additional Facility as the case may be.

(d) The place of any arbitration conducted under this Article shall be a country which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(e) Each Party undertakes to carry out without delay the provisions of any award resulting from an arbitration held in accordance with this Article. Further, each Party shall provide for the enforcement in its territory of such arbitral awards.

4. In any proceeding involving an investment dispute, a party shall not assert, as defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an

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arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Rules, except to the extent modified by the Parties, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply to the appointment of the arbitral panel, except that the appointing authority referenced in those rules shall be the Secretary-General of the Permanent Court of Arbitration.

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 Tribunal 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 of the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE VIII

The provisions of Article VI and VII shall not apply to a dispute arising

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- (a) under the export credit, guarantee, or insurance programs of the Export-Import Bank of the United States, or
- (b) under other governmental credit, guarantee, or insurance programs of either Party, pursuant to which the parties to the dispute have agreed to other means of settling disputes.

ARTICLE IX

This Treaty shall not derogate from

- (a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party,
- (b) international obligations, or
- (c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or

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security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

1. Each Party shall strive to accord fair and equitable treatment with respect to taxation of the investments of nationals and companies of the other Party. The Parties shall encourage their respective nationals and companies to avail themselves of the competent authority procedures under any convention for the avoidance of double taxation between the Parties for the resolution of any dispute concerning taxes.

2. The provisions of this Treaty (including Article II) shall not apply to taxes, except as follows. Articles III, IV and VI may apply to taxes imposed by a Party, but only if such taxes either:

- (a) have an effect equivalent to expropriation under Article III, or affect a Party's obligations under Article IV; or
- (b) affect a Party's observance and enforcement of the terms of an investment agreement or authorization granted by a Party's foreign investment authority.

TAXES

Sub-art. is still covered a concession Tax - even concession is in Art. II (p. 7).

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3. The provisions of Article VI shall, however, not apply if the dispute concerning matters mentioned in paragraph 2(a) and (b) of this Article is subject to the dispute settlement provisions of a convention for the avoidance of double taxation between the Parties and has been settled in a reasonable period of time.

ARTICLE XII

This Treaty shall apply to the political subdivisions of the Parties.

ARTICLE XIII

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 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made thereafter.
2. Either Party may, by giving at least one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.
3. With respect to investments made prior to the date of termination of this Treaty and to which this Treaty otherwise

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applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

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

DONE in duplicate at Washington on the seventeenth day of June, 1992, in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:



FOR THE RUSSIAN
FEDERATION:



ANNEX

1. Consistent with Article II, paragraph 1, the Russian Federation reserves the right to make and maintain limited exceptions to national treatment in the sectors or matters it has indicated below:

electric power production (including nuclear and all other power plants belonging to the United Energy System); production of uranium and other fissionable materials and their products; ownership of land and use of subsoil and natural resources; marine and inland sea fisheries (including those within the exclusive economic zone); construction, installation, operation, and maintenance of communications lines; ownership and brokerage of real estate; mining and processing of ores of precious metals and rare earth metals, and precious stones (including rough stones); air transport, ocean and river shipping, and related services; state loans (credits); state grants (subsidies); banking activities; brokerage and dealerships in securities and currency values, and related services; ownership of state securities; acquisition of state and municipal property in the process of privatization; insurance; mass media companies; private detective and security services.

2. Consistent with Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to national treatment in the sectors or matters it has indicated below:

air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real property; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources; mining on the public domain; primary dealership in United States government securities; maritime services and maritime-related services.

3. Consistent with Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to most-favored-nation treatment in the sectors or matters it has indicated below:

mining on the public domain; maritime services and maritime-related services; primary dealership in United States government securities; ownership of real property.

PROTOCOL

1. With respect to Article I, paragraph 1(a), the Parties confirm their mutual understanding that "company of a Party" includes a partnership organized under the laws of a Party that has legal personality or legal capacity under the laws of such Party.
2. (a) With respect to Article I, paragraph 1(c), Article I, paragraph 3, and Article II, paragraph 4, the Parties confirm their mutual understanding that investments "controlled" include investments controlled directly by nationals or companies of a Party as well as investments controlled indirectly by such nationals or companies through nationals or companies of a third country. The foregoing also applies to investments "owned" as used in Article I, paragraph 1(c) and Article II, paragraph 4.
 - (b) The Parties acknowledge that the question of control will depend on the factual circumstances of the particular case. In determining control, consideration should be given, inter alia, to whether there is:
 - (i) a substantial interest in the investment, taking into account the extent of equity or other financial interest:

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(ii) the ability to exercise substantial influence over the management and operation of the investment; or

(iii) the ability to exercise substantial influence over the composition of the board of directors or over the composition of any other managing body.

