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## **rgyzzstan Bilateral Investment Treaty**

**Y**Signed 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 investment sector. It is U.S. policy, however, to advise that no alternative arrangements during BIT negotiations that conclusively demonstrate a result in favor 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 template with 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 international 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 broadly descriptive.

#### 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 national or company of one of the Treaty partners 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 intellectual property rights. It also excludes both tangible and intangible property, tangible or intangible, claims to money or performance having economic value, and associated with investment, intellectual property rights, and rights conferred by law or contract (such as over a limited license or permit). The requirement that a claim to money be associated with investment excludes claims resulting solely from trade transactions, such as simple movement 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 companies established in the other territory owned or controlled by a national of the 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-effected 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 a 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 national, 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, well established in the territory owned or controlled by the state.

#### 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" 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

"Return" means "any amount derived from or accrued with investment," in the Treaty provide non-exclusively to example, including: profit; dividend; interest; copyright; royalty payment; management, technical assistance or other fee; and return on investment. The scope of these provisions shall be the same as the provisions in Article IV.

#### Article IV

The Treaty recognizes that the operations of investment require protection extending beyond the investment to numerous related activities. These provisions shall be intended to protect investment including operation of utility, borrowing money, possession of property, using stock in purchasing foreign exchange or import. These activities are covered by Article II, paragraph 1 which guarantees the investor's right to MFN treatment or investment activities. (Article II, paragraph 10, see below, provide an explanation, refer to the "Article IV" protection by the Treaty.)

#### ARTICLE II (Treaty)

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

Paragraph 1 generally ensures the investor's MFN or national treatment in both the entry and post-entry phases of investment. It thus prohibits both the creation of proposed foreign investment on the national territory and discriminatory measures once the investment has been made, subject to specific exceptions provided in separate Annex. As previously noted, the Government of Kyrgyzstan is not to include any such exceptions to national or most-favored-nation treatment. The U.S. exceptions are contained in the section entitled "Annex."

Paragraph 2 further guarantees that investment shall enjoy "national treatment" in accordance with international law. It also prohibits discrimination throughout territory or discriminatory measures, the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of investment. This paragraph sets out minimum standards of treatment in customary international law.

In paragraph 2(c), each Party pledges to respect national obligations that may have entered into with respect to investment. Thus, national dispute settlement under Article VI or VII, a Party would be precluded from arguing, on the basis of sovereignty, that it may unilaterally ignore its obligations to such investment.

Paragraph 3 allows, subject to each Party's immigration laws and regulations, the entry of each Party's national into the territory of the other for purposes linked to investment involving the commitment of "substantial investment or capital." This paragraph refers to renunciation of BIT partner eligibility for treaty-protected investment under U.S. immigration laws and guarantee of bilateral investment or U.S. investor.

Paragraph 4 guarantees compliance of the right to engage top management personnel of the choice, register of nationalities.

Under paragraph 5, neither Party may impose performance requirements such as those concerning investment on the export of goods, purchase of local goods or services. Such requirements are major concern on investor.

Paragraph 6 provides that each Party must provide effective means of enforcing rights and claims with respect to investment, investment agreement or any investment authorization. Under paragraph 7, each Party must make publicly available laws, administrative practices and judicial procedures pertaining to or affecting investment.

Paragraph 8 recognizes that under the U.S. enterprise system, State of the United States may, in some instances, treat out-of-State enterprises in corporation in different manner than they treat in-State enterprises in corporation. The Treaty provides that the national treatment commitment, with respect to the State, means treatment no less favorable than that provided to U.S. out-of-State enterprises in corporation.

Paragraph 9 limits the Article's MFN obligations by providing that it will not apply to investment (i.e., future preference) accorded by either Party to third countries by virtue of Party's membership in free trade or other

customs union or other multilateral agreement on Trade (GATT). The text of the agreement is set forth in the Annex to the GATT.

Article II, paragraph 1 of the BIT with Kyrgyzstan signed to solve problems that U.S. business may encounter in the economic transition of the Kyrgyz Republic. The provisions of the BIT are intended to provide a framework for the development of trade and economic relations between the two countries. The provisions include: access to goods, services, and payments; access to national institutions and markets; access to the financial system; the promotion and investment of U.S. business; the protection of investments; the conduct of market studies; the appointment of commercial representatives; and the protection of intellectual property. The provisions of the BIT are intended to provide a framework for the development of trade and economic relations between the two countries.

#### ARTICLE III (EXPROPRIATION)

Article III covers the treatment of investments in the Kyrgyz Republic.

