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rgyzstan Bilateral Investment Treaty

YSigned January 19, 1993; Entered into Force January 12, 1994

103RD Congress 1st Session

SENATE Treaty Doc. 103-13

INVESTMENT TREATY WITH THE REPUBLIC OF KYRGYZSTAN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES **K**

Transmitting

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KYRGYZSTAN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AT WASHINGTON ON JANUARY 19, 1993

SEPTEMBER 8, 1993.-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

WASHINGTON : 1993

LETTER OF TRANSMITTAL

THE WHITE HOUSE

September 7, 1993.

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 Kyrgyz Republic Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and related exchange of letters, signed at Washington on January 19, 1993. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty will establish an agreed-upon legal basis for the protection and encouragement of investment. This Treaty thus forms an integral part of the framework for expanding trade and investment relations between the United States and the countries of the former Soviet Union. It is designed to encourage economic opportunity-including investment, trade, and growth-in both countries. It will assist Kyrgyzstan in its transition to a market economy by strengthening the role of the private sector and by encouraging appropriate macroeconomic and structural policies.

The Treaty is fully consistent with U.S. policy toward international and domestic 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 **K**

standards for ratification and compensation for ratification, for transfers of funds associated with investments, for domestic investments from reform requirements, and the investor's freedom to transfer its investments 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 this Treaty, with Proclamation and related changes effective, at an early date.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, September 7, 1993.

The President, The White House.

THE PRESIDENT: I have the honor to submit to you this Treaty Between the United States of America and the Republic of Kyrgyzstan concerning the Encouragement and Reciprocal Protection of Investment, with Proclamation and related changes effective, signed at Washington on January 19, 1993. I recommend that this Treaty, with Proclamation and changes effective, be transmitted to the Senate for its advice and consent to ratification.

This is the further favorable investment treaty (BIT) that the United States has signed with a newly independent state of the former Soviet Union. (BITs have already been signed with Armenia, Kazakhstan, Moldova and Russia.) This Treaty will assist Kyrgyzstan in its transition to a market economy by creating favorable conditions for U.S. investment, helping to attract such investment and, thus, strengthening the development of the private sector. It is U.S. policy, however, to advise that no treaty partners during BIT negotiations that conclude a BIT do so in a mutually satisfactory manner as in the case of U.S. investment flows.

To date, 13 BITs are in force for the United States with Bangladesh, Cameroon, the Czech Republic, Egypt, Grenada, Morocco, Panama, Singapore, Slovakia, Sri Lanka, Tunisia, Turkey, and Zambia. In addition to this Kyrgyzstan Treaty, the United States has signed, but not yet brought into force, BITs with Argentina, Armenia, Bulgaria, the Congo, Haiti, Kazakhstan, Moldova, Romania, and Russia and a business and consular treaties with Poland, which contains the BIT elements.

The Office of the United States Trade Representative and the Department of State jointly lead BIT negotiations, with assistance from the Departments of Commerce and Treasury.

THE U.S.-KYRGYZSTAN TREATY

The U.S.-Kyrgyzstan Treaty adopts the U.S. treaty BIT text with the following modifications. The Treaty with Kyrgyzstan thus satisfies the general BIT objectives, which are:

-Investments of nationals and companies of the Party on the territory of the other Party (Investments) receive the better of national treatment or most-favored-nation (MFN) treatment, subject to certain safeguards and conditions, both in establishment and thereafter;

-Investments are guaranteed from domestic reform requirements, including requirements to use local resources and materials;

-Expropriation can occur only in accordance with national law standards; for a public purpose; on a non-discriminatory basis; and under due process of law; and upon payment of prompt, adequate, and effective compensation;

-Investments are guaranteed the unrestricted transfer of funds in a freely usable currency; and

-Nationals and companies of the Party, in investment disputes with the host government, have access to binding international arbitration, with the first resort being to domestic courts. Where

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

Preamble

The preamble sets the goal of the Treaty. The Treaty promotes the view that open investment policy leads to economic growth. The goals include economic cooperation, increased flow of capital, stable framework for investment, development of respect for internationally recognized worker rights, and maximum efficiency in the use of economic resources. The Preamble does not impose binding obligations, but the intent of the goal may serve to interpret the Treaty.

ARTICLE I (DEFINITIONS)

ARTICLE I sets out definitions for terms used throughout the Treaty. A general matter, they are defined to be broad and inclusive.

