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Latvia Bilateral Investment Treaty

Signed January 13, 1995; Entered into Force November 26, 1996; Amended May 1, 2004

Prior to the accession of Latvia to the European Union, this treaty was amended to reduce the possibility of conflict with the laws of the European Union. [[View Amending Protocol](#)]

104th CONGRESS 1st Session **L**

SENATE TREATY Doc. 104-12

INVESTMENT TREATY WITH LATVIA **L**

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF LATVIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT WITH ANNEX AND PROTOCOL, SIGNED, AT WASHINGTON ON JANUARY 13, 1995

JULY 10, 1995.-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

U.S. GOVERNMENT PRINTING OFFICE

99-118 WASHINGTON : 1995

LETTER OF TRANSMITTAL

THE WHITE HOUSE, July 10, 1995. **L**

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 Republic of Latvia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 13, 1995. 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 Latvia will protect U.S. investors and assist Latvia in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthening the development of the 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 international law standards for expropriation and compensation for expropriation; free transfer of funds associated with investments; freedom of investments from performance requirements; fair, equitable, and most-favored-nation treatment; and the **L**

investors or investment treaties free of choice 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 Annex and Protocol, at an early date.

WILLIAM J. CLINTON.

me

LETTER OF SUBMITTAL

DEPARTMENT OF STATE, W

Washington, June 16, 1995.

The PRESIDENT,

The White House.

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 Republic of Latvia for the Encouragement, and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on January 13, 1995. 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 Latvia is based on the view that an open investment policy contributes to economic growth. This Treaty will assist Latvia in its efforts to develop its economy by creating conditions more favorable to U.S. private investment and thus strengthening the development of the private sector. It is U.S. policy, however, to advise potential treaty partners during BIT negotiations that conclusion of a BIT does not necessarily result in immediate increases in private U.S. investment flows.

To date, twenty-one BITs are in force for the United States-with Argentina, Bangladesh, Bulgaria, Cameroon, the Congo, the Czech Republic, Egypt, Grenada, Kazakhstan, Kyrgyzstan, Moldova, Morocco, Panama, Poland, Romania, Senegal, Slovakia, Sri Lanka, Tunisia, Turkey, and Zaire. In addition to the Treaty with Latvia, the United States has signed, but not yet brought into force, BITs with Albania, Armenia, Belarus, Ecuador, Estonia, Georgia, Haiti, Jamaica, Mongolia, Russia, Trinidad and Tobago, Ukraine and Uzbekistan.

The Office of the United States Trade Representative and the Department of State jointly lead this BIT negotiation, with assistance from the Departments of Commerce and Treasury and the Overseas Private Investment Corporation.

THE U.S.-LATVIA TREATY

The Treaty with the Republic of Latvia is based on the 1992 U.S. prototype BIT, and achieves all of the prototype's objectives, which are:

-All forms of U.S. investment in the territory of the Republic of Latvia are covered.

-Investments receive the better of national treatment or most-favored-nation (MFN) treatment both on establishment and thereafter, subject to certain specific exceptions.

-Performance requirements may not be imposed upon or enforced against investments.

-Expropriation can occur only in accordance with international law standards, that is, for a public purpose; in a non-discriminatory manner; in accordance with due process of law, and upon payment of prompt, adequate, and effective compensation.

-The unrestricted transfer, in a freely usable currency, of funds related to an investment is guaranteed.

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

The U.S.- Treaty differs from the 1992 protocol in some minor respects. It eliminates Article III of the 1992 protocol which had excluded from the dispute settlement provisions of the BIT those disputes arising under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States, similar to those arising under any other such official programs pursuant to which the Parties agreed to other means of settling disputes. The Export-Import Bank, the Overseas Private Investment Corporation and other relevant government agencies and coordinated programs on their own should not need to maintain such provisions.

The U.S.- Treaty also differs from the protocol in that it includes provisions in Article 1, paragraph 1 (f) and (g), and Article II, paragraph 2, which clarify and extend the requirements of the Treaty with respect to enterprise representation, and Article II, paragraph 11, which clarifies that enterprises should receive the benefit of national or MFN treatment with respect to their associated enterprises. This addition linguistically discussed in further detail in the article-by-article analysis of the Treaty below.

In addition, Paragraph 1 clarifies the dispute resolution provisions of the Treaty with respect to the national treatment obligations in the Annex, foreign enterprises now can purchase land in urban areas.

The following article-by-article analysis of the provisions of the Treaty:

Preamble

The Preamble sets the goals of the Treaty. The Treaty is premised on the belief in open economic policy leads to economic growth. These goals include economic cooperation, increased flow of capital, stable framework for enterprises, development of respect for international law-recognized market rights, and maximum efficiency in the use of economic resources. While the Preamble does not impose binding obligations, its statement of goals may serve as a basis for the interpretation of the Treaty.

Article I (Definitions)

Article I sets out definitions for terms used throughout the Treaty. As general matters, they are designed to be broad and inclusive in nature.