Paragraph 1 describes the rights of investors and the obligations of the host country. It states that the host country shall not nationalize or expropriate investments owned by investors from the other Party or control over them, and shall not nationalize or expropriate investments owned by investors from the other Party or control over them, and shall not nationalize or expropriate investments owned by investors from the other Party or control over them.

Paragraph 2 states that expropriation must be for a public purpose, be non-discriminatory, and be subject to prompt, adequate compensation. It also states that the compensation shall be paid in freely convertible currency and shall be transferable.

Paragraph 3 states that compensation shall be paid in freely convertible currency and shall be transferable. It also states that the compensation shall be paid in freely convertible currency and shall be transferable.

Paragraph 2 states that the host country shall not nationalize or expropriate investments owned by investors from the other Party or control over them, and shall not nationalize or expropriate investments owned by investors from the other Party or control over them.

Paragraph 3 states that the host country shall not nationalize or expropriate investments owned by investors from the other Party or control over them, and shall not nationalize or expropriate investments owned by investors from the other Party or control over them.

#### ARTICLE IV (TRANSFERS)

Article IV covers the transfer of assets and the movement of capital.

Paragraph 1 states that the host country shall not restrict the transfer of assets and the movement of capital. It also states that the host country shall not restrict the transfer of assets and the movement of capital.

Paragraph 2 states that the host country shall not restrict the transfer of assets and the movement of capital. It also states that the host country shall not restrict the transfer of assets and the movement of capital.

Paragraph 3 requires that notwithstanding the laws of the Parties, the laws of the host country shall apply to the resolution of disputes. It provides that the Parties may require reports from the host country on the measures taken by the host country as a result of the dispute. It also requires that the Parties may take measures to protect their rights and interests and to ensure satisfaction of judgments and awards through the laws, and the host country measures shall be consistent with the laws. Such laws must be applied as a rule, and the measures shall be consistent with the laws.

#### ARTICLE V (STATE-STATE CONSULTATIONS)

Article V provides for pre-arbitration consultations between the Parties, at the Party's request, on any matter relating to the interpretation and application of the Treaty.

#### ARTICLE VI (STATE- INVESTOR DISPUTE RESOLUTION)

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

Article VI provides that the "investor dispute" shall mean a dispute arising out of or relating to the rights granted by the Treaty with respect to an investment, a dispute authorized, in accordance with the investment contract, to be referred to arbitration by the investor.

When a dispute arises, Article VI stipulates that the disputing parties will attempt to resolve the dispute by mutual agreement, which may include binding the host country party to arbitration. Should such consultations fail, paragraphs 2 and 3 set forth the various remedies for the investor to pursue. The investor may make a choice of arbitration available to: (1) apply for the investor arbitration procedure under the Treaty; (2) submit the dispute to arbitration pursuant to an agreement entered into by the investor and the host country government; or (3) submit the dispute to the local courts or administrative tribunals of the host country.

Under the Treaty, the investor may take an 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 joined the Centre - the respective 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.

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

Paragraph 5 provides that an 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 investment for the arbitration awards. In addition, paragraph 6 includes a separate commitment by a host country for arbitration awards, regardless of the provisions of Article VI.

Paragraph 7 provides that a dispute settlement procedure, a Party may, at the request of the investor, be a Party to the investment agreement, a Party may, at the request of the investor, be a Party to the investment agreement, a Party may, at the request of the investor, be a Party to the investment agreement, a Party may, at the request of the investor, be a Party to the investment agreement.

Paragraph 8 stipulates that the Treaty shall not be subject to ICSID arbitration will be available for investors making investment from the investor's ratification of the laws of the Party with which the investor is a dispute.

#### ARTICLE VII (STATE-STATE ARBITRATION)

Article VII provides for binding arbitration of disputes between the United States and Kyrgyzstan that are referred to arbitration by mutual agreement. 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 p<sup>n</sup> 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<sup>o</sup> of the Unite Nations Charter. Meas res permitte by th<sup>e</sup> provision on the protection of a Party's essential sec rity interests i ll incl e sec rity-relate ctio<sup>o</sup>s 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<sup>e</sup> 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<sup>e</sup>porting 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<sup>e</sup> 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

U.S. bilateral investment agreements allow for coal exports to a state and MFN treatment. The U.S. exports and signed after the 1990s to accommodate the obligations from a bilateral agreement, in some cases, MFN treatment is required by law.

