

FOIA MARKER

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Folder Title:

Latvia-Richard Shifter [1]

Staff Office-Individual:

Central and Eastern European Affairs-Fried, Daniel

Original OA/ID Number:

893

Row:	Section:	Shelf:	Position:	Stack:
30	4	9	1	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	RE: [Latvia] [Released in Part] (4 pages)	11/08/1995	P1/b(1) VZ 9/21/2023
002. memo	Daniel Fried to Anthony Lake, re: Your Brief Meeting with Latvian Ambassador Kalnins (1 page)	07/14/1995	P1/b(1) VZ 9/21/2023
003. report	Biography (1 page)	ca. 06/1995	P1/b(1)
004. report	Biography (1 page)	ca. 06/1995	P1/b(1)
005. memo	Re: Circular 175 Authorization for Negotiation and Conclusion of Treaties on Treatment and Protection of Investment (4 pages)	ea. 1990	P1/b(1) VZ 9/21/2023

COLLECTION:

Clinton Presidential Records
National Security Council
Central and Easter European Affairs (Fried, Daniel)
OA/Box Number: 893

FOLDER TITLE:

Latvia - Richard Schifter [1]

2011-1037-F

ke2183

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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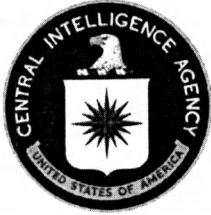
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~~Secret~~

3.5c

Latvia

Intelligence Report

Office of Slavic and Eurasian Analysis

8 November 1995

Latvia: Bumps on the Road to Reform

3.5c

The large vote cast for several fringe parties in last month's parliamentary elections highlighted the Latvian public's disenchantment with painful economic reforms. The fragmented coalition government that eventually emerges could backslide on economic reform, but broad popular support for Western integration probably will force it ultimately to toe the line on reform. Pervasive crime and corruption, however, could stymie Latvia's transition to a "mature" democratic society. At the same time that Riga is working to normalize relations with Moscow, deep-rooted suspicions about Russia's intentions toward Latvia are prompting closer ties to the West.

3.5c

Political Developments. Parliamentary elections held on 30 September and 1 October failed to produce an obvious winner, with nine parties splitting 100 seats. *The unexpected success of several wildcard parties--representing both the far left and far right--probably will make sustaining a workable coalition extremely difficult.*

- In the election aftermath, several leftist parties and the right-wing populist People's Movement for Latvia--headed by German-born Joachim Siegerist, renowned for being booted out of the previous parliament for poor attendance and charged in Germany for inciting racial hatred--formed a self-described "Centrist Bloc" comprising at least 48 seats.
- The core of the Centrist Bloc is the "Democratic Party Saimnieks," which received the most votes, claiming 18 seats. Founded by former Latvian Communist Party members, "Saimnieks"--which perhaps not ironically means "master"--has ties to organized crime and Russian intelligence front companies, including Nordex,

EO 13526 1.4c

EO 13526 1.4c

EO 13526 1.4c

3.5c

Although this Bloc has so far drawn the most support from elected deputies, President Ulmanis on 7 November tapped a member of the right-of-center National Conciliation

This report was requested by the Office of the Secretary of Defense to support the Secretary's upcoming trip to the Baltic states. It was prepared by [redacted] Office of Slavic and Eurasian Analysis. Comments and queries are welcome and may be directed to Chief, New States Division, OSE, [redacted]

3.5c

Declassified in Part

Per E.O. 13526

2016-0314-M-1 (1.66)

6/12/2023 VZ

3.5c

Bloc--Maris Grinblats, the head of the ultranationalist For Fatherland and Freedom Party--to try to form a government. A parliamentary majority must approve Grinblats's proposed government; he will be hard-pressed to win the support of five uncommitted, but left-leaning Socialist deputies. Grinblats's failure could force Ulmanis to turn to the Center Bloc to form a government or possibly call for new elections.

- To ensure that any coalition government continues working to integrate Latvia into Western political, economic, and security organizations, Ulmanis in mid-October called on the lameduck parliament to approve a formal application to the European Union. Ulmanis then called together the leaders of all of the parties to be represented in the new parliament and secured their endorsement of the application, which was formally presented in Brussels later in the month. EO 13526 1.4c

EO 13526 1.4c 3.5c

Organized Crime. Organized criminal activity pervades the Latvian economy and undercuts reforms. EO 13526 1.4c Organized crime groups--mostly ethnic Russian with strong international connections--focus their activities on illegal trade between former Soviet states and the West, using deepwater ports in Riga and Ventspils.

- EO 13526 1.4c Latvia's organized crime gangs derive their primary revenues from selling stolen Western automobiles and illegal shipments of Russian oil, as well as by facilitating illegal immigration to Europe; extortion and racketeering are also major money earners. 3.5c

Latvia's legitimate economy has been penetrated to a large degree. Described as the "Switzerland of the East" for its lucrative banking sector, Latvia is the money laundering capital of the former Soviet Union, EO 13526 1.4c

EO 13526 1.4c

- Preliminary investigations by the FBI and audits by a US accounting firm uncovered a major international money-laundering operation that was run out of Latvia's largest commercial bank--Bank Baltija, which collapsed in May. Bank Baltija moved millions of dollars through its accounts in the United States and created a network of offshore companies. EO 13526 1.4c, 3.5c

Economic Reform. *Twin financial crises this year are undermining Latvia's economic recovery.* The failure of 16--out of 55--banks and the government's inability to collect tax revenues have spawned a larger-than-expected budget deficit and forced

the lameduck parliament in late October to pass a supplementary budget bill increasing the debt ceiling to 92 million lats from 40 million.

- The amended budget cut the amount earmarked this year for compensation to depositors of failed banks to 3.5 million lats from 23 million, according to press reports. 3.5c

Projections for this year's economic performance have been adjusted to reflect the current crises. IMF officials are concerned about Latvia's derailed reform program and lack of effort by the government to get back on track, EO 13526 1.4c

EO 13526 1.4c

- The IMF and Latvian Government last year had predicted that GDP would grow by 4 percent; current projections are for zero growth, EO 13526 1.4c
- The lameduck parliament's draft 1996 budget does not provide for a balanced budget, as was called for in Riga's IMF program; 1.4(c)
EO 13526 1.4c, 1.4(d) a zero deficit next year would be impossible, 1.4(c) the planned deficit of 68 million lats is too high. *The IMF probably will pressure Riga to lower next year's deficit target, demanding constructive government action to cut the budget and improve revenue collection.*
- A Center Bloc coalition government probably would be less inclined to rigorously abide by IMF programs; "Saimnieks" and Siegerist's party have promised further budget-busting social safety-net outlays, according to the Embassy. 3.5c

Relations With Russia. Ulmanis and the two governments that served with him since June 1993 have worked to normalize often strained relations with Russia; the April 1994 agreements on Russian troop withdrawals and Moscow's continued operation of the Skrunda ballistic missile warning facility resolved the most contentious bilateral issues.

- "Saimnieks" and the other leftist parties represent the interests of Russian businesses in Latvia, as well as ethnic Russian residents, EO 13526 1.4c A Center Bloc government probably would support measures to curry favor with Moscow--for example, easing implementation of, or changing, Latvian language requirements in order to better integrate ethnic Russians into Latvian society. 3.5c

Despite resolution of the main problems, *most Latvians remain deeply suspicious of Russia's intentions toward the Baltic states*. Riga's concerns were exacerbated by last month's publication in the Russian press of an alleged draft military doctrine that calls for Russia to invade the Baltic states should NATO admit them as members.