Investment

The treaty's definition of investment is broad, recognizing that investment can take a wide variety of forms. It covers investment that is owned or controlled by a total or complete ownership of the Treaty partner made in the territory of the other. Investment 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 may change if the requirement could be satisfied by less than that proportion.

The definition provides an exclusion of intangible assets such as trademarks, patents, and other intellectual property rights. It also excludes investment in real estate, such as land, buildings, and other immovable property, and investment in the territory of the other Party. The requirement that investment be made in the territory of the other Party excludes claims arising solely from trade transactions, such as importation of goods across a border, from being considered investment covered by the Treaty.

Under paragraph 2 of Article I, either country may deny the benefit of the Treaty to investment by complete ownership of the other that is owned or controlled by a total of third country if 1) the company merely shells, without substantial business activities in the home country, or 2) the third country is one with which the denying party does not maintain normal economic relations. For example, that time the United States does not maintain normal economic relations with, for example, Cuba or Libya.

Paragraph 3 confirms that "any alteration to the form which is effected or re-vested shall not affect the character of investment." For example, decision to alter the corporate form of investment will not deprive it of protection under the Treaty.

Company

The definition of "company" is broad in order to cover virtually any type of legal entity, including any corporation, company, association, or other entity that is organized under the laws and rules of a Party. It is understood that a company of a Party that is established in the territory of the other Party has the investment covered by the Treaty, even if the parent company is ultimately owned by a non-Party country, although the other Party may deny the benefit of the Treaty to the limited circumstances set forth in Article I paragraph 2. Likewise, a company of a third Party will also be covered. The definition also covers charitable and non-profit entities, as well as entities that are owned or controlled by the state.

Nationality

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" broadens the term "citizen"; for example, the estate of an American citizen who is a national of the United States, but not a citizen.

Return

Paragraph 3 requires that notwithstanding the laws of the Parties, the Parties may make their laws retroactive so that they would apply to transactions with respect to investments. It provides that the Parties may require reports from their investors and impose taxes by such means as a withholding tax dividends. It also requires that the Parties may take measures to protect their rights for disputes and ensure satisfaction of judgments and awards through their laws, which such measures conform with transactions. Such laws must be applied automatically, directly and good faith manner.

ARTICLE V (STATE-STATE CONSULTATIONS)

Article V provides for prompt consultation between the Parties, at the Party's request, on any matter relating to their respective application of the Treaty.

ARTICLE VI (STATE- INVESTOR DISPUTE RESOLUTION)

Article VI sets forth the various measures by which disputes between a investor and the host country may be settled.

Article VI provides that the "investor dispute" at the time when the investor dispute arises is the rights granted by the Treaty with respect to a investment, a investment authorization, a agreement between the investor and the host government.

When a dispute arises, Article VI stipulates that the disputants will initially seek to resolve the dispute by mutual agreement, which may include binding third party procedures. Should such mutual consultations fail, paragraphs 2 and 3 set forth the investor's right to file a dispute settlement. The investor may make a exclusive and irrevocable choice: (1) apply for the investor arbitration procedures under the Treaty; (2) submit the dispute to procedures previously agreed upon by the investor and the host government; or (3) submit the dispute to the local courts or administrative tribunals of the host country.

Under the Treaty, the investor may take a investment dispute to binding arbitration after six months from the date that the dispute arises. The investor may choose between the International Centre for Settlement of Investment Disputes (ICSID) (if the host country has a third country - the right to the Additional Facility is available) and ad hoc arbitration using the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The Treaty also requires that, by mutual agreement, the parties to the dispute may choose an alternative arbitration institution for arbitration rules.

Paragraph 4 states that the United States and Kyrgyzstan shall submit a investment dispute to binding arbitration in accordance with the host country.

Paragraph 5 provides that a non-ICSID arbitration shall take place in a country that is a Party to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards. The requirement has the ability of investor to file for arbitration awards. In addition, paragraph 6 includes a separate commitment by a host Party to file for arbitration awards, regardless of the provisions of Article VI Procedures.

Paragraph 7 provides that a investment dispute settlement procedure, a Party may not invoke as a defense, under the law, the fact that the investor or the host government has not provided a will be reimbursed for the same damage suffered as a result of the investment.

Paragraph 8 stipulates that the Treaty does not require that ICSID arbitration will be available for investors making a investment through the host government's ratification of the laws of the Party with which the investment is made.