Enterprises

The Treaty's definition of enterprises is broad, recognizing that enterprises can take a variety of forms. It covers enterprises which are owned or controlled by nationals or companies of one of the Treaty partners or the territory of the other. Enterprises can be made either directly or indirectly through one or more subsidiaries, 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 requirements could be satisfied by less than a proportion.

The definition provides non-exclusive lists of services, claims and rights which constitute enterprises. These include both tangible and intangible property, natural resources, companies or services, "claims on money or performance having economic value, and associated enterprises, intellectual property rights, and rights conferred by law or contract (such as government-issued licenses and permits). The requirement that "claims on money" be associated enterprises excludes claims arising solely from transactions, such as transactions on national goods only. Cross-border sale of goods from being considered enterprises covered by the Treaty.

Under paragraph 2 of Article 1, either country may deny the benefits of the Treaty to enterprises by companies established in the other which are owned or controlled by nationals of a third country if (1) the company is merely a shell, whose substantial business activities are in the home country, or (2) the third country is one in which the denying Party does not maintain normal economic relations. For example, the United States does not maintain normal economic relations with, for example, Cuba or by.

Paragraph 3 confirms that neither party will require the formation of a service enterprise or a shell company to effect transactions with enterprises. For example, changing the corporate form of an enterprise will not deprive of protection under the Treaty.

Company

The definition of many is broad in order to cover virtually any type of legal entity, including any corporation, any association, or other entity that is organized under the laws and regulations of a Party. In addition, with the definition of investment, this definition also ensures that companies of a Party that establish investments in the territory of the other Party have their investments covered by the Treaty, even if the parent company is ultimately owned by non-Party nationals, although the other Party may deny the benefits of the Treaty in the limited circumstances set forth in Article I, paragraph . Likewise, a company of a third country that is owned or controlled by nationals of companies of a Party will also be covered. The definition also covers variable and non-preferential entities, as well as entities that are owned or controlled by the same.

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-born American is a national of the United States, but not a citizen.

Return

Return is defined as an amount derived from or associated with an investment. The Treaty provides a non-exclusive list of examples, including profits; dividends; interest; capital gains; rental payments; management fees; and other fees; and returns in kind. The scope of this definition provides breadth to the Treaty's transfer provisions in Article IV.

Associated activities

The Treaty recognizes that the performance of an investment requires provisions extending beyond the investment itself to various activities. This definition provides an illustrative list of such investment activities, including performing a business family business, operating a company, issuing stock and purchasing foreign exchange for investment purposes. These activities are covered by Article II, paragraph 1, which guarantees the benefits of national treatment for investment and associated activities.

Subsidiary

Subsidiary is defined as an enterprise owned, controlled through ownership in shares, by a Party.

Delegation

Delegation is defined to include a legislative grant, governmental order, directive or other authority which transfers governmental authority to a subsidiary or authorizes a subsidiary to exercise such authority.

The definitions of subsidiary and delegation are included to clarify the scope of the obligations of Article II, paragraph , which provides that any governmental authority delegated to a subsidiary by a Party shall be exercised in a manner consistent with the Party's obligations under the Treaty.

Article II (Treaty)

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

Paragraph 1 generally ensures the benefits of MFN treatment in both the entry and post-entry phases of investment. It also prohibits both the screening of proposed foreign investments on the basis of nationality and discriminatory measures where the investment has been made, subject to specific exceptions provided for in the separate Annex. The United States and Latvia have both reserved certain exceptions in the Annex to the Treaty, the provisions of which are discussed in the separate Annex.

Paragraph is designed to ensure that a Party cannot utilize a so-called "reverse" non-preferential obligations under the Treaty. This end, it requires each Party to observe its treaty obligations even when it has, for administrative or other reasons, assigned primary authority to a subsidiary, such as the power to export, grant licenses, approve financial transactions, receive quotas, fees or other charges. Paragraph also supports the principle of equal treatment of investments by requiring that a Party ensure that

state enterprises a right to better national MFN treatment than the sale of its goods or services to the Party's territory.

Paragraph 3 guarantees that investments shall be granted "fair and equitable" treatment. It also prohibits Parties from impairing through arbitrary or discriminatory means the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of investments. This paragraph sets out a minimum standard of treatment based on customary international law.

In paragraph 3() each Party pledges to respect any obligations that may have entered into with respect to investments. Thus, no dispute settlement under Articles VI or VII of a Party would be free from argument on the basis of its veracity that it may unilaterally ignore its obligations to such investments.

Paragraph 4 allows subject to each Party's immigration laws and regulations the entry of each Party's nationals into the territory for the transfer of purposes. In the case of investment and involving the commitment of a "substantial amount of capital or other resources." This paragraph serves to render nationals of a BIT partner eligible for treaty-investor visas under U.S. immigration law and guarantees similar treatment for U.S. investors.