- In response to the draft's publication, Latvian Prime Minister Gailis considered invoking a clause in the Partnership for Peace (PFP) agreement that Riga interprets to allow a PFP signatory to seek formal consultations with NATO if that state considers that its security is threatened, [redacted] EO 13526 1.4c

3.5c

NATO and PFP. By all accounts, fear of Russian threats to its security is the driving force behind Latvia's national security strategy--the main focus of which is rapid integration into Western political, economic, and security structures. Various sources indicate that *Latvia considers NATO the best guarantor of its security and will use every opportunity to press NATO members for assistance in gaining entry*.

- Although Latvian officials have admitted that the country is not currently prepared to join NATO, they have said that any enlargement strategy that does not allow for the Baltic states' eventual entry into NATO would be tantamount to sacrificing them to a Russian sphere of influence a la Molotov-Ribbentrop, [redacted] EO 13526 1.4c

1.4(c)

- To promote its candidacy, Latvia actively participates in PFP. *The Baltic Battalion (BALTBAT)--a nascent peacekeeping unit composed of troops from each of the Baltic countries--is the main vehicle for Latvia's participation in PFP*. Last year, Riga devoted 10 percent of its defense budget--about \$2 million--to establish the BALTBAT training center at Adazi, [redacted] EO 13526 1.4c

3.5c

~~CONFIDENTIAL~~
NSC/RMO PROFILE

RECORD ID: 9505427
RECEIVED: 14 JUL 95 17

TO: LAKE

FROM: FRIED

DOC DATE: 14 JUL 95
SOURCE REF:

KEYWORDS: LATVIA

ANSA

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By XX NARA, Date 9/27/2013
2011-1037-F

PERSONS:

SUBJECT: YOUR BRIEF MTG W/ LATVIAN AMB KALNINS ON 17 JUL

ACTION: NOTED BY LAKE

DUE DATE: 18 JUL 95 STATUS: C

STAFF OFFICER: FRIED

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

FRIED

NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSMEC

CLOSED BY: NSMEC

DOC 1 OF 1

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~
ACTION DATA SUMMARY REPORT

RECORD ID: 9505427

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 LAKE
001

Z 95071419 FOR INFORMATION
X 95071917 NOTED BY LAKE

~~CONFIDENTIAL~~

National Security Council
The White House

PROOFED BY: _____ LOG # _____
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT
BYPASSED WW DESK: _____ DOCLOG PR A/O _____

5427

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Harmon	_____	_____	_____
Dohse	<u>1</u>	<u>D</u>	_____
Sens	_____	_____	_____
Soderberg	<u>copy</u>	_____	_____
Berger	<u>2</u>	<u>PR</u>	_____
Lake	<u>3</u>	_____	_____
Situation Room	_____	Natl Sec Advisor has seen	_____
West Wing Desk	<u>4</u>	<u>PRS 7/17</u>	<u>N</u>
Records Mgt.	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc:

COMMENTS:

Lake mts w/ Amb
1 Screens

7/17 3:30

Exec Sec Office has diskette _____

July 14, 1995

Natl Sec Advisor
has seenINFORMATION

MEMORANDUM FOR ANTHONY LAKE

FROM: DANIEL FRIED *DF***NOTED**SUBJECT: Your Brief Meeting with Latvian Ambassador Kalnins
Monday, July 17, 3:30-3:40pm

Latvian Ambassador Ojars Kalnins requested a ten-minute meeting in order: a) to present a small, mounted piece of concrete from the "imploded" Skrunda LPAR facility; and, b) to thank you for a quick USG response to a Latvian request for assistance in dealing with the Bank Baltija collapse.

-- **Skrunda.** On May 4, the former-Soviet radar complex at Skrunda was "imploded" in accordance with a Latvian-Russian agreement. The U.S. -- the Army Corps of Engineers working through a U.S. contractor -- ran the actual implosion, which took place on the fifth anniversary of the day the Latvian Soviet Republic Parliament declared independence. The implosion went off according to plan; it was followed by a rock concert.

-- **Bank Baltija.** One of Latvia's most prominent private banks collapsed this spring, amid charges of corruption and fraud and (unconfirmed) rumors of Russian criminal and/or intelligence meddling. In response to urgent Latvian requests, our SEED Act Coordinator dispatched, in quick succession, a Secret Service financial crimes officer and a Treasury advisor; we are preparing to send a larger FBI team to work with Latvian law enforcement officials to investigate possible criminal acts. We also are helping Latvia reform its weak banking system, a longer-term project to consolidate new, small private banks into a viable net.

Kalnins credits SEED Coordinator Ralph Johnson and us for the USG responsiveness. This is an example of how our CEE assistance program has improved in the last couple of years. We were able to combine different programs (our Treasury advisor program and resources from the President's CEE law enforcement initiative) and move interagency and fast.

Kalnins promised he won't raise Russia, NATO, officer housing, Baltic Battalion funding or other tough issues.

~~CONFIDENTIAL~~

Declassify on: OADR

DECLASSIFIED**PER E.O. 13526**

2016-0314-M-1 (1.67)

6/12/2023 RZ

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9504667
RECEIVED: 19 JUN 95 09

TO: PRESIDENT

FROM: LAKE
GRIFFIN, P
WH EXECUTIVE CLERK

Latvia
Ø

DOC DATE: 05 JUL 95
SOURCE REF:

KEYWORDS: LATVIA
TREATIES

INTL TRADE

PERSONS:

SUBJECT: TREATY BTW US & LATVIA FOR ENCOURAGEMENT & RECIPROCAL PROTECTION
OF INVESTMENT

ACTION: PRESIDENT SGD PER WH EXEC CLERK DUE DATE: 22 JUN 95 STATUS: C

STAFF OFFICER: FRIED

LOGREF:

FILES: WH NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
DANVERS
FRIED
NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSJDA

CLOSED BY: NSASK

DOC 3 OF 3

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9504667

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 BEYRLE	Z 95061909 PREPARE MEMO FOR LAKE
001	Z 95061916 ACTION TRANSFERRED
001 FRIED	Z 95061916 PREPARE MEMO FOR LAKE
002 LAKE	Z 95063019 FWD TO PRESIDENT FOR SIG
003 PRESIDENT	Z 95070520 FOR SIGNATURE
003	X 95071310 PRESIDENT SGD PER WH EXEC CLERK

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

003 950705	VICE PRESIDENT
003 950705	WH CHIEF OF STAFF

UNCLASSIFIED

National Security Council
The White House

REC'D 7/1
9AM

PROOFED BY: _____

LOG # 4667

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT

BYPASSED WW DESK: _____

DOCLOG mc A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Harmon	<u>1</u>	<u>[Signature]</u>	_____
Dohse	_____	_____	_____
Sens	_____	_____	_____
Soderberg	_____	_____	_____
Berger	_____	_____	_____
Lake	<u>2</u>	<u>Nat Sec Advisor</u> <u>has seen</u>	_____
Situation Room	_____	_____	_____
West Wing Desk	<u>3</u>	<u>[Signature]</u>	<u>DGristen</u>
Records Mgt.	_____	_____	_____
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A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc:

