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INVESTMENT TREATY WITH HONDURAS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HONDURAS CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH ANNEX AND PROTOCOL, SIGNED AT DENVER ON JULY 1, 1995

MAY 23, 2000.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 23, 2000.*

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 Honduras Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Denver on July 1, 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 Honduras is the fourth such Treaty with a Central or South American country. The Treaty will protect U.S. investment and assist Honduras in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthen the development of its 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. The Treaty includes detailed provisions regarding the computation and payment of prompt, adequate, and effective compensation for expropriation; free transfer of funds related to investments; freedom of investments from specified performance requirements; fair, equitable, and most-favored-nation treatment; and the investor'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.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 1, 2000.

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 Honduras Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Denver on July 1, 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 Honduras is the fourth such treaty signed between the United States and a Central or South American Country. The Treaty is based on the view that an open investment policy contributes to economic growth. This Treaty will assist Honduras in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thereby strengthening the development of its private sector. It is U.S. policy, however, to advise potential treaty partners during BIT negotiations that conclusion of such a treaty does not necessarily result in increases in private U.S. investment flows.

To date, 31 BITs are in force for the United States—with Albania, Argentina; Armenia, Bangladesh, Bulgaria, Cameroon, the Republic of the Congo, the Democratic Republic of the Congo (formerly Zaire), the Czech Republic, Ecuador, Egypt, Estonia, Georgia, Grenada, Jamaica, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Mongolia, Morroco, Panama, Poland, Romania, Senegal, Slovakia, Sri Lanka, Trinidad & Tobago, Tunisia, Turkey, and Ukraine. In addition to the Treaty with Honduras, the United States has signed, but not yet brought into force, BITs with Azerbaijan, Bahrain, Belarus, Bolivia, Croatia, El Salvador, Jordan, Lithuania, Mozambique, Nicaragua, Russia, 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.

THE U.S.-HONDURAS TREATY

The Treaty with Honduras is based on the 1994 U.S. prototype BIT and satisfies the U.S. principal objectives in bilateral investment treaty negotiations:

—All forms of U.S. investment in the territory of Honduras are covered.

—Covered investments receive the better of national treatment or most-favored-nation (MFN) treatment both while they

are being established and thereafter, subject to certain specified exceptions.

—Specified performance requirements may not be imposed upon or enforced against covered investments.

—Expropriation is permitted only in accordance with customary international law standards.

—Parties are obligated to permit the transfer, in a freely usable currency, of all funds related to a covered investment, subject to exceptions for specified purposes.

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

These elements are further described in the following article-by-article analysis of the provisions of the Treaty:

Title and Preamble

The Title and Preamble state the goals of the Treaty. Foremost is the encouragement and protection of investment. Other goals include economic cooperation on investment issues; the stimulation of economic development; higher living standards; promotion of respect for internationally-recognized worker rights; and maintenance of health, safety, and environmental measures. While the Preamble does not impose binding obligations, its statement of goals may assist in interpreting the Treaty and in defining the scope of Party-to-Party consultations pursuant to Article VIII.

Article I (Definitions

Article I defines terms used throughout the Treaty.

Company, Company of a Party

The definition of "company" is broad, covering all types of legal entities constituted or organized under applicable law, and includes corporations, trusts, partnerships, sole proprietorships, branches, joint ventures, and associations. The definition explicitly cover not-for-profit entities, as well as entities that are owned or controlled by the state. "Company of a Party" is defined as a company constituted or organized under the laws of that Party.

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.

Investment, Covered Investment

The Treaty's definition of investment if broad, recognizing that investment can take a wide variety of forms. Every kind of investment is specifically incorporated in the definition; moreover, it is explicitly noted that investment may consist or take the form of any of a number of interests, claims, and rights.

The Treaty provides an illustrative list of the forms an investment may take. Establishing a subsidiary is a common way of mak-

ing an investment. Other forms that an investment might take include equity and debt interests in a company; contractual rights; tangible, intangible, and intellectual property; and rights conferred pursuant to law, such as licenses and permits. Investment as defined by the Treaty generally excludes claims arising solely from trade transactions, such as a sale of goods across a border that does not otherwise involve an investment.

The Treaty defines "covered investment" as an investment of a national or company of a Party in the territory of the other Party. An investment of a national or company is one that the national or company owns or controls, either directly or indirectly. Indirect ownership or control could be through other, intermediate companies or persons, 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, or by other arrangements.