3. With respect to Article I, paragraph 1(e), the Parties confirm their mutual understanding that "associated activities" also include access to public utilities, public services, commercial rental space, raw materials, inputs, and services of all types, all at nondiscriminatory prices if the prices are determined by governmental authorities.

4. The Parties wish to confirm the following understanding relating to Article II, paragraph 1 of the Treaty with respect to the entry of investments:

(a) Notwithstanding the requirement in Article II, paragraph 1 to accord national treatment with respect to the entry of investments, the Russian Federation may, for a period not to exceed five years from the entry into force of this Treaty, require that Russian Federation Government permission be obtained for large-scale investments that exceed the threshold amount set forth in the Russian Federation Law on Foreign Investments of July 4, 1991 (the "Law"). The Russian Federation, in determining whether to grant or deny such

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permission, shall do so in conformity with all other provisions of this Treaty. Further, such permission shall not be denied for the purpose of limiting competition, or discouraging or prohibiting investment by nationals or companies of the United States in particular sectors or matters (except as a consequence of the exceptions to national treatment set forth in the Annex).

(b) The Russian Federation shall ensure that, within one year from the entry into force of this Treaty, the threshold amount for investments requiring Russian Federation Government permission under the Law will be changed so that such permission will be required only for such large-scale investments as were intended by the Law on the date of its adoption.

5. (a) With respect to Article II, paragraph 9, the Parties acknowledge that certain special economic arrangements and relations exist between the Russian Federation and the other states that formerly constituted the Soviet Union. These arrangements and relations result from the de facto continuation of relationships formed previously among the former republics of the Soviet Union. The Parties acknowledge that, as a consequence of such existing arrangements and relations, the investments of the nationals or companies of such states in the territory of the Russian Federation may be

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accorded national treatment in those sectors or matters where the Russian Federation has specifically reserved the right to deny national treatment to investments of nationals and companies of the United States.

(b) With respect to the foregoing, the Parties acknowledge that the obligation to accord most-favored-nation treatment shall not apply to the advantages described above which result from economic arrangements and relations in effect, and which apply to investments existing, on the date of the entry into force of the Treaty.

(c) The Parties confirm their mutual understanding that any advantages arising under future arrangements other than those described in subparagraph (a) of this paragraph 5 entered into between the Russian Federation and any other state of the former Soviet Union after the date of the entry into force of this Treaty may give rise to an exception to the Russian Federation's obligation to accord most-favored-nation treatment to investments of nationals and companies of the United States only if such future arrangements satisfy the requirements of Article II, paragraph 9. In this event, the Parties further agree to discuss holding consultations to determine whether a mutually beneficial basis exists for according any such advantages to investments of nationals or companies of the United States.

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6. With respect to Article II, paragraph 9, the Parties confirm that the exclusion from most-favored-nation treatment obligations shall apply also to advantages accorded by the United States by virtue of its binding obligations under any multilateral international agreement concluded under the framework of the GATT after the signature of this Treaty. The Parties further agree to discuss holding consultations to determine whether a mutually beneficial basis exists for accordng any such advantages to investments of nationals or companies of the Russian Federation.
7. With respect to an investment dispute under Article VI, the Parties confirm that any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof, and which immediately before the occurrence of the event or events giving rise to the dispute was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party.
8. With respect to Article X, paragraph 1, the Parties confirm their mutual understanding that whether a measure is undertaken by a Party to protect its essential security interests is self-judging.
9. With respect to Article XIII, paragraph 1, the Parties note that, according to customary international law on the law of treaties, unless a different intention appears from the

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treaty or is otherwise established, its 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 of the entry into force of the treaty with respect to that Party.

10. With respect to the entry in paragraph 1 of the Annex concerning State grants, the Parties acknowledge that, at the present time, certain subsidies continue to be provided to Russian companies as a consequence of previously established State plans and the participation of these companies in the fulfillment of State orders ("Plan Subsidies"). The Parties acknowledge the transitional nature of Plan Subsidies. The Russian Federation shall strive to ensure that Plan Subsidies will be reduced to a minimum. The Russian Federation confirms that Plan Subsidies will not be given for the purpose of, and shall strive to ensure that they do not have the effect of, adversely affecting conditions of competition or discouraging or prohibiting investment by nationals or companies of the United States in particular sectors.