COMMENTS:

Exec Sec Office has diskette [Signature]

National Security Council
The White House

PROOFED BY: _____

LOG # 4667

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT

BYPASSED WW DESK: _____

DOCLOG _____ A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Harmon	_____	_____	_____
Dohse	_____	_____	_____
Sens	_____	_____	_____
Soderberg	_____	_____	_____
Berger	_____	_____	_____
Lake	_____	_____	_____
Situation Room	_____	_____	_____
West Wing Desk	<u>1</u>	<u>WWS 7/5</u>	<u>To prodsk</u>
Records Mgt. <u>↳</u>	<u>2</u>	<u>WWS 7/10</u>	<u>W</u>
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A = Action	I = Information	D = Dispatch	R = Retain	N = No Further Action
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cc: Fried, Kreczko, Danvers

COMMENTS:

Exec Sec Office has diskette _____

THE WHITE HOUSE

WASHINGTON

July 5, 1995

President sgd per WH
Executive Clerk July 10, 1995

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE
PATRICK GRIFFIN *DS*SUBJECT: Treaty Between U.S. and Latvia for Encouragement
and Reciprocal Protection of InvestmentPurpose

To transmit to Congress the U.S.-Latvia Treaty for Encouragement
and Reciprocal Protection of Investment.

Background

The U.S.-Latvia Treaty for Encouragement and Reciprocal
Protection of Investment (Tab B) signed on January 13, 1995 will
benefit U.S. business 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 letter at Tab A transmits the Treaty to the Senate for its
advice and consent to ratification.

RECOMMENDATION

That you sign the transmittal letter at Tab A.

Attachments

Tab A Transmittal letter
Tab B Treaty text

cc: Vice President
Chief of Staff

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

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 investor's or investment's freedom to choose 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.

THE WHITE HOUSE,

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

The Government of the United States of America and the Government of 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 flow of private capital and the economic development of the Parties;

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

Recognizing that the development of economic and business ties can contribute to the well-being of workers in both Parties and 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:

ARTICLE I

1. For the purposes of this Treaty,

(a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests 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 works, including sound recordings,

inventions in all fields of human endeavor,

industrial designs,

semiconductor mask works,

trade secrets, know-how, and confidential business information, and

trademarks, service marks, and trade names; and

(v) any right conferred by law or contract, and any licenses and permits pursuant to law;

(b) "company" of a Party means any kind of corporation, company, association, 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 returns in kind;

(e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property rights; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of foreign exchange for imports.

(f) "state enterprise" means an enterprise owned, or controlled through ownership interests, by a Party.

(g) "delegation" includes a legislative grant, and a government order, directive or other act transferring to a state enterprise or monopoly, or authorizing the exercise by a state enterprise or monopoly, of governmental authority.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control 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 nationals 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 nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters

listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall, unless specified otherwise in the Annex, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

2. (a) Nothing in this Treaty shall be construed to prevent a Party from maintaining or establishing a state enterprise.

(b) Each Party shall ensure that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Treaty wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has 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 any state enterprise that it maintains or establishes accords the better of national or most favored nation treatment in the sale of its goods or services in the Party's territory.

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

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

(c) Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

6. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce 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 investment, investment agreements, and investment authorizations.

8. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory 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 this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

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

(a) that Party's binding obligations that derive from full membership in a free trade area or customs union; or

(b) that Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade that enters into force subsequent to the signature of this Treaty.

11. The Parties acknowledge and agree that "associated activities" include, without limitation, such activities as:

(a) the granting of franchises or rights under licenses;

(b) access to registrations, licenses, permits and other approvals (which shall in any event be issued expeditiously);

(c) access to financial institutions and credit markets;

(d) access to their funds held in financial institutions;

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

(f) the dissemination of commercial information;

(g) the conduct of market studies;

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

(i) the marketing of goods and services, including through internal 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 rental space at nondiscriminatory prices, if the prices are set or controlled by the government; and

(k) access to raw materials, inputs and services of all types at nondiscriminatory 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: for public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (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, as defined in Article 30 of the Articles of Agreement of the International Monetary Fund, on the basis of the prevailing market rate of exchange at that time; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any associated compensation, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, 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 related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) returns;
- (b) compensation pursuant to Article III;
- (c) payments arising out of an investment dispute;
- (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;
- (e) proceeds from the sale or liquidation of all or any part of an investment; and
- (f) additional contributions to capital for the maintenance or development of an investment.

2. Transfers shall be made in a freely usable currency, as defined in Article 30 of the Articles of Agreement of the International Monetary Fund, at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (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, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

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

ARTICLE VI

1. For 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 choose to submit the dispute for resolution:

(a) to the courts or administrative tribunals of the Party that is a 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 choose 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 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

(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 choice so 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 when 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 Centre) 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.

8. For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of a Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party 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 consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrators, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those 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 third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

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

ARTICLE VIII

This Treaty shall not derogate from:

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

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE IX

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

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

ARTICLE X

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

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

(a) expropriation, pursuant to Article III;

(b) transfers, pursuant to Article IV; or

(c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI (1) (a) or (b),

to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XI

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

ARTICLE XII

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

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

3. With respect to investments made or acquired prior 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 such date of termination.

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

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

DONE in duplicate at Washington, on the thirteenth day of January, 1995 in the English and Latvian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF LATVIA:

A handwritten signature in dark ink, appearing to read "Michael Kantor", written over the text "FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:".A handwritten signature in dark ink, appearing to read "Valdis Pizma", written over the text "FOR THE GOVERNMENT OF THE REPUBLIC OF LATVIA:".

PROTOCOL

The Parties confirm their mutual understanding that with respect to the listing of "ownership and control of land" in paragraph 3 of the Annex, current Latvian legislation permits foreign investors to own or control land in urban areas, as defined under the laws of the Republic of Latvia.

ANNEX

1. The Government of the United States reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below:

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

2. The Government of the United States reserves the right to make or maintain limited exceptions to most favored nation treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below:

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

3. The Republic of Latvia reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1 in the sectors or matters it has indication below:

Control of defense industries; manufacturing and sale of narcotics, weapons and explosives; control of newspapers, television and radio broadcasting stations, or news agencies; recovery of all renewable and non-renewable natural resources including resources found on the continental shelf; fishing; hunting; port management; banking; ownership and control of land; brokerage or real property; and gambling.

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

June 28, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM:

DAN FRIED *DF*

SUBJECT:

Treaty Between U.S. and Latvia for Encouragement
and Reciprocal Protection of Investment

Attached at Tab A is the letter of transmittal to the Congress for the President's signature. The treaty between the U.S. and Latvia for the Encouragement and Reciprocal Protection of Investment is at Tab B.

Concurrence by:

Alan Kreczko *AK* and Bill Danvers *BD*RECOMMENDATION

That you sign the memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President

Tab A Transmittal Letter

Tab B Treaty Text

Tab II Talbott Letter

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

June 29, 1995

*f Latvia*ACTION

MEMORANDUM FOR ANDREW SENS

FROM:

DANIEL FRIED *DF*

SUBJECT:

FLOTUS Meeting With First Lady of Latvia Aina
Ulmanis

Per your request, attached is a memorandum to Melanne Verveer with points for the First Lady's use during her meeting with the First Lady of Latvia at the Special Olympics.