The U.S. portfolio of horizontal sales of services which, for a long time has included the following: (a) air transportation; (b) banking; (c) insurance; (d) maritime transportation; (e) air transportation; (f) maritime transportation; (g) maritime transportation; (h) maritime transportation; (i) maritime transportation; (j) maritime transportation; (k) maritime transportation; (l) maritime transportation; (m) maritime transportation; (n) maritime transportation; (o) maritime transportation; (p) maritime transportation; (q) maritime transportation; (r) maritime transportation; (s) maritime transportation; (t) maritime transportation; (u) maritime transportation; (v) maritime transportation; (w) maritime transportation; (x) maritime transportation; (y) maritime transportation; (z) maritime transportation.

Ownership of air transportation, maritime-land services, and maritime services in the U.S. government securities also excluded from the MFN treatment commitments. The last of these is the exemption by the United States from MFN treatment obligations because of U.S. laws which require. The effect of this provision would be to prohibit a bilateral MFN agreement.

The list of goods and services which are domestic laws have been identified for the following: (a) MFN basis, unless otherwise specified; (b) MFN basis, unless otherwise specified; (c) MFN basis, unless otherwise specified; (d) MFN basis, unless otherwise specified; (e) MFN basis, unless otherwise specified; (f) MFN basis, unless otherwise specified; (g) MFN basis, unless otherwise specified; (h) MFN basis, unless otherwise specified; (i) MFN basis, unless otherwise specified; (j) MFN basis, unless otherwise specified; (k) MFN basis, unless otherwise specified; (l) MFN basis, unless otherwise specified; (m) MFN basis, unless otherwise specified; (n) MFN basis, unless otherwise specified; (o) MFN basis, unless otherwise specified; (p) MFN basis, unless otherwise specified; (q) MFN basis, unless otherwise specified; (r) MFN basis, unless otherwise specified; (s) MFN basis, unless otherwise specified; (t) MFN basis, unless otherwise specified; (u) MFN basis, unless otherwise specified; (v) MFN basis, unless otherwise specified; (w) MFN basis, unless otherwise specified; (x) MFN basis, unless otherwise specified; (y) MFN basis, unless otherwise specified; (z) MFN basis, unless otherwise specified.

Because the U.S. exports to a state and MFN treatment based on existing U.S. law, hereby agreed to the following:

Kyrgyzstan and the coal exports to a state and MFN treatment.

The United States Government agrees which go into the Treaty of Commerce and Consular Rights between the United States and the Republic of Kyrgyzstan.

Respectfully submitted,

WARREN CHRISTOPHER

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

The United States of America and the Republic of Kyrgyzstan (hereinafter "Parties");

Desiring to promote economic cooperation between them, with respect to investments by investors of one Party in the territory of the other Party;

Recognizing that agreement upon the matters set forth herein will stimulate the flow of private capital and economic development of the Parties;

Agreeing that it is in the interests of both Parties to encourage and protect investments in their respective territories;

Recognizing that the development of economic and business relations between them is in the best interests of both Parties and that the promotion of such relations will contribute to the economic growth and development of both Parties;

Having concluded a Treaty of Commerce and Consular Rights between them;

Have agreed as follows: A

ARTICLE 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 companies 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, retention 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 exchange 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 companies, or of national or companies of any third country, which verify the most favorable, subject to the right of each Party to make or maintain excise taxation falling within one of the categories 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 issues concerning the categories or matters listed in the Annex. Moreover, each Party agrees to notify the other of any transaction with respect to the categories 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 category or matter at the time the excise tax becomes effective. The treatment accorded pursuant to any excise tax shall, nevertheless, in the Annex, be not less favorable than that accorded in like situations to investment and associated activities of national or companies of any third country.

2. (a) In \_\_\_\_\_ hall 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 \_\_\_\_\_ mpair by arbi rary or di cri \_\_\_\_\_ mi na ory \_\_\_\_\_ a ur \_\_\_\_\_ h \_\_\_\_\_ ma \_\_\_\_\_ na g \_\_\_\_\_ n , op ra ion,  
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5. N i h r Par y hall i \_\_\_\_\_ mp \_\_\_\_\_ o p r for \_\_\_\_\_ ma \_\_\_\_\_ nc \_\_\_\_\_ mi \_\_\_\_\_ quir \_\_\_\_\_ n a condi ion of, \_\_\_\_\_ abli h \_\_\_\_\_ n , xpan ion or  
ma \_\_\_\_\_ in nanc of in \_\_\_\_\_ n , which r quir or n forc 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 n forc in \_\_\_\_\_ 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 \_\_\_\_\_ k \_\_\_\_\_ 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 or i 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 \_\_\_\_\_ lila \_\_\_\_\_ 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 \_\_\_\_\_ xp or of any quip \_\_\_\_\_ n and au o \_\_\_\_\_ mo \_\_\_\_\_ bil \_\_\_\_\_ o  
i \_\_\_\_\_ mp \_\_\_\_\_ or d;