Paragraph 5 guarantees companies to engage top managerial personnel free of regulatory nationalities.

Under paragraph 6 neither Party may impose performance requirements such as to secure a return on investment, nor the export of goods, services or technology for the purpose of goods or services. Such requirements are major burdens on investors.

Paragraph 7 provides that each Party must provide effective means for asserting rights and claims with respect to investment investment agreements and any investment authorization. Under paragraph 8 each Party must make publicly available all laws, regulations and administrative practices and judicial procedures pertaining to the affecting investments.

Paragraph 9 recognizes that under the U.S. federal system States of the United States may sometimes be treated as if they were separate States and in a different manner than they are treated as States and in a different manner. The Treaty provides that the national treatment commitment with respect to the States means treatment no less favorable than that provided to U.S. states or territories.

Paragraph 10 limits the Article's MFN obligation by providing that it will not apply to advantages available by either Party to other countries by virtue of a Party's membership in a free trade area or customs union or a future multilateral agreement under the auspices of the General Agreement on Tariffs and Trade (GATT). The free trade area exception notwithstanding the exception provided for with respect to trade under the GATT.

Paragraph 11 suggests that available provisions at U.S. businesses may face an emerging market economies. This provision makes clear that nationals and companies of either Party receive the better national MFN treatment with respect to a state list of activities associated with their investments.

Article III (Expression)

Article III not only rates that the Treaty to international law standards for expression and compensation.

Paragraph 1 describes the general rights of investors and obligations of the Parties with respect to expression and nationalization. These rights also apply to the return of state measures "tantamount to expression or nationalization" and thus apply to "repealing expressions" that result in a substantial deprivation of the benefit of an investment with the understanding of the investment.

Paragraph 1 further bars all expressions of nationalization except those that are for a public purpose; arrangements under a discriminatory manner subject to "prompt and adequate compensation"; subject to the usual process; and a right to treatment provided to the standard of Article II paragraph 3. (These standards guarantee fair and equitable treatment and prohibit the arbitrary and discriminatory impairment of investment, in its broadest sense.)

The second sentence of paragraph 1 clarifies the meaning of "rompt, equal, and effective compensation." Compensation must be equivalent to the fair market value of the expropriated investments immediately before the expropriatory action was taken or become known (whichever is earlier); be immediate; include in its scope commercially reasonable from the perspective of the expropriation; be fully reimbursable; be freely transferable; and be calculated in freely usable currency on the basis of the prevailing market exchange rate.

Paragraph 2 enables an investor claiming harm from an expropriation to seek prompt judicial or ministerial review of the claim in the host country, including determination of whether the expropriation is a nationalization or expropriation.

Paragraph 3 enables investors of the beneficiary nation or MFN treatment with respect to losses relating to war or civil disturbances, but, unlike paragraph 1, does not establish an absolute obligation of any compensation or such losses.

Article IV (Transfers)

Article IV protects investors from certain government exchange controls limiting current and future repatriation of funds.

In paragraph 1, the Parties agree to permit "transfers relating to investments to be made freely and immediately in convertible local currency." Paragraph 1 also provides non-exclusive lists of transfers that must be allowed, including repatriation of income (as defined in Article I); payments made in compensation or expropriation (as defined in Article III); payments arising out of investments (as defined in Article III); payments made under contract, including the amortization of principal and interest payments on loans; proceeds from the liquidation or sale of real or personal investments; and the liquidation of claims against the government or its agencies.

Paragraph 2 provides that transfers relating to "freely usable currency" and the prevailing market exchange rate on the date of repatriation of such assets or transactions in the currency of the beneficiary. "Freely usable" is defined in the International Monetary Fund; and includes here the following "freely usable" currencies: the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling.

Paragraph 3 recognizes that notwithstanding these guarantees, Parties may maintain certain laws or obligations that could restrict transfers with respect to investments. It provides that the Parties may require repatriation of currency transfers to impose income taxes by such means as withholding taxes on dividends. It also recognizes that Parties may protect their sovereign interests and ensure the stability of the national economy through their laws, even if such measures interfere with transfers. Such laws must be applied in an equitable, non-discriminatory and good faith manner.

Article V (Settlement of Disputes)

Article V provides for prompt settlement between the Parties, either Party's request, on any matter relating to the interpretation or application of the Treaty.

Article VI (Settlement of Investment Disputes)

Article VI sets forth several means by which disputes between an investor and the host country may be settled.

Article VI provides that, upon "investment dispute," a term which covers any dispute arising out of or relating to an investment, an investor may, at his option, submit the dispute to arbitration, or to the Tribunal with respect to investments.

When a dispute arises, Article VI, paragraph 2, provides that the disputing parties should initially seek to resolve the dispute by consultation and negotiation, which may include non-binding arbitration procedures. Should such consultations fail, paragraph 2 and 3 set forth the investor's range of choices of dispute settlement. Paragraph 2 permits the investor to: 1) employ one of the several arbitration procedures outlined in the Treaty; 2) submit the dispute to arbitration previously agreed upon by the investor and the host country government in an investment agreement or otherwise; or 3) submit the dispute to the local courts or ministerial tribunals of the host country.