RECOMMENDATION

That you sign the attached memo to Melanne Verveer in the First Lady's Office.

Attachments

Tab I Memorandum to Melanne Verveer

Tab A Background Memorandum and Points to Make

Tab B Bio

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

INFORMATION

MEMORANDUM FOR MELANNE VERVEER

FROM: ANDREW SENS

SUBJECT: FLOTUS Meeting With First Lady of Latvia Aina
Ulmanis

Attached at Tabs A and B are background information, points to make and biographic data for Mrs. Clinton's meeting with the first Lady of Latvia Aina Ulmanis.

Attachments

Tab A Background Memorandum and Points to Makeo
Tab B Bio

MRS. CLINTON'S MEETING WITH
LATVIAN FIRST LADY AINA ULMANIS

Mrs. Clinton met Mrs. Ulmanis during the President's trip to Riga in July, 1994; they met again on June 28 during the White House signing ceremony which launched a U.S.-Latvian medical partnership. The partnership, funded by \$1 million of USG funds and \$3 million of private sector contributions, involves health care improvement for Latvian hospitals. Their joint participation in the Special Olympics July 1 in New Haven further symbolizes Latvian-American cooperation.

U.S. relations with Latvia have deepened since the July, 1994 trip. We support Latvia's sovereignty and its democratic and market economic transformation. We seek Latvia's integration into Western institutions. Thanks largely to U.S. efforts, all Russian forces have withdrawn from Latvia. On May 4, a former Soviet military radar at Skrunda was "imploded" with great fanfare, symbolizing an end to Soviet occupation began in 1940.

Latvia recently concluded an Association Agreement with the European Union and is an active participant in the Partnership for Peace. Together with Estonia and Lithuania, Latvia is organizing and training a new Joint Baltic Peacekeeping Battalion. The United States has pledged \$10 million to assist this project this year and an additional \$5 million in FY96. We also are working to intensify cooperation with Latvia in the fight against international organized crime. Latvia is concerned about Russian long-term intentions toward the Baltic states and seeks the security of NATO membership. The United States is leading NATO's process of gradually bringing in new members, possibly including at some point the Baltic states.

The Latvian First Lady's name is either Mrs. Ulmanis or Aina Ulmane.

Points to Make

- Greatly enjoyed your visit to the White House to launch the partnership between the American International Health Alliance and Latvian hospitals.
- This project, and our support for the Special Olympics, demonstrates the growing ties between our societies.
- These efforts are just one part of the links between Latvia and the wider Western world.
- The United States supports Latvia's sovereignty and reintegration with the West.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. report	Biography (1 page)	ca. 06/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Central and Easter European Affairs (Fried, Daniel)
OA/Box Number: 893

FOLDER TITLE:

Latvia - Richard Schifter [1]

2011-1037-F
ke2183

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9505013
RECEIVED: 29 JUN 95 08

TO: BOWYER, L

FROM: SENS

DOC DATE: 29 MAR 95
SOURCE REF:

KEYWORDS: LATVIA

APPOINTMENT FIRST LADY

PERSONS: ULMANIS, AINA

SUBJECT: FLOTUS MTG W/ FIRST LADY OF LATVIA

ACTION: SENS SGD MEMO

DUE DATE: 03 JUL 95 STATUS: C

STAFF OFFICER: FRIED

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

EXECSEC

FRIED

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSASK

CLOSED BY: NSDRS

DOC 2 OF 2

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 9505013

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 SENS
002

Z 95062915 FOR SIGNATURE
X 95062915 SENS SGD MEMO

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

002 950329 BOWYER, L

UNCLASSIFIED

National Security Council
The White House

PROOFED BY: _____

LOG # 5013

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT

BYPASSED WW DESK: _____

DOCLOG JOH A/O _____

	SEQUENCE TO	INITIAL DATE	DISPOSITION
<u>6</u> Harmon	_____	_____	_____
Dohse	_____	_____	_____
Sens	<u>1</u>	<u>203</u>	_____
Soderberg	_____	_____	_____
Berger	_____	_____	_____
Lake	_____	_____	_____
Situation Room	_____	_____	_____
West Wing Desk	<u>2</u>	<u>JOH 6/29</u>	<u>N</u>
Records Mgt.	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc:

COMMENTS: -

First Lady mtg
w/ First Lady of
Latvia

Exec Sec Office has diskette yes

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

June 29, 1995

INFORMATION

MEMORANDUM FOR LIZ BOWYER

FROM:

ANDREW D. SENS *ADS*

SUBJECT:

FLOTUS Meeting With First Lady of Latvia Aina
Ulmanis

Attached at Tabs A and B are background information, points to make and biographic data for Mrs. Clinton's meeting with the first Lady of Latvia Aina Ulmanis.

Attachments

Tab A	Background Memorandum and Points to Make
Tab B	Bio

MRS. CLINTON'S MEETING WITH
LATVIAN FIRST LADY AINA ULMANIS

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- The United States supports Latvia's sovereignty and reintegration with the West.

TAB B

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. report	Biography (1 page)	ca. 06/1995	P1/b(1)

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NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

June 29, 1995

ACTION

MEMORANDUM FOR ANDREW SENS

FROM:

DANIEL FRIED *DF*

SUBJECT:

FLOTUS Meeting With First Lady of Latvia Aina
Ulmanis

Per your request, attached is a memorandum to Melanne Verveer with points for the First Lady's use during her meeting with the First Lady of Latvia at the Special Olympics.

RECOMMENDATION

That you sign the attached memo to Melanne Verveer in the First Lady's Office.

Attachments

Tab I Memorandum to Melanne Verveer

Tab A Background Memorandum and Points to Make

Tab B Bio

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

June 28, 1995

Q *Latvia*ACTION

MEMORANDUM FOR ANTHONY LAKE

FROM:

DAN FRIED *DF*

SUBJECT:

Treaty Between U.S. and Latvia for Encouragement
and Reciprocal Protection of Investment

Attached at Tab A is the letter of transmittal to the Congress for the President's signature. The treaty between the U.S. and Latvia for the Encouragement and Reciprocal Protection of Investment is at Tab B.

Concurrence by:

Alan Kreczko *AK* and Bill Danvers *WD*RECOMMENDATION

That you sign the memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President

Tab A Transmittal Letter

Tab B Treaty Text

Tab II Talbott Letter

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE
PATRICK GRIFFIN

SUBJECT: Treaty Between U.S. and Latvia for Encouragement
and Reciprocal Protection of Investment

Purpose

To transmit to Congress the U.S.-Latvia Treaty for Encouragement
and Reciprocal Protection of Investment

Background

The U.S.-Latvia Treaty for Encouragement and Reciprocal
Protection of Investment (Tab B) signed on January 13, 1995 will
benefit U.S. business 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 letter at Tab A transmits the Treaty to the Senate for its
advice and consent to ratification.

RECOMMENDATION

That you sign the transmittal letter at Tab A.

Attachments

Tab A Transmittal letter
Tab B Treaty text

cc: Vice President
Chief of Staff

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 investor's or investment's freedom to choose 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.