ARTICLE VII (STATE-STATE ARBITRATION)

Article VII provides for binding arbitration of disputes between the United States and Kyrgyzstan that are not resolved through mutual consultations or third party mediation. The article stipulates that a Party's prior consent to arbitration is required.

ARTICLE VIII (Exclusion of Investment Dispute Settlement)

Article e cl es from the coverage of Article an any isp te s arising n er the e port cre it, g arantee or ins rance programs of the E port- mport Bank of the Unite States, as ll as those of any other s ch official programs p rs ant to ich the Parties have agree to other means of settling isp tes. w e

ART CLE X (PRESER AT ON OF R GHTS)

Article X clarifies that the Treaty is meant only to establish a floor for the treatment of foreign investment. An investor may be entitle to more favorable treatment thro gh omestic legislation, other international legal obligations, or a specific obligation ass me by a Party th respect to that investor. This provision ens res that the Treaty ll not be interprete to erogate from any entitlement to s ch more favorable treatment. i

ART CLE X;(MEASURES NOT PRECLUDED)

The first paragraph of Article X reserves the right of a Party to take meas res as necessary for the maintenance of p blic or er, the f llfillment of its international obligations th respect to international peace an sec rity, or the protection of its o essential sec rity interests. These provisions are common in international investment agreements. i

The maintenance of pⁿ blic or er ll incl e meas res taken p rs ant to a Party's police po rs to ens re p blic health an safety. nternational obligations th respect to peace an sec rity ll incl e, for e ample, obligations arising o t of Chapter^o of the Unite Nations Charter. Meas res permitte by th^e provision on the protection of a Party's essential sec rity interests i ll incl e sec rity-relate ctio^os taken in time of r or national emergency; actions not arising from a state of r or national emergency must have a clear an irect relationship to the essential sec rity interest of th^e Party involve . a

The secon paragraph allo a Party to promulgate special formalities in connection th the establishment of investment, provi e that the formalities o not impair the s bstance of any Treaty rights. S ch formalities ll incl e, for e ample, U.S. r^eporting req irements for certain in r investment. i o

ART CLE X (TAX POL C ES)

The Treaty e horts both co ntries to provi e fair an eq itable treatment to investors th respect to ta policies. Ho ever, ta matters are generally e cl e from the coverage of the prototype B T, base on the ass mption that ta matters are properly covere in bilateral ta treaties. i

The Treaty, an partic larly the isp te settlement provisions, o apply to ta matters in three areas, to the e tent they are not s bject to the isp te settlement provisions of a ta treaty, or, if so s bject, have been raise n er a ta treaty's isp te settlement proce res an are not resolve in a reasonable perio of time.

The three areas ere the Treaty co ll apply to ta matters are e propriation (Article), transfers (Article) an the observance an enforcement of terms of an investment agreement or a thorization (Article (1) (a) or (b)). These thre^e areas are important for investors, an t of the three-e propriatory ta ation an ta provisions containe in an investment agreement or a thorization are not typically a resse in ta treaties. w o

ART CLE X (APPL CAT ON TO POL T CAL SUBDI S ONS)

Article X makes clear that the obligations of the Treaty are applicable to all political s b ivisions of the Parties, s ch as State an local governments.

ART CLE X (ENTRY NTO FORCE, DURAT ON AND TERMINAT ON)

The Treaty enters into force thirty ays after e change of instr ments of ratification an contin es in force for a perio of ten years. From the ate of its entry into force, the Treaty applies to e isting an f t re investments. After the ten-year term, the Treaty ll contin e in force nless terminate by either Party pon one year's notice. f terminate , all e isting investments ll contin e to be protecte n er the Treaty for ten years thereafter. i

1. For the purpose of this Treaty,

(a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by national or company of the other Party, whether it is a direct investment, a contract; and includes:

(i) tangible and intangible property, including movable and immovable property, as well as a right, such as a mortgage, lien and pledge;

(ii) a company or share, stock or other interest in a company or interest in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual property which includes, inter alia, rights relating to:

literary and artistic work, including cinematography, invention in all fields of human endeavor, industrial design, microcomputer software, trademark, know-how, and confidential business information, and trademark, service mark, and trade name; and

(v) any right conferred by law or contract, and any license and permit pursuant to law;

(b) "company" of a Party means any kind of corporation, company, association, partnership, partnership, 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 or controlled;

(c) "national" of a Party means a natural person who is a national of a Party under its applicable 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 return in kind;

(e) "associated activities" includes the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities or the conduct of business; the making, performance and enforcement of contracts; the acquisition, production and disposition of property of all kinds including intellectual property rights; the borrowing of funds; the purchase, sale, lease, and alienation of property and other contracts; and the purchase or importation of goods or services;

2. Each Party reserves the right to deny to any company the advantages of this Treaty if national of any third country controls such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by national of a third country with which the denying Party does not maintain normal economic relations.