Under paragraph 1 of the investment agreement, as not submitted to the dispute under the procedures in paragraph 2 and six months have elapsed from the date the dispute arose, the investor may choose among the International Centre for the Settlement of Investment Disputes (ICSID Convention arbitration or the ICSID Additional Facility (if Convention arbitration is not available) or ad hoc arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Paragraph 3 also recognizes that by mutual agreement the parties to the dispute may choose another arbitration institution or set of arbitration rules.

Paragraph 4 contains the consent of the United States and the Republic of Latvia to the submission of investment disputes to binding arbitration in accordance with the choice of the investor.

Paragraph 5 provides that a 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 Foreign Arbitral Awards. This requirement expands the ability of investors to obtain enforcement of their arbitral awards abroad. In addition, paragraph 6 includes a separate commitment by each Party to enforce arbitral awards rendered pursuant to Article VI procedures.

Paragraph 7 provides that in any dispute settlement procedure a Party may not invoke as a defense counterclaim, set-off or in any other manner the fact that the company or national has received or will be reimbursed for the same damages under an insurance or guarantee contract.

Paragraph 8 is included in the Treaty to ensure that ICSID arbitration will be available for investors making investments in the form of companies created under the laws of the Party with which there is a dispute.

Article VII (State-State arbitration)

Article VII provides for binding arbitration of disputes between the United States and the Republic of Latvia that are not resolved through consultations or other diplomatic channels. The article constitutes each Party's prior consent to arbitration. It provides for the selection of arbitrators, establishes time limits for submissions, and requires the Parties to bear the costs equally unless otherwise directed by the Tribunal.

Article VIII (Preservation of rights)

Article VIII clarifies that the Treaty is meant only to establish a floor for the treatment of foreign investment. An investor may be entitled to more favorable treatment through domestic legislation or other international legal obligations or a specific obligation assumed by a Party with respect to that investor. This provision ensures that the Treaty will not be interpreted to derogate from any entitlement to such more favorable treatment.

Article IX (Measures not precluded)

Paragraph 1 of Article IX reserves the right of a Party to take measures for the maintenance of public order and the fulfillment of its obligations with respect to international peace and security, as well as to those measures that are necessary for the protection of its own essential security interests. These provisions are common to international investment agreements.

The maintenance of public order would include measures taken pursuant to a Party's police powers to ensure public health and safety. International obligations with respect to peace and 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 national security interest of the Party involved.

The second paragraph allows a Party to promulgate special formalities in connection with the establishment of investment, provided that the formalities do not impair the substance of any Treaty rights. Such formalities would include, for example, U.S. reporting requirements for certain inward investment.)

Article X (Tax policies)

Paragraph I h r b h c un ri pr vid fair and qui abl r a men inv r wi h r p c a p lici .Howev r, a ma r ar g n rally clud d fr m h c v rag f h Tr a y, ba d n h a ump i n ha a ma r ar pr p rly c v r d in bila ral a r a i .

Th Tr a y, and par icularly h di pu l men pr vi i n ,d apply a ma r in hr ar a , h n h yar n ubj c h di pu l men pr vi i n fa a r a y, r if ubj c ,hav b n rai d und r a a r a y di pu l men pr c dur and ar n r lv d in a r a nabl p r i d f ime.

Pur uan paragraph 2, h hr ar a wh r h Tr a y c uld apply a ma r ar pr pria i n (Ar icl III), ran fr (Ar icl IV) and h b rvanc and nfr c men f rms fa n inv men agr men r au h riza i n (Ar icl VI (1) (a) r (b)). Th hr ar a ar imp ran fr inv r , and wo f h hr -- pr pria ry a a i n and a pr vi i n c n ain d in an inv men agr men r au h riza i n--ar n ypically addr d in a r a i .

Ar icl XI (Applica i n p lical ubdivi i n)

Ar icl XI mak cl ar ha h bliga i n f h Tr a y ar applicabl all p lical ubdivi i n f h Par i , uch a pr v incial, S a and l cal g v rnmen .

Ar icl XII (En ry in f rc , dura i n and r mina i n)

Th Tr a y n r in f rc hir y day af r chang f in rumen f ra ifica i n and c n inu in f rc f ra p r i d 'f n y ar . Fr m h da fi n ry in f rc , h Tr a y appli i ng and fu ur inv men . Af r h n-y ar rm, h Tr a y will c n inu in f rc unl r mina d by i h r Par y up n n y ar n ic . If h Tr a y i r mina d, all i ng inv men wou ld c n inu b pr c d und r h Tr a y f r n y ar h r af r .

Ann

U.S. bila ral inv men r a i all w f r c ral c p i n n a i nal and MFN r a men . Th U.S. c p i n ar d ign d pr c g v rnmen al r gula ry in r and acc mmoda h d r ga i n fr m n a i nal r a men and, in me ca , MFN r a men in i ng f d ral law.