THE WHITE HOUSE,

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

The Government of the United States of America and the Government of 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 flow of private capital and the economic development of the Parties;

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

Recognizing that the development of economic and business ties can contribute to the well-being of workers in both Parties and 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:

ARTICLE I

1. For the purposes of this Treaty,

(a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests 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 works, including sound recordings,

inventions in all fields of human endeavor,

industrial designs,

semiconductor mask works,

trade secrets, know-how, and confidential business information, and

trademarks, service marks, and trade names; and

(v) any right conferred by law or contract, and any licenses and permits pursuant to law;

(b) "company" of a Party means any kind of corporation, company, association, 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 returns in kind;

(e) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property rights; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of foreign exchange for imports.

(f) "state enterprise" means an enterprise owned, or controlled through ownership interests, by a Party.

(g) "delegation" includes a legislative grant, and a government order, directive or other act transferring to a state enterprise or monopoly, or authorizing the exercise by a state enterprise or monopoly, of governmental authority.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control 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 nationals 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 nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters

listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall, unless specified otherwise in the Annex, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

2. (a) Nothing in this Treaty shall be construed to prevent a Party from maintaining or establishing a state enterprise.

(b) Each Party shall ensure that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Treaty wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has 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 any state enterprise that it maintains or establishes accords the better of national or most favored nation treatment in the sale of its goods or services in the Party's territory.

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

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

(c) Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

6. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce 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 investment, investment agreements, and investment authorizations.

8. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory 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 this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

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

(a) that Party's binding obligations that derive from full membership in a free trade area or customs union; or

(b) that Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade that enters into force subsequent to the signature of this Treaty.

11. The Parties acknowledge and agree that "associated activities" include, without limitation, such activities as:

(a) the granting of franchises or rights under licenses;

(b) access to registrations, licenses, permits and other approvals (which shall in any event be issued expeditiously);

(c) access to financial institutions and credit markets;

(d) access to their funds held in financial institutions;

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

(f) the dissemination of commercial information;

(g) the conduct of market studies;

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

(i) the marketing of goods and services, including through internal 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 rental space at nondiscriminatory prices, if the prices are set or controlled by the government; and

(k) access to raw materials, inputs and services of all types at nondiscriminatory 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: for public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (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, as defined in Article 30 of the Articles of Agreement of the International Monetary Fund, on the basis of the prevailing market rate of exchange at that time; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any associated compensation, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, 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 related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) returns;
- (b) compensation pursuant to Article III;
- (c) payments arising out of an investment dispute;
- (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;
- (e) proceeds from the sale or liquidation of all or any part of an investment; and
- (f) additional contributions to capital for the maintenance or development of an investment.

2. Transfers shall be made in a freely usable currency, as defined in Article 30 of the Articles of Agreement of the International Monetary Fund, at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (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, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

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

ARTICLE VI

1. For 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 choose to submit the dispute for resolution:

(a) to the courts or administrative tribunals of the Party that is a 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 choose 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 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

(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 choice so 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 when 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 Centre) 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.

8. For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of a Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party 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 consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrators, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those 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 third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

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

ARTICLE VIII

This Treaty shall not derogate from:

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

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE IX

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

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

ARTICLE X

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

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

(a) expropriation, pursuant to Article III;

(b) transfers, pursuant to Article IV; or

(c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI (1) (a) or (b),

to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XI

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

ARTICLE XII

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

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

3. With respect to investments made or acquired prior 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 such date of termination.

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

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

DONE in duplicate at Washington, on the thirteenth day of January, 1995 in the English and Latvian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF LATVIA:

A handwritten signature in dark ink, appearing to read "Michael Kantor", written over a horizontal line.A handwritten signature in dark ink, appearing to read "Valdis Pizma", written over a horizontal line.

ANNEX

1. The Government of the United States reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below:

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

2. The Government of the United States reserves the right to make or maintain limited exceptions to most favored nation treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indicated below:

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

3. The Republic of Latvia reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1 in the sectors or matters it has indication below:

Control of defense industries; manufacturing and sale of narcotics, weapons and explosives; control of newspapers, television and radio broadcasting stations, or news agencies; recovery of all renewable and non-renewable natural resources including resources found on the continental shelf; fishing; hunting; port management; banking; ownership and control of land; brokerage or real property; and gambling.

PROTOCOL

The Parties confirm their mutual understanding that with respect to the listing of "ownership and control of land" in paragraph 3 of the Annex, current Latvian legislation permits foreign investors to own or control land in urban areas, as defined under the laws of the Republic of Latvia.

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DEPARTMENT OF STATE
WASHINGTON

June 16, 1995

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 for 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.

The President,

The White House.

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 led 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 specified 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 nondiscriminatory 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.

The U.S.-Latvia Treaty differs from the 1992 prototype in some minor respects. It eliminates Article VIII of the 1992 prototype text 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, as well as 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 indicated prior to this

negotiation that they saw no need to maintain such a provision.

The U.S.-Latvia Treaty also differs from the prototype in that it includes provisions in Article I, paragraph 1 (f) and (g), and Article II, paragraph 2, which clarify and extend the requirements of the Treaty with respect to state enterprises, and Article II, paragraph 11, which clarifies that investors should receive the better of national or MFN treatment with respect to activities associated with their investment. This additional language is discussed in further detail in the article-by-article analysis of the Treaty below.

In addition, a Protocol clarifies that despite Latvia's inclusion of ownership of land in its exceptions to the Treaty's national treatment obligations in the Annex, foreign investors in Latvia can purchase land in urban areas.

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

Preamble

The Preamble states the goals of the Treaty. The Treaty is premised on the view that an open investment policy leads to economic growth. These goals include economic cooperation, increased flow of capital, a stable framework for investment, development of respect for internationally-recognized worker rights, and maximum

efficiency in the use of economic resources. While the Preamble does not impose binding obligations, its statement of goals may serve to assist in the interpretation of the Treaty.

Article I (Definitions)

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

Investment

The Treaty's definition of investment is broad, recognizing that investment can take a wide variety of forms. It covers investments that are owned or controlled by nationals or companies of one of the Treaty partners in the territory of the other. Investments 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 requirement could be satisfied by less than that proportion.

The definition provides a non-exclusive list of assets, claims and rights that constitute investment. These include both tangible and intangible property, interests in a company or its assets, "a claim to money or performance having economic value, and associated with an

investment," intellectual property rights, and any right conferred by law or contract (such as government-issued licenses and permits). The requirement that a "claim to money" be associated with an investment excludes claims arising solely from trade transactions, such as a transaction involving only a cross-border sale of goods, from being considered investments covered by the Treaty.

Under paragraph 2 of Article I, either country may deny the benefits of the Treaty to investments by companies established in the other that are owned or controlled by nationals of a third country if 1) the company is a mere shell, 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, at this time the United States does not maintain normal economic relations with, inter alia, Cuba or Libya.

Paragraph 3 confirms that any alteration in the form in which an asset is invested or reinvested shall not affect its character as investment. For example, a change in the corporate form of an 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 regulations of a Party. In connection 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 2. Likewise, a company of a third country that is owned or controlled by nationals or companies of a 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.

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 of American Samoa 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; royalty payments; management, technical assistance or 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 operation of an investment requires protections extending beyond the investment to numerous related activities. This definition provides an illustrative list of such investor activities, including operating a business facility, borrowing money, disposing of property, issuing stock and purchasing foreign exchange for imports. These activities are covered by Article II, paragraph 1, which guarantees the better of national or MFN treatment for investments and associated activities.

State Enterprise

"State enterprise" is defined as an enterprise owned, or controlled through ownership interests, by a Party.