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

ARTICLE II

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own national or company, or of national or company of any third country, which is the most favorable, subject to the right of each Party to make or maintain excise taxation 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 which it is aware concerning the sector or matters listed in the Annex. Moreover, each Party agrees to notify the other of any transaction with respect to the sector or matters listed in the Annex, and to limit such excise taxation to a minimum. Any transaction by either Party shall not apply to investment existing in that sector or matter at the time the excise taxation becomes effective. The treatment accorded pursuant to any excise taxation shall, nevertheless, in the Annex, be not less favorable than that accorded in like situations to investment and associated activities of national or company of any third country.

2. (a) In n hall a all i b accord d fair and qui abl r a n , hall njoy full pro c ion and curi y and hall in no ca b accord d r a n l han ha r quir d by in rna ional law.

(b) N i h r Par y hall in any way i^{mp}air by arbi rary or di cri^{mi}na ory a ur h ma^{na}g n , op ra ion, ma^{na} in nanc , u , njoy n , acqui i ion, xpan ion, or di po al of in^{mi} n . For purpo of di pu r olu ion und r Ar icl VI and VII, a a ur ma^y b arbi rary or di cri^{mi}na ory no wi h and in h fac ha a Par y ha had or ha xrci d h oppor uni y or i w uch a ur in h cour or ad^{mi}ni ra i ribunal of a Par y.

(c) Each Par y hall ob r any obli a ion i ma^y ha n r d in o wi h r ard o in g n .

3. Subj c o h laws r la in o h n ry and o journ of ali n , na ional of i h r Par y hall b p r^{mi} d o n r and or ma^{na} in in h rri ory of h o h r Par y for h purpo of abli hin , d lopin , ad^{mi}ni rin , or ad i in on h op ra ion of an in n o which h y, or a co any of h fir Par y ha , mp^{lo}y h m, ha co d or ar in h proc of co in a ub an ial a^{mo}un of capi al or o h r r ourc .

4. Co^{mp}ani which ar l ally con i u d und r h applicabl laws or r ula ion of on Par y, and which ar in g n , hall b p r^{mi} d o n a op ma^{na} rial p ronn l of h ir choic , r ardl of na ionali y.

5. N i h r Par y hall i^{mp}o p rfor ma^{nc} mi^{qu}ir n a condi ion of, abli h n , xpan ion or ma^{na} in nanc of in n , which r quir or nforc co n o xpor ood produc d, or which p cify ha ood or ric purcha d locally, or which i^{mp}o any o h r i^{mi}lar r quir n .

6. Each Par y hall pro id ff ci an of a r in clai and nforcin ri h wi h r p c o in g n , in g n a r n , and in g n au horiza ion . mi

7. Each Par y hall ma^{ku} public all laws, r ula ion , ad^{mi}ni ra i prac ic and proc dur , and adjudica ory d ci ion ha p r ain o or aff c in g n .

8. Th r a n accord d by h Uni d Sa of A rica o irg n and a ocia d ac i i i of na ional and co^{mp}ani of h R public of Kyr yz an und r h pro i ion of hi Ar icl hall in any Sa , T rri ory or po ion of h Uni d Sa of A rica b no l fa orabl han h r a n accord d h r in o in g n and a ocia d ac i i i of na ional of h Uni d Sa of A rica r id n in, and co^{mp}ani l ally con i u d und r h laws and r ula ion of o h r Sa , T rri ori or po ion of h Uni d Sa of A rica.

9. Th mo^{fa} or d na ion pro i ion of hi Ar icl hall no apply o ad an a accord d by i h r Par y o na ional or co^{mp}ani of any hird coun ry by ir u of:

(a) ha Par y' bindin obli a ion ha d ri fro^m full mb^r hip in a fr rad ar a or cu o union; or (b) ha Par y' bindin obli a ion und r any mu^l ila ral in rna ional a r n und r h fra work of h Gen ral A r n on Tariff and Trad ha n r in o forc ub qu n o h i na ur of hi Tr a y.

