



Trade Guide: Bilateral Investment Treaties

BILATERAL INVESTMENT TREATIES

What are these Treaties and what do they do?

The formal name for this type of agreement is: “Treaty Between the Government of the United States of America and the Government of (Country) Concerning the Encouragement and Reciprocal Protection of Investment.” They are commonly called Bilateral Investment Treaties or BITs.

A Bilateral Investment Treaty is designed to ensure that U.S. investors receive national or most favored nation treatment (whichever is better) in the other signatory country. It protects U.S. investors against performance requirements, restrictions on transfers and arbitrary expropriation. BITs set forth procedures for the settlement of disputes. By providing a more open and secure environment for investment, they also promote private sector development.

The Office of the United States Trade Representative and the Department of State jointly lead BIT negotiations, with assistance from the Department of Commerce and the Treasury. BITs must receive the advice and consent of the Senate before they are ratified and enter into force. They remain in force for ten years and then continue in force unless one of the Parties terminates them. One year’s written notice to the other Party is required for termination.

BITs are currently in force between the United States and the following 39 countries. (Dates of entry into force are in parentheses.)

To read the text of each BIT, you may go to TANC’s database of BITs currently in-force.

Albania(1998)

Argentina (1994)

Armenia (1996)

Azerbaijan (2001)

Bahrain (2001)

Bangladesh (1989)

Bolivia (2001)

Bulgaria (1994)

Cameroon (1989)

Congo, Democratic Republic (Kinshasha) (1989)

Congo, Republic (Brazzaville) (1994)

Croatia (2001)

Czech Republic (1992)*

Ecuador (1997)

Egypt (1992)

Estonia (1997)

Georgia (1997)

Grenada (1989)

Honduras (2001)

Jamaica (1997)

Jordan (2003)

Kazakhstan (1994)

Kyrgyzstan (1994)

Latvia (1996)

Lithuania (2001)

Moldova (1994)

Mongolia (1997)

Morocco (1991)

Mozambique (2005)

Panama (1991)

Amendment to Panama BIT (2000)

Poland (1994)

Romania (1994)

Rwanda (2012)

Senegal (1990)

Slovakia (1992)*

Sri Lanka (1993)

Trinidad & Tobago (1996)

Tunisia (1993)

Turkey (1990)

Ukraine (1996)

Uruguay (2006)

* The Treaty that entered into force in 1992 for the Czech and Slovak Federal Republic has been in force for the Czech Republic and Slovakia as separate states since January 1, 1993.

Treaties have been concluded with the following countries but have not yet entered into force: Belarus, El Salvador, Haiti, Nicaragua, Russia and Uzbekistan. The U.S. Government is also negotiating additional Bilateral Investment Treaties. As Treaties enter into force, they will be added to the TANC's web site.

Who benefits from these Treaties?

If a Bilateral Investment Treaty is in effect between the United States and another country, any U.S. company or national investing or planning to invest in that country can benefit from that Treaty. A unique feature of U.S. BITs is that protection for investors is provided from the pre-investment phase through the life of the investment.

How can these Treaties help my company?

U.S. Bilateral Investment Treaties are not identical, and investors interested in the benefits provided by a specific BIT should examine the complete text.

Definition of Investment

“Investment” is defined in most U.S. BITs as every kind of investment owned or controlled, directly or indirectly, by a national or company, including:

- a company;
- shares, stock and other forms of equity participation in a company;
- bonds, debentures and other forms of debt interest in a company;
- contractual rights (for example: concessions; rights under turnkey, construction or management contracts; rights under production or revenue-sharing contracts);
- tangible property, including real property;
- intangible property, including rights such as leases, mortgages, liens and pledges;
- intellectual property, including: copyrights and related rights, patents, rights in plant varieties, industrial designs, rights in semiconductor layout designs, trade secrets (including know-how and confidential business information), trade and service marks, and trade names; and
- rights conferred pursuant to law, such as licenses and permits.