Delegation

"Delegation" is defined to include a legislative grant, government order, directive or other act which transfers governmental authority to a state enterprise or authorizes a state enterprise to exercise such authority.

The definitions of "state enterprise" and "delegation" are included to clarify the scope of the obligations of Article II, paragraph 2, which provides that any governmental authority delegated to a state enterprise by

a Party must be exercised in a manner consistent with the Party's obligations under the Treaty.

Article II (Treatment)

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

Paragraph 1 generally ensures the better of MFN or national treatment in both the entry and post-entry phases of investment. It thus prohibits both the screening of proposed foreign investment on the basis of nationality and discriminatory measures once the investment has been made, subject to specific exceptions provided for in a 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 section entitled "Annex."

Paragraph 2 is designed to ensure that a Party cannot utilize state owned or controlled enterprises to circumvent its obligations under the Treaty. To this end, it requires each Party to observe its treaty obligations even when it chooses, for administrative or other reasons, to assign some portion of its authority to a state enterprise, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees or other charges. Paragraph 2 also supports competitive equality for investments by requiring that a Party ensure that state enterprises accord the better of

national or MFN treatment in the sale of its goods or services in the Party's territory.

Paragraph 3 guarantees that investment 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(c), each Party pledges to respect any obligations it may have entered into with respect to investments. Thus, in dispute settlement under Articles VI or VII, a Party would be foreclosed from arguing, on the basis of sovereignty, 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 of the other for purposes linked to 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 the right to engage top managerial personnel of their choice, regardless of nationality.

Under paragraph 6, neither Party may impose performance requirements such as those conditioning investment on the export of goods produced or the local purchase of goods or services. Such requirements are major burdens on investors.

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

Paragraph 9 recognizes that under the U.S. federal system, States of the United States may, in some instances, treat out-of-State residents and corporations in a different manner than they treat in-State residents and corporations. The Treaty provides that the national treatment commitment, with respect to the States, means treatment no less favorable than that provided to U.S. out-of-State residents and corporations.

Paragraph 10 limits the Article's MFN obligation by providing that it will not apply to advantages accorded by either Party to third 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 in this Treaty is analogous to the exception provided for with respect to trade in the GATT.

Paragraph 11 is designed to avoid problems that U.S. businesses may face in emerging market economies. This provision makes clear that nationals and companies of either Party receive the better of national or MFN treatment with respect to a detailed list of activities associated with their investments.

Article III (Expropriation)

Article III incorporates into the Treaty the international law standards for expropriation and compensation.

Paragraph 1 describes the general rights of investors and obligations of the Parties with respect to expropriation and nationalization. These rights also apply to direct or indirect state measures "tantamount to expropriation or nationalization," and thus apply to "creeping expropriations" that result in a substantial deprivation of the benefit of an investment without taking of the title to the investment.

Paragraph 1 further bars all expropriations or nationalizations except those that are for a public purpose; carried out in a non-discriminatory manner; subject to "prompt, adequate, and effective compensation"; subject to due process; and accorded the treatment provided in the standards 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 "prompt, adequate, and effective compensation." Compensation must 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 paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; be freely transferable; and be calculated in a freely usable currency on the basis of the prevailing market rate of exchange.

Paragraph 2 entitles an investor claiming that an expropriation has occurred to prompt judicial or administrative review of the claim in the host country, including a determination of whether the expropriation and any compensation conform to international law.

Paragraph 3 entitles investors to the better of national or MFN treatment with respect to losses related to war or civil disturbances, but, unlike paragraph 1, does not specify an absolute obligation to pay compensation for such losses.

Article IV (Transfers)

Article IV protects investors from certain government exchange controls limiting current account and capital account transfers.

In paragraph 1, the Parties agree to permit "transfers related to an investment to be made freely and without delay into and out of its territory." Paragraph 1 also provides a non-exclusive list of transfers that must be allowed, including returns (as defined in Article I); payments made in compensation for expropriation (as defined in Article III); payments arising out of an investment dispute; payments made under a contract, including the amortization of principal and interest payments on a loan; proceeds from the liquidation or sale of all or part of an investment; and additional contributions to capital for the maintenance or development of an investment.

Paragraph 2 provides that transfers are to be made in a "freely usable currency" at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. "Freely usable" is a standard of the International Monetary Fund; at present there are five such "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 affect transfers with respect to investments. It provides that the Parties may require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. It also recognizes that Parties may protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings through their laws, even if such measures interfere with transfers. Such laws must be applied in an equitable, nondiscriminatory and good faith manner.

Article V (State-State Consultations)

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

Article VI (State-Investor Dispute Resolution)

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

Article VI procedures apply to an "investment dispute," a term which covers any dispute arising out of or relating to an investment authorization, an investment agreement, or to rights granted by the Treaty with respect to an investment.

When a dispute arises, Article VI, paragraph 2, provides that the disputants should initially seek to resolve the dispute by consultation and negotiation, which

may include non-binding third party procedures. Should such consultations fail, paragraphs 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 procedures 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 administrative tribunals of the host country.

Under paragraph 3, if the investor has not submitted 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 using 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 arbitral institution or set of arbitral 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, 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 those measures it regards as necessary for the protection of its own essential security interests. These provisions are common in 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 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 1 exhorts both countries to provide fair and equitable treatment to investors with respect to tax policies. However, tax matters are generally excluded from the coverage of the Treaty, based on the assumption that tax matters are properly covered in bilateral tax treaties.

The Treaty, and particularly the dispute settlement provisions, do apply to tax matters in three areas, to the extent they are not subject to the dispute settlement provisions of a tax treaty, or, if so subject, have been raised under a tax treaty's dispute settlement procedures and are not resolved in a reasonable period of time.

Pursuant to paragraph 2, the three areas where the Treaty could apply to tax matters are expropriation (Article III), transfers (Article IV) and the observance

and enforcement of terms of an investment agreement or authorization (Article VI (1) (a) or (b)). These three areas are important for investors, and two of the three -- expropriatory taxation and tax provisions contained in an investment agreement or authorization -- are not typically addressed in tax treaties.

Article XI (Application to Political Subdivisions)

Article XI makes clear that the obligations of the Treaty are applicable to all political subdivisions of the Parties, such as provincial, State and local governments.

Article XII (Entry into Force, Duration and Termination)

The Treaty enters into force thirty days after exchange of instruments of ratification and continues in force for a period of ten years. From the date of its entry into force, the Treaty applies to existing and future investments. After the ten-year term, the Treaty will continue in force unless terminated by either Party upon one year's notice. If the Treaty is terminated, all existing investments would continue to be protected under the Treaty for ten years thereafter.

Annex

U.S. bilateral investment treaties allow for sectoral exceptions to national and MFN treatment. The U.S. exceptions are designed to protect governmental regulatory interests and to accommodate the derogations from national

treatment and, in some cases, MFN treatment in existing federal law.

The U.S. portion of the Annex contains a list of sectors and matters in which, for various legal and historical reasons, the federal government or the States may not necessarily treat investments of nationals or companies of the other Party as they do U.S. investments or investments from a third country. The U.S. exceptions from national treatment are: air transportation; ocean and coastal shipping; banking, insurance, securities, and other financial services; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real property; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources; mining on the public domain; and maritime and maritime-related services.