10. Th Par i acknowl d and a r ha "a ocia d" ac i i i , includ wi hou li^{mi} a ion, uch ac i i i a :

(a) h ran in of franchi or ri h und r lic n ;

(b) acc o r i ra ion , lic n , p r^{mi} and o h r appro al (which hall in any n b i u d xp di iou ly);

(c) acc o financial in i u ion and cr di ma^{rk} ;

(d) acc o h ir fund h ld in financial in i u ion ;

() h i^{mp} or a ion and in alla ion of quip n n c ary for h nor^{ma} l conduc of bu in affair , includin bu no li^{mi} d o, offic quip n and au o^{mo} bil , and h xpor of any quip n and au o^{mo} bil o i^{mp} or d;

(f) h di mi^{na} ion of co rcial infor^{ma} ion; g

(g) the contract market studies;

(h) the application of commercial representations, including agents, consultants and distributors and their participation in trade fairs and promotional events;

(i) the marketing of goods and services, including through inter alia distribution and marketing systems, as well as by advertising and direct contact with individuals and companies;

(j) access to public utilities, public services and commercial retail space at discriminatory prices, if the prices are set or controlled by the government;

(k) access to raw materials, inputs and services of all types at discriminatory prices, if the prices are set or controlled by the government.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except: (a) public purpose; (b) a discriminatory measure; (c) payment of prompt, adequate and effective compensation; and (d) accordance with the process law and the general principles of treatment provided in Article II(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory act was taken or became known, whichever is earlier; be calculated in a freely convertible currency on the basis of the prevailing market rate of exchange at that time; be paid with delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable.

2. A national, company or 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 a substantial expropriation has occurred, if so, whether such expropriation is a discriminatory measure, and to determine the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party with respect to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to investments of nationals or companies of that other Party, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall permit all transfers relating to an investment to be made freely and with delay in that Party's territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising from an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to all agreements; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital or the maintenance or development of an investment.

2. Transfers shall be made in a freely convertible currency at the prevailing market rate of exchange of the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfers; (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, reserves or the satisfaction of judgments in a jurisdiction of proceeds, through the equitable, discriminatory and other applicable laws.

ARTICLE V

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

ARTICLE I

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 or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

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

- (a) to the courts or administrative tribunals of the Party to the dispute; or
- (b) in accordance with any applicable, previously agreed dispute-settlement procedures; or
- (c) in accordance with the terms of paragraph 3.

3 (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may wish to consent in writing to the submission of the dispute for settlement by binding arbitration:

- (i) to the International 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 8, 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
- (iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- (iv) to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

(b) Once the national or company concerned has so consented, either Party to the dispute may initiate arbitration in accordance with the choices specified in the consent.

4 Each Party hereby consents 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, together with the written consent of the national or company given under paragraph 3 shall satisfy the requirement for:

- (a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Center) and for purposes of the Additional 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, done at 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 state that is a Party to the New York Convention.

6 Any arbitral award rendered 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 in its territory for its enforcement.

7 In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, 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 with respect to the investment.

8. For purposes of arbitration under paragraph 3 of this Article, any compulsory legislative constitution under the application of laws and regulations of a Party or political subdivision thereof but that, immediately before the occurrence of the investment giving rise to the dispute, was in force to the whole or in part of the territory, shall be treated as if it were a law of the 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 resolved through consultation or other diplomatic channels, shall be submitted, upon the request of either Party, to arbitration by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrator, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall elect a third arbitrator as the Chairman, who is to be the third State. The UNCITRAL Rules of Procedure shall apply to the arbitration panel except that the appointing authority shall be the Secretary-General of the Centre.

3. Unless otherwise agreed, the submission shall be made in the language in which the complaint was made to the dispute resolution tribunal. The Tribunal shall render its decision in the language in which the submission or the dispute resolution proceedings were made.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid or 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 disputes arising under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other measures of trade liberalization.

ARTICLE IX

This Treaty shall not derogate from:

a) laws and regulations, administrative practices or procedures, or administrative or judicial decisions of either Party;

b) international obligations; or

c) obligations assumed by either Party, including those contained in investment agreements or investment authorizations, that limit investment activities to the extent that the investment agreement or investment authorization is in force.

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 of essential 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 either Party's right to regulate investments.

ARTICLE XI (

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

3. The Republic of Kyrgyzstan does not reserve the right to make or maintain limited exceptions to notification treatment, as provided in Article II, paragraph 1.

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. z