Th U.S. p r i n f h Ann c n ain a li f c r and ma r in which, f r vari u l gal and hi rical r a n , h f d ral g v rnmen r h S a may n n c arily r a inv men r n a i nal r c mpani f h h r Par y a h y d U.S. inv men r inv men fr ma hird c un ry. Th U.S. c p i n fr m n a i nal r a men ar : air ran p r a i n ; c an and c a al hipping, banking, in uranc , curi i , and h r financial r vic ; g v rnmen gran ; g v rnmen in uranc and l an pr grams; n rgy and p w æ pr duc i n ; cu m h u br k r , wn r hip fr al pr p ry ; wn r hip and p r a i n f br adca r c mmon carri r radi and l vi i n a i n ; wn r hip f har in h C mmunica i n Sa lli C rp r a i n ; h pr vi i n f c mmon carri r l ph n and l graph r vic ; h pr vi i n f ubmarin cabl ' r vic ; u f land and na ural r urc ; mining n h public d main; and mari ime and mari ime-r la d r vic .

Own r hip fr al pr p ry, mining n h public d main, mari ime and mari ime-r la d r vic , and primary d al r hip in U.S. g v rnmen curi i ar clud d fr m MFN a well a n a i nal r a men c mmi men . Th la hr c r ar mp d by h Uni d S a fr m MFN r a men bliga i n b cau f U.S. laws ha r quir r cipr ci y. Enfrc men fr cipr ci y pr vi i n c uld d ny b h n a i nal and MFN r a men .

Th Uni d S a li ng fa c rd n n c arily ignify ha d me ic laws hav n ir ly r rv di f r n a i nal . Fu ur r ric i n r llimi a i n n f r ign inv men ar nly p rmi d in h c r li d ; mu b mad n an MFN ba i , unl h rwi p cifi d in h Ann ; and mu b appr pria ly n ifi d. Any addi i nal r ric i n r llimi a i n which a Par y may ad p wi h r p c li d c r may n aff c i ng inv men .

B cau h U.S. c p i n n a i nal r a men and MFN r a men ar ba d n i ng U.S. law, h yar n al r d during n g ia i n . '

The Republic of Latvia's exceptions to national treatment are: intellectual property; agriculture and fisheries; maritime shipping, air transport, and postal services; energy; mass media, including newspapers, television and radio broadcasting stations, press agencies; renewable and non-renewable natural resources including forests and minerals; hunting; port management; banking; ownership and control; broadcasting; real property; and gambling. These exceptions were based on previous investment measures in force under a treaty negotiated by the Government of the Republic of Latvia. The Republic of Latvia has not reserved any special exceptions to MFN treatment in the Annex.

Part

In a Part of the Treaty, the two sides agree that despite Latvia's national ownership and control and in paragraph 3 of the Annex, current Latvian legislation permits foreign investment in rural and "urban" areas, as defined under Latvian laws.

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

Respectfully submitted,

STROBE TALBOTT. k

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
GOVERNMENT OF THE REPUBLIC OF LATVIA
CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the United States of America and the Republic of Latvia (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;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the economic development of the Parties;

Agreeing that a 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 economic and business ties and contributions to the well-being of workers in both Parties and to promote respect for internationally recognized worker rights; and

Noting the bilateral Most-Favored-Nation Agreement on Customs Matters of April 30, 1926 and the bilateral Treaty of Friendship, Commerce and Consular Relations of July 25, 1928 between the Parties;

In furtherance of Article Three of the bilateral Agreement Concerning the Development of Trade and Investment Relations of December 9, 1992 between the Parties;

Noting the bilateral agreement on Trade Relations and Intellectual Property Rights Protection of July 6, 1994 between the Parties; and

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

Have agreed as follows: k

ARTICLE I

1. For the purposes of this Treaty, k

(a) "inv _ n " an v y kind of inv n in h i o y of on Pa y own d o con oll d di c ly o indi c ly by na ional o co^{mp}ani of h o h Pa y, uch a qui y, d b , and vic and inv n con ac ; and includ :

(i) angibl and in angibl p op y, including ^{mo}vabl and i vabl p op y, a well a igh , uch a gag , li n and pl dg ;

(ii) a co^{mp}any o ha of ock o o h in _ in a co^{mp}any o in _ in h a h of;

(iii) a clai^m o ^{mo}n y o a clai^m o p fo ^{ma}nc having con^{thi}c valu , and a ocia d wi h an inv n ;

(iv) in ll c ual p op y which includ , in alia, igh la ing o:

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inv n ion in all fi ld of hu^{ma}n nd avo ,

indu ial d ign ,

conduc o ^{ma}k wo k , ad c , know-how, and confid n ial bu in info ^{ma} ion, and

ad ^{ma}k , vic ^{ma}k , and ad na ; and

(v) any igh conf d by law o con ac , and any lic n and p ^{mi} pu uan o law;