Ownership of real property, mining on the public domain, maritime and maritime-related services, and primary dealership in U.S. government securities are excluded from MFN as well as national treatment commitments. The last three sectors are exempted by the United States from MFN treatment obligations because of U.S. laws that require reciprocity. Enforcement of

reciprocity provisions could deny both national and MFN treatment.

The listing of a sector does not necessarily signify that domestic laws have entirely reserved it for nationals. Future restrictions or limitations on foreign investment are only permitted in the sectors listed; must be made on an MFN basis, unless otherwise specified in the Annex; and must be appropriately notified. Any additional restrictions or limitations which a Party may adopt with respect to listed sectors may not affect existing investments.

Because the U.S. exceptions to national treatment and MFN treatment are based on existing U.S. law, they are not altered during negotiations.

The Republic of Latvia's exceptions to national treatment are: control of defense industries; manufacturing and sales of narcotics, weapons and explosives; control of newspapers, television and radio broadcasting stations, or news agencies; recovery of all renewable and non-renewable natural resources including resources found on the continental shelf; fishing; hunting; port management; banking; ownership and control of land; brokerage of real property; and gambling. These exceptions were based on provisions of investment measures currently in force or under active consideration by the Government of the Republic of Latvia. The Republic of

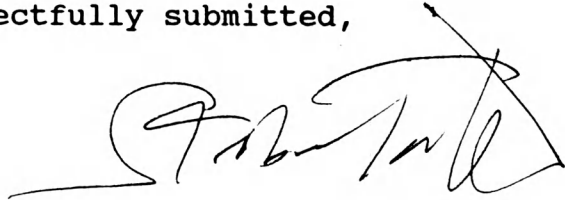
Latvia has not reserved any sectoral exceptions to MFN treatment in the Annex.

Protocol

In a Protocol to the Treaty, the two sides clarify that despite Latvia's inclusion of "ownership and control of land" in paragraph 3 of the Annex, current Latvian legislation permits foreign investors to own or control land in "urban" areas, as defined under Latvian laws.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. B. T. L.", with a large, sweeping flourish extending from the end of the signature.



United States Department of State

20520

UNCLASSIFIEDOFFICE OF N.I.

TO: [illegible]

FAX NO. 456-9100

FROM: Melissa Hudson

FAX NO:

TEL NO. 647 8900

SUBJECT: Latvian Bilateral Investment
Treaty w/ US - this has
"legalese" to it - Hope it helps.

This transmission consists of a Cover Sheet plus 9
Page(s)

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THE WHITE HOUSE

Office of the Press Secretary

Immediate Release

January 13, 1995

U.S. SIGNS BILATERAL INVESTMENT TREATIES WITH ALBANIA AND LATVIA

The United States has signed two new Bilateral Investment Treaties in conjunction with the White House Conference on Trade and Investment in Central and Eastern Europe.

United States Trade Representative (USTR) Ambassador Michael Kantor and Albanian Ambassador Lublin Dilja signed a Bilateral Investment Treaty (BIT) between the U.S. and Albania on January 11, 1995 in Washington.

Ambassador Kantor and Latvian Foreign Minister Valdis Birkavs signed a BIT between the U.S. and Latvia on January 13, 1995 during the Foreign Minister's visit to Washington.

President Clinton welcomed the signing of the two BITs. "These Bilateral Investment Treaties put in place a strong foundation for expanded U.S. trade and investment with the reforming democracies of Central and Eastern Europe. They are another step toward integrating Europe's new democracies with an expanding TransAtlantic community. Americans and Central Europeans alike will benefit through the increased business," he said.

"These treaties form a key element of an open investment climate and will strengthen economic links between the U.S. and Latvia and Albania," said Ambassador Kantor.

The BITs guarantee the right to invest on terms no less favorable than those accorded domestic or third-country investors. They also guarantee the free transfer of capital, profits and royalties, freedom from performance requirements of any kind, access to international arbitration, and internationally recognized standards of expropriation and compensation.

These BITs are the eleventh and twelfth signed during the Clinton Administration and bring the number of U.S. BITs to 34 overall. BITs with the Czech Republic, Slovakia, Poland, Romania and Bulgaria are now in force; the U.S. has signed a BIT with Slovenia and is negotiating a BIT with Lithuania.



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United States Department of State

Washington, D.C. 20520

Original to L/T

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Copies to:

ACTION MEMORANDUM

95 JAN 11 AIO:25

S UNCLASSIFIED SS 1/10
 TD WITH ~~CONFIDENTIAL~~ ATTACHMENTS

D

JAN - 1-5

P TO: The Secretary

E THROUGH: E - Mrs. Spero *JS*

T FROM: EB - Daniel K. Tarullo *JS*
 L - Conrad K. Harper *JS*

M

G SUBJECT: Circular 175 Procedure: Request for Authorization to
 S/P Conclude a Bilateral Investment Treaty with the
 Republic of Latvia

EUR ISSUE FOR DECISION

EB Whether to authorize and issue a Full Power (Tab 1) for the
 FMP conclusion of a Treaty Between the United States of America and
 L the Republic of Latvia Concerning the Encouragement and
 L/T Reciprocal Protection of Investment. USTR has proposed that
 Deputy U.S. Trade Representative Charlene Barshefsky to sign
 the Treaty should Ambassador Kantor be unable to do so.

S/S ESSENTIAL FACTORS

S/S-S(Dir) Bilateral investment treaty (BIT) negotiations with the
 WIIS *JS* Republic of Latvia were undertaken pursuant to the Circular 175
 blanket authorization, dated April 9, 1990, permitting the
 negotiation of such treaties with the Soviet Union and with
 various countries of Eastern Europe (Tab 2). The Memorandum of
 Law (Tab 3) attached to that blanket authorization is equally
 applicable to this request. This Treaty (Tab 4) incorporates
 provisions from the model BIT, and is consistent with the
 objectives of the U.S. BIT program. The model negotiating text
 has been approved by the interagency Trade Policy Staff
 Committee.

-2-

Treaties with similar provisions have been signed with Argentina, Armenia, Bangladesh, Belarus, Bulgaria, Cameroon, the Congo, Czechoslovakia (now in force for the Czech Republic and Slovakia), Ecuador, Egypt, Estonia, Georgia, Grenada, Haiti, Jamaica, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Morocco, Panama, Poland, Romania, Russia, Senegal, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uzbekistan, and Zaire.

During negotiations that began in July 1993 and were concluded in December 1994, the Government of the Republic of Latvia accepted the U.S. model BIT text with only minor changes. The U.S. - Latvia BIT thus achieves the following five main objectives of the U.S. model:

- o the better of national treatment or most-favored-nation (MFN) treatment for investments, both on establishment and thereafter, subject to specified sectoral exceptions;
- o prohibition of performance requirements;
- o expropriation and compensation for expropriation in accordance with international law standards;
- o free transfer of funds related to an investment into and out of the host country; and
- o access for investors to binding international arbitration for the settlement of disputes with the host government, without first resorting to domestic courts.

On entry into force, the Treaty provisions will apply to existing investments and to new investments thereafter.

The Department of State commits no new funds or personnel to the implementation of this Treaty.

RECOMMENDATIONS

1. That you authorize the conclusion of the Treaty, subject to the concurrence of USTR, EB, L, and EUR in any changes to the text.