Benefits to Investors

The following are the main benefits that are offered to U.S. investors by Bilateral Investment Treaties:

National and MFN Treatment. U.S. BITs oblige each Party to the Treaty to treat investors from the other Party as well as it treats domestic investors in like circumstances (national treatment), or as well as it treats any other foreign investor in like circumstances (most favored nation or MFN treatment), whichever is better.

Each Party to a BIT has the right to make or maintain exceptions to the obligation to provide national or MFN treatment. These exceptions are specified in a protocol or annex to the Treaty. For example, air transportation, banking, insurance, broadcasting and the provision of common carrier telephone services were some of the exceptions made by the U.S. in the BIT with Argentina. Air transportation, uranium mining, insurance and fishing were among the exceptions made by Argentina. Investors should consult the full text of the BIT with the country where they plan to make their investment to determine whether sectors in which they have an interest have been exempted from national or MFN treatment. They should also consult with local experts to determine whether restrictions on foreign investment exist within certain sectors.

Expropriation. U.S. Bilateral Investment Treaties provide clear limits on the ability of a country to expropriate an investment. They state that expropriation must be for a public purpose. It must be carried out in a non-discriminatory manner, consistent with international law. Parties to a BIT are obliged to pay prompt, adequate, and effective compensation in the event of an expropriation.

Transfers. U.S. BITs guarantee investors the right to transfer funds into and out of the host country, without delay, in a freely usable currency using a market rate of exchange. This guarantee covers all transfers related to an investment, including interest, proceeds from liquidation, repatriated profits and infusions of additional financial resources after the initial investment has been made.

Performance Requirements. U.S. BITs limit the ability of host governments to impose performance requirements as conditions for establishing or maintaining an investment. The scope of these provisions has widened in more recent BITs. Until 1994 our model text contained an obligation not to impose mandatory local content, export or similar requirements. More recent BITs have also prohibited mandates to transfer technology, restrictions on imports or sales (for example, limits on imports or sales in relation to the volume or value of an investor's production, exports or foreign exchange earnings) and requirements to conduct research and development in the host country.

Key Personnel. U.S. BITs require each Party, subject to its individual immigration laws, to allow investors to enter and reside in its territory to make or operate investments. Some U.S. BITs specifically prohibit certain limitations on visas for investors. They also prohibit nationality-based restrictions on the hiring of top managerial personnel for an investment.

Dispute Settlement

U.S. Bilateral Investment Treaties give investors or their subsidiaries the right to submit an investment-related dispute with the government of the other Party to binding international arbitration. The investor may seek settlement in local courts, but once resolution of a dispute is sought in local courts, international arbitration can no longer be used as a method for resolving that dispute. The investor cannot be required to use the country's domestic courts or to obtain the consent of the treaty partner government to submit the dispute to arbitration. The model BIT also provides for state-to-state consultations and, if necessary, binding arbitration as a means of resolving a dispute regarding differences in interpretation or application of a Bilateral Investment Treaty.

The dispute settlement procedures in a BIT generally do not apply retroactively. In other words the dispute settlement mechanisms — as well as the other obligations — in a BIT do not apply to any act or fact which took place before the BIT entered into force. However, if the act or fact began in the past but continues after the BIT entered into force, the BIT may apply.

Can the U.S. Government help me if I have a problem?

Yes. If you experience difficulties relating to an investment in a country that has entered into a Bilateral Investment Treaty with the United States because that country is not acting in accordance with its obligations under that Treaty, contact the Office of Trade Agreements Negotiations and Compliance's [Report a Trade Barrier Hotline](#) at the U.S. Department of Commerce. The Center can help you understand your rights under the Treaty and put you in touch with U.S. Government officials who can advise you of the availability of appropriate local legal counsel, and can help you contact host government officials who may be in a position to facilitate a resolution of your problem. If appropriate, the U.S. Government can also make inquiries with the government of the other country involved that could help you resolve your problem.

How can I get more information?

[Complete texts](#) of all U.S. Bilateral Investment Treaties are available on the web site of the Office of Trade Agreements Negotiations and Compliance (TANC) of the U.S. Department of Commerce.

If you have questions about this Agreement or how to use it, contact TANC through its [Report a Trade Barrier Hotline](#).