(b) ⁱco^{mp}any" of a Pa y an any kind of co po a ion, co^{mp}any, a ocia ion, n pi , pa n hip, o o h o ganiza ion, l gally con i u d und h laws and gula ion of a Pa y o a poli cal ubdivi ion h of wh h o no o ganiz d fo p cunia y gain, o p iva ly o gov n n ally own d o con oll d;

(c) "na ional," of a Pa y an a na ual p on who i a na ional of a Pa y und i applicabl law;

(d) " u n" an an a^{mo}un d iv d fo^m o a ocia d wi h an inv n , including p ofi ; divid nd; in ; capi al gain; oyal y pay n ; ^{ma}nag n , chnical a i anc o o h f ; o u n in kind;

() "a ocia d ac ivi i " includ h o ganiza ion, con ol, op a ion, ^{ma}in nanc and di po i ion of co^{mp}ani , b anch , ag nci , offic , fac o i o o h facili i fo h conduc of bu in ; h ^{ma}king, p fo ^{ma}nc and nfo c n of con ac ; h acqui i ion, u , p o c ion and di po i ion of p op y of all kind includ ing in ll c ual p op y igh ; h bo owing of fund ; h pu cha , i uanc , and al of qui y ha and o h cu i i ; and h pu cha of fo ign xchang fo i o ;

(f) " a n pi " an an n pi own d, o con oll d h ough own hip in , by a Pa y;

(g) "d l ga ion" includ a l gi la iv g an , and a gov n n o d , di c iv o o h ac an f ing o a a n pi o nopoly, o au ho izing h x ci b~~y~~a a n pi o ^{mo}nopoly of, gov n n al au ho i y.

2. Each Pa y v h igh o d ny o any co^{mp}any h advan ag of hi T a y if na ional of any hi d coun y con ol uch co^{mp}any and, in h ca of a co^{mp}any of h o h Pa y, ha co^{mp}any ha no ub an ial bu in ac ivi i in h i o y of h o h Pa y o i con oll d by na ional of a hi d coun y wi h which h d nying Pa y do no ^{ma}in ain no ^{ma}l cono^{mi}c la ion .

3. Any al a ion of h fo^m in which a a inv d o inv d hall no aff c h i cha ac a inv n . _

ARTICLE II

1. Each Pa y hall p ^{mi} and a inv n , and ac ivi i a ocia d h wi h, on a ba i no l , favo abl han ha acco d d in lik i ua ion o inv n o a ocia d ac ivi i of i own na ional o co^{mp}ani , o of na ional o co^{ani} of any hi d coun y, which v i h ^{mo} favo abl , ubj c o h igh of ach Pa y o ^{ma}k o ^{ma}in ain xc p ion falling wi hin on of h c o o ^{ma} li d in h Ann x o hi T a y. Each Pa y ag o no ify h o h Pa y b fo o on h da of n y in o fo c of hi T a y of all uch laws and _ gula ion of which i i awa conc ning h c o o ^{ma} li d in h Ann x. Mo ov , ach Pa y

agrees to not to enter or acquire) except with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. A future exception between Parties shall not apply to investment existing at that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to a exception shall, unless specified otherwise in the Annex, be not less favorable than that accorded like situations to investments and associated activities of nationals or companies of a third country.

2. (a) Notwithstanding, the treatment shall be construed to prevent a Party from maintaining or establishing a state enterprise.

(b) Each Party shall ensure that a state enterprise that maintains or establishes acts as a market at its own cost system with the Party's obligations under this Treaty wherever such enterprise exercises a regulator, administrative or other governmental authority at the Party as delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees or other charges.

(c) Each Party shall ensure that a state enterprise that maintains or establishes accords the better overall or most favored national treatment to the sale of its goods or services in the Party's territory.

3. (a) Investments shall at all times be accorded a fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.

(b) Neither Party shall allow a discriminatory or discriminatory measures to be taken, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purposes of dispute resolution under Article 3 VI and VII, a measure may be discriminatory notwithstanding that a Party as advisor exercised the opportunity to review such measure by the courts or administrative tribunals of a Party.

(c) Each Party shall observe a obligation to maintain with regard to investments.

4. Subject to the laws relating to the entry, residence, 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 advancing the operation of an investment to which they, or a company of the host Party that, employ them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage in commercial activities, regardless of nationality.

6. Neither Party shall impose performance requirements as conditions, establishment, expansion or maintenance of investments, which require or force commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

7. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorization.

8. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicator decisions that pertain to or affect investments.

9. The treatment accorded by the United States of America to investments and associated activities of nationals and companies of the Republic of Latvia under the provisions of its Articles shall in a State, Territory or possession of the United States of America be no less favorable than the treatment accorded there to investments and associated activities of nationals of the United States of America resident, and companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

10. The most favored national provisions of this Treaty shall not apply to advantages accorded by either Party to nationals or companies of a third country by virtue of:

(a) that Party's bilateral obligations to derive from multilateral plurilateral trade area or customs union; or)

(b) that the binding obligation under an multilateral international agreement under the framework of the General Agreement on Tariffs and Trade that entered into force subsequent to the signature of this Treaty.