1/11/95

Approve

✓ 1/11/95

Disapprove

-3-

2. That you sign the attached Full Power (Tab 1) authorizing U.S. Trade Representative Mickey Kantor or, should Ambassador Kantor be unable to do so, Deputy U.S. Trade Representative Charlene Barshefsky to sign on behalf of the United States.

1/11/95

Approve



Disapprove _____

Attachments:

- Tab 1 - Full Power
- Tab 2 - Circular 175 Authorization to Negotiate
(CONFIDENTIAL)
- Tab 3 - Memorandum of Law
- Tab 4 - Proposed Treaty with Annex

FULL POWER

I invest Ambassador Michael Kantor, United States Trade Representative, or, in his absence, Ambassador Charlene Barshefsky, Deputy United States Trade Representative, with full power and authority for and in the name of the Government of the United States of America to sign 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, together with any related documents, the said Treaty to be transmitted to the President of the United States of America for his ratification by and with the advice and consent of the Senate of the United States of America.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Department of State to be affixed at the city of Washington, in the District of Columbia, this

William Clinton



United States Department of State

Washington, D. C. 20520

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COPIES TO:

ACTION MEMORANDUM

CONFIDENTIAL

TO: D - Mr. Eagleburger

FROM: EB - Eugene J. McAllister ^{FM}
L - Abraham D. Sofaer ^{AO}

SUBJECT: Circular 175 Authorization for Negotiation and
Conclusion of Treaties on Treatment and Protection
of Investment

ISSUE FOR DECISION

Authorization pursuant to the Circular 175 procedure (11 FAM 700 et seq.) to negotiate and conclude treaties on the treatment and protection of investment with the Union of Soviet Socialist Republics and with various countries in Eastern Europe.

ESSENTIAL FACTORS

Recent political and economic reforms in the Soviet Union and in the various countries of Eastern Europe have led to increased interest in direct investment in these countries by U.S. companies. A principal objective of U.S. foreign policy with respect to these countries is to support political liberalization and the movement toward a market orientation for the economy. Increased direct investment by U.S. investors would be a valuable source of capital and managerial expertise and, by assisting in the modernization of the economy and the raising of living standards, would promote the development and durability of democratic institutions.

This memorandum seeks authority to negotiate and conclude bilateral investment treaties with the Soviet Union and various countries in Eastern Europe. The Soviet Union, Czechoslovakia, and Hungary are the initial priorities; negotiations with Yugoslavia, Bulgaria, Romania, and the German Democratic Republic would also be covered by this authorization. Approval

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DECL: OADR

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- 2 -

of this blanket authority will obviate the need for requesting Circular 175 authority for each new negotiation, and is specifically authorized by 11 FAM 722.5 when a series of agreements of the same general type is contemplated.

In 1983 similar blanket authority was granted for the current program of negotiating bilateral investment treaties (BITs) with developing and lower-income developed countries. At that time it was noted that there are a number of antecedents to the ongoing U.S. effort to negotiate BITs, including: the longstanding U.S. policy to protect American investment overseas; previously negotiated Friendship, Commerce, and Navigation (FCN) treaties, most of which contain provisions relevant to investment; and the successful efforts by other developed countries to negotiate investment protection agreements.

Authority to negotiate BITs was granted, with respect to the earliest such treaties, on a case by case basis, and, subsequently, pursuant to the 1983 blanket authorization noted above. The blanket authorization served as the basis for the recently-concluded negotiation of a Business and Economic Treaty with Poland. While the blanket authorization could, as a matter of law, also provide a basis for the proposed treaties with the Soviet Union and Eastern European countries other than Poland, we believe that a separate authorization is desirable for several reasons. First, no separate grant of authority was sought with respect to Poland because it had not yet been decided whether the agreement would be concluded as a treaty or as an executive agreement. It has been decided that a treaty rather than an executive agreement is likely to be the appropriate form for such agreements, it is appropriate to confirm this decision with respect to all analogous agreements with Eastern European countries. In addition, the U.S. has learned through the negotiations with Poland that it will be necessary to adapt certain of the BIT provisions to the circumstances of evolving Eastern European economies. The proposed treaties with the Soviet Union and Eastern European countries thus will be sufficiently different as to merit separate authorization.

THE TREATY PROPOSAL

The U.S. proposes to commence negotiation with the Soviet Union and Eastern European states of agreements containing the following key elements:

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- 3 -

1. A very broad definition of investment which will enjoy the benefits of the treaty, covering both traditional investment forms and contemporary patterns of service industry and contract investment, as well as corporate tiers of investment regardless of place of incorporation of subsidiaries;
2. Establishment of investment will be permitted on terms and conditions which accord national treatment or most-favored-nation (MFN) treatment, whichever is more favorable. Similarly, after establishment investment will receive national or MFN treatment, whichever is more favorable. In addition, we would attempt to incorporate a prohibition on the use of performance requirements as well as provisions providing investors certain specific protections not comprehended by either national or MFN treatment in non-market economies;
3. Standards of expropriation and compensation derived from international law and recognized by the U.S.;
4. Free transfers of capital, returns, compensation and other payments into and out of the host country;
5. Dispute settlement procedures both for disputes between the host country and a national of the other country, and disputes arising between the governments.

It is likely that U.S. negotiators will have to accept deviations from one or more of these standards in order to achieve an agreement with the countries in question. For example, the content of the "fair market value" standard of compensation for expropriation also is not entirely evident in a centrally-planned, non-market economy. Moreover, as long as the USSR and the countries of Eastern Europe lack market price regimes, the governments of those countries may be reluctant to agree to an unqualified right to transfer capital, profits, and other payments, particularly local currency profits. U.S. negotiators should pursue the dual goals of achieving the best agreement possible under current circumstances and of using these negotiations as a medium for advising these governments on fundamental economic reforms. Thus, these negotiations may provide a measure of leverage in helping to move the Soviet and Eastern European economies toward a market orientation.

The Congress and the private sector support the concept of negotiating investment protection agreements with the Soviet

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- 4 -

Union and the countries of Eastern Europe. The interests of U.S. investors would clearly be served by agreements protecting them against discriminatory treatment in these countries and ensuring that they are able to compete on an equal footing with both local and third country firms.

RECOMMENDATION

That you authorize, pursuant to the Circular 175 procedures (11 FAM 700 et seq.), the Assistant Secretary for Economic and Business Affairs or his designee and the Legal Adviser or his designee, to join with the United States Trade Representative or her designee, with the concurrence of appropriate regional bureaus and interested agencies, in negotiating and concluding treaties on the treatment and protection of investment with the Soviet Union and certain countries in Eastern Europe, along the lines set forth in this memorandum and the accompanying Memorandum of Law (Tab 1).

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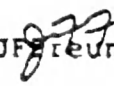
Approve



Disapprove

Attachments

- Tab A - Memorandum of Law
- Tab B - Draft Treaty

Drafted:EB/IFD/OIA:JF reund:Wang 1610

Cleared:EB/IFD/OIA:RCReis

EB/ITC/EWT:AParker

L/EBC:KPropp

L:MYoung

C:NBurns

D/EEA:RBarry

EUR/SOV:JHerbst

EUR/EEY:JCloud

Treasury:COuellette

USTR:CSerwer, DPrice

Commerce:SLewenz

FMP/MP:AFairchild (Subs) EB:ALarson ~~CONFIDENTIAL~~

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