(f) h \_\_\_\_\_ di \_\_\_\_\_ mi \_\_\_\_\_ na ion of co \_\_\_\_\_ r \_\_\_\_\_ cial infor \_\_\_\_\_ ma \_\_\_\_\_ ion; g \_\_\_\_\_

(g) the contract market studies;

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

(i) the marketing of goods and services, including through internet 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 real estate 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 without delay in accordance with its 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) a national contribution to the maintenance and 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; and (b) imposing income taxes by such means as a withholding tax applicable to individuals 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 company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national company; (b) an investment authorization granted by that Party's foreign investment authority to such national 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 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 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 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 company concerned has 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 company under paragraph 3. Such consent, together with the written consent of the national company given under paragraph 3 shall satisfy the requirement of:

- (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 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 jurisdiction established by the application of laws, regulations, orders, or political subdivisions thereof, but that, immediately before the occurrence of the investment giving rise to the dispute, was in force and effect in the territory of the Party, 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 shall constitute the third State. The UNCITRAL Rules of Procedure shall apply mutatis mutandis to the appointment of the arbitrators, 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 filed with the other party to the arbitration, and the Tribunal shall render its decision in the language in which the submission was made, which shall be final.

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 out of the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or out of the other official credit, guarantee or insurance arrangements pursuant to which the Parties have granted to other members of the Organization.

#### ARTICLE IX

This Treaty shall not derogate from:

a) laws, regulations, orders, 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 or economic activities to the extent that the investment is in accordance with the Treaty in like situations.

#### ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance of international peace or 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 investment, but such formalities shall not impair the substance of either Party's right to regulate the investment.

#### ARTICLE XI (

1. With respect to tax liability, each Party should strive to a fair and equitable treatment of investment of national and multinational companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Article V and V, shall apply to matters of taxation only with respect to the following:

(a) exports, under Article ;

(b) transfers, under Article V; and

(c) the business and investment firms of an investment agreement authorized in Article V (1) (a) or (b), to the extent that the subject of the investment is a multinational enterprise, and the tax liability of the two Parties, shall be determined under the provisions and arrangements within a reasonable time.

#### ARTICLE X

This Treaty shall apply to the territorial divisions of the Parties.

#### ARTICLE X

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force until terminated in accordance with paragraph 2 of this Article. It shall apply to investment existing at the time of entry into force and to investment made thereafter.

2. Either Party may, by giving ninety days' written notice to the other Party, terminate this Treaty at the end of the initial ten year period at any time thereafter.

3. With respect to investment made thereafter to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from the date of termination. It

4. The Annex, Protocol, and Schedule shall form an integral part of this Treaty.

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

DONE in duplicate at Washington, the nineteenth day of January, 1993 in the English and Russian languages, both texts being equally authentic. A Kyrgyz language text shall be prepared which shall be rendered equally authentic upon exchange of diplomatic notes confirming its conformity with the English language text.

FOR THE UNITED STATES OF AMERICA:

FOR THE REPUBLIC OF KYRGYZSTAN:

#### ANNEX

1. The United States reserves the right to make or maintain limitations on national treatment, as provided in Article , paragraph 1, in the following matters: (a) air transport; (b) air and sea transport; (c) banking; (d) insurance; (e) government grants; (f) government insurance and insurance programs; (g) energy and power distribution; (h) telecommunications; (i) intellectual property; (j) workers' compensation and labor relations; (k) workers' health insurance; (l) communication satellite services; (m) common carrier services; (n) and (o) other services; (p) the provision of submarine cables; (q) uranium and natural resources; (r) mining and metallurgy; (s) maritime services and maritime-related services; and (t) primary distribution in United States government utilities.

2. The United States reserves the right to make or maintain limitations on most favored nation treatment, as provided in Article , paragraph 1, in the following matters: (a) air transport; (b) air and sea transport; (c) banking; (d) insurance; (e) government grants; (f) government insurance and insurance programs; (g) energy and power distribution; (h) telecommunications; (i) intellectual property; (j) workers' compensation and labor relations; (k) workers' health insurance; (l) communication satellite services; (m) common carrier services; (n) and (o) other services; (p) the provision of submarine cables; (q) uranium and natural resources; (r) mining and metallurgy; (s) maritime services and maritime-related services; and (t) primary distribution in United States government utilities.

2. The United States reserves the right to make or maintain limitations on most favored nation treatment, as provided in Article , paragraph 1, in the following matters: I

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.

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*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*