11. The Parties acknowledge and agree that a located activity, include without limitation, such activity as:

(a) the granting of franchise rights under license;

(b) acceptance of contract, license, permit and other approval (which shall in an event be used expeditiously);

(c) acceptance of financial institution and credit market;

(d) acceptance of the funds held in financial institution;

(e) the importation and installation of equipment necessary for the normal conduct of business affairs, including but not limited to, office equipment and automobile, and the export of an equipment and automobile imported;

(f) the dissemination of commercial information;

(g) the conduct of market trade;

(h) the appointment of commercial representative, including agent, consultant and distributor and the participation in trade fairs and promotion event;

(i) the marketing of goods and services, including through international distribution and marketing terms, as well as advertising and direct contact with individual and companies;

(j) acceptance of public utility, public services and commercial enterprise at nondiscriminatory prices, if the prices are set or controlled by the government; and

(k) acceptance of award, input and services of all types at nondiscriminatory prices, if the prices are set or controlled by the government. "

ARTICLE III

1. Investment shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization (expropriation) except: for public purposes; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law

and the general principle of treatment provided for in Article II (3). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be calculated in a freely usable currency on the basis of the prevailing market rate of exchange at that time; be paid without delay; include interest at a commercial reasonable rate from the date of expropriation; be fully realizable; and be freely transferable.

2. A national, or company of the 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 authority of the other Party to determine whether an such expropriation has occurred and, if so, whether such expropriation, and an associated compensation, conforms to the principle of international law.

3. National or company of the Party whose investment suffers loss in the territory of the other Party owing to war or other armed conflict, evolution, state of national emergency, insurrection, civil disturbance or other similar event shall be accorded treatment by such other Party no less favorable than that accorded to its own national or company or to national or company of another third country, whichever is the most favorable treatment, as regarded an measure adopted in relation to such losses. "

ARTICLE IV

1. Each Party has permitted a transfer of an investment to be made free and without delay in one or more of the following. Such transfers include:

- (a) return;
- (b) compensation pursuant to Article 6;
- (c) liquidation of an investment dispute;
- (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 an asset of an investment; and
- (f) additional contribution to capital for the maintenance or development of an investment.

2. Transfer shall be made in a free convertible currency at the prevailing market rate of exchange on the date of transfer with the exception of payment in the currency to be transferred.

3. Notwithstanding the provision of paragraph 2, either Party may maintain laws and regulations (a) equating equity of currency transfer; and (b) imposing income tax but which means a withholding tax applicable to dividend or other transfer. Furthermore, either Party may protect the right of creditors, or enforce the application of judgment in adjudication proceeding, through the equitable, nondiscriminatory and good faith application of law.

ARTICLE V

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

ARTICLE V

1. For purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of one of the following:

- (a) an investment agreement between the Party and a national or company; or
- (b) an investment authorization granted by the Party to foreign investment authorized national or company; or
- (c) an agreement each of an investor conferred or created by the Treaty with the exception of an investment.

2. In the event of an investment dispute, the parties to the dispute should initiate a consultation through consultation and negotiation. If the dispute cannot be resolved amicably, the national or company concerned may choose to submit the dispute for resolution:

- (a) to the court of administrative tribunals of the Party in a Party to the dispute; or
- (b) in accordance with an applicable, previously agreed dispute-resolution mechanism; 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 has exhausted all available remedies on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for resolution by binding arbitration:

- (i) to the national Centre for the Settlement of Investment Disputes ("Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 ("ICSID Convention"), provided that the Party is a Party to such Convention; or
- (ii) to the Additional Facility of the Centre, if the Centre is not available; or I

(iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(iv) or any other arbitration institution in accordance with any other arbitration rules as may be mutually agreed by the parties.

(b) once the national or company concerned has so consented in writing, the Parties may initiate arbitration in accordance with the choice specified in the consent.

4. Each Party by consent to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent of the national or company shall be given under paragraph 3 shall satisfy the requirements:

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

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

5. Any arbitration under paragraph 3(a)(ii) (iii) or (iv) of this Article shall be held in a seat which is a Party to the New York Convention.

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

7. In any proceeding involving an investment dispute a Party shall not assert as a defence a claim of hostilities -off or of the host national or company concerned has ceased, or all civil pursuant to an insurance or guarantee contract in connection with the compensation for all or part of its all goods.

8. For purposes of an arbitration under paragraph 3 of this Article any company locally constituted in the applicable laws and regulations of a Party or a political subdivision thereof but habitually or effectively carrying on its business in the host country shall be treated as a national or company of such host Party in accordance with Article 25(2)(b) of the ICSID Convention.

ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not solved through consultations

or other diplomatic channels shall be submitted upon the request of either Party to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the arbitration of the United Nations Commission on International Trade Law (UNCITRAL) except where otherwise provided by the Parties to the arbitration shall govern.

2. Within three months of receipt of a request each Party shall appoint an arbitrator. The arbitrators shall select a chairman as Chairman of the Arbitration Panel. The UNCITRAL Rules for appointing members of the Arbitration Panel shall apply mutatis mutandis to the appointment of the Arbitration Panel, which appointing authority if necessary in the 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 chairman and the Tribunal shall make its decisions within three 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 the arbitrators and other costs of the proceedings shall be paid equally by the Parties. The Tribunal may however allocate the costs of the proceedings if it has a high proportion of the costs paid by one of the Parties.

ARTICLE III

The Treaty shall not derogate from:

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

ARTICLE IX

1. The Treaty shall not exclude the application by the Party of measures necessary for the maintenance of public order, the fulfillment of obligations with respect to the maintenance or establishment of international peace or security, or the protection of its essential security interests.
2. The Treaty shall not exclude the Party from exercising fiscal formalities in connection with the establishment of investment, but such formalities shall not constitute a substantive obstacle of any of the foregoing to the Treaty.

ARTICLE X

1. With respect to taxation, each Party should strive to accord fairness and equity in the treatment of investment of national and companies of the other Party.
2. Nevertheless, the provisions of the Treaty, and notwithstanding Articles I and II, shall apply to matters of taxation only with respect to the following:
 - (a) taxation, pursuant to Article III;
 - (b) transfer, pursuant to Article I; or
 - (c) the observance and enforcement of terms of an investment agreement or authorization applicable to national Article I (1) (a) or (b), to the extent they are not subject to the deduction of a Convention for the avoidance of double taxation between the two Parties, or have been agreed under such Convention and are not overruled within a reasonable period of time.

ARTICLE XI

The Treaty shall apply to the political subdivision of the Parties.

ARTICLE XII

1. The Treaty shall enter into force ten 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 investment existing at the time of entry into force as well as to investment made or acquired thereafter.
2. Either Party may, by giving one year's written notice to the other Party, terminate the Treaty at the end of the next ten-year period or at any time thereafter.
3. With respect to investment made or acquired prior to the date of termination of the Treaty and to which the Treaty otherwise applies, the provisions of all of the other Articles of the Treaty shall thereafter continue to be effective for a further period of ten years from the date of termination.
4. The Annex, Protocol, and Schedule shall form an integral part of the Treaty.

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

DONE in d i t e t Washington, this thirteenth d y of J n ry, 1995 in Eng ish nd L t i n g ges, both te t being eq y thenti .

thirteenth

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

/S/

FOR THE GOVERNMENT OF THE REPUBLIC OF LATVIA:

/S/ x

ANNEX

1. The Government of the United St tes reserves the right to make or maint in imited e e tions to n tion tre tment, s rovided in Arti e II, r gr h 1, in the se tors or matters it h s indi ted be ow:

ir tr ns ort tion; o e n nd o st shi ing; b nking; ins r n e; government-gr nts; government ins r n e nd o n rogr ms; energy nd ower rod tion; stom ho se brokers; ownershi of re ro erty; ownershi nd o er tion of bro d st or ommon rrier r dio nd te evision st tions; ownershi of sh res in the Communi tions S te ite Cor or tion; the rovision of ommon rrier te e hone nd te egr h servi es; the rovision of s bmarine b e servi es; se of nd nd n t r reso r es; mining on the b i domain; maritime servi es nd maritime-re ted servi es; nd rimary de ershi in United St tes government se rities.

2. The United St tes reserves the right to make or maint in imited e e tions to most f vored n tion tre tment, s rovided in Arti e II, r gr h 1, in the se tors or matters it h s indi ted be ow: ownershi of re ro erty; mining on the b i domain; maritime servi es nd maritime-re ted servi es; nd rimary de ershi in United St tes government se rities. x

3. The Re b i of L tvi reserves the right to make or maint in imited e e tions to n tion tre tment, s rovided in Arti e II, r gr h 1 in the se tors or matters it h s indi tion be ow:

ontro of defense ind stries; man f t ring nd s e of n r oti s, we ons nd e osives; ontro of news er, te evision nd r dio bro d sting st tions, or news gen ies; re overy of renew ab e nd non-renew ab e n t r reso r es in ding reso r es fo nd on the ontinent she f; fishing; h nting; ort man gement; b nking; ownershi nd ontro of nd; broker ge or re ro erty; nd g mb ing. x

PROTOCOL

The P rties onfirm their mut nderst nding th t with res e t to the isting of "ownershi nd ontro of nd" in r gr h 3 of the Anne , rrent L tvi n egis tion ermits foreign investors to own or ontro nd in rb n re s, s defined nder the ws of the Re b i of L tvi .

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency. x