The broad nature of the definitions of "investment," "company," and "company of a Party" means that investments can be covered by the Treaty even if ultimate control lies with non-Party nationals. A Party may, however, deny the benefits of the Treaty in the limited circumstances described in Article XII.

State Enterprise, Investment Authorization, Investment Agreement

The Treaty defines "state enterprise" as a company owned, or controlled through ownership interests, by a Party. Purely regulatory control over a company does not qualify it as a state enterprise.

The Treaty defines an "investment authorization" as an authorization granted by the foreign investment authority of a Party to be covered investment or a national or company of the other Party.

The Treaty defines an "investment agreement" as a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (1) grants rights with respect to natural resources or other assets controlled by the national authorities and (2) the investment, national, or company relies upon in establishing or acquiring a covered investment. This definition thus excludes agreements with subnatural authorities (including U.S. States) as well as agreements arising from various types of regulatory activities of the national government, including, in the tax area, rulings, closing agreements, and advance pricing agreements.

ICSID Convention, Centre, UNCITRAL Arbitration Rules

The "ICSID Convention," "Centre," and "UNCITRAL Arbitration Rules" are explicitly defined to make the text brief and clear.

Article II (Treatment of Investment)

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

Paragraph 1 generally ensure the better of national or MFN treatment in both the entry and post-entry phases of investment. It thus prohibits, outside of exceptions listed in the Annex, "screen-

ing" on the basis of nationality during the investment process, as well as nationality-based post-establishment measures. For purposes of the Treaty, "national treatment" means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of its own nationals or companies. For purposes of the Treaty, "MFN treatment" means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of nationals or companies of a third country. The Treaty obliges each Party to provide whichever of national treatment or MFN treatment is the most favorable. This is defined by the Treaty as "national and MFN treatment." Paragraph 1 explicitly states that the national and MFN treatment obligation will extend to state enterprises in their provision of goods and services to covered investment.

Paragraph 2 states that each Party may adopt or maintain exceptions to the national and MFN treatment standard with respect to the sectors or matters specified in the Annex. Further restrictive measures are permitted in each sector. (The specific exceptions are discussed in the section entitled "Annex" below.) In the Annex, Parties may take exceptions only to the obligation to provide national and MFN treatment; there are not sectoral exceptions to the rest of the Treaty's obligations. Finally, in adopting any exception under this provision, a Party may not require the divestment of a preexisting covered investment.

Paragraph 2 also states that a Party is not required to extend to covered investments national and MFN treatment with respect to procedures provided for in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights. This provision clarifies that certain procedural preferences granted under intellectual property conventions, such as the Patent Cooperation Treaty, fall outside the BIT. This exception parallels those in the Uruguay Round's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the North American Free Trade Agreement (NAFTA).

Paragraph 3 sets out a minimum standard of treatment based on standards found in customary international law. The obligations to accord "fair and equitable treatment" and "full protection and security" are explicitly cited, as is each Party's obligation not to impair, through unreasonable and discriminatory means, the management, conduct, operation, and sale or other disposition of covered investments. The general reference to international law also implicitly incorporates other fundamental rules of customary international law regarding the treatment of foreign investment. However, this provision does not incorporate obligations based on other international agreements.

Paragraph 4 requires that each Party provide effective means of asserting claims and enforcing rights with respect to covered investments.

Paragrah 5 ensures the transparency of each Party's regulation of covered investments.

Article III (Expropriation)

Article III incorporates into the Treaty customary international law standards for expropriation. Article III also includes detailed provisions regarding the computation and payment of prompt, adequate, and effective compensation.

Paragrah 1 describes the obligations of the Parties with respect to expropriation and nationalization of a covered investment. These obligations apply to both direct expropriation and indirect expropriation through measures "tantamount to expropriation or nationalization" and thus apply to "creeping expropriations"—a series of measures that effectively amounts to an expropriation of a covered investment without taking title.

Paragraph 1 further bars all expropriations or nationalizations except those that are for a public purpose; carried out in a non-discriminatory manner; in accordance with due process of law; in accordance with the general principles of treatment provided in Article II(3); and subject to "prompt, adequate and effective compensation."

Paragraphs 2, 3, and 4 more fully describe the meaning of "prompt, adequate and effective compensation." The guiding principle is that the investor should be made whole.

Article IV (Compensation for Damage Due to War and Similar Events)

Paragraph 1 entitles investments covered by the Treaty to national and MFN treatment with respect to any measure relating to losses suffered in a Party's territory owing to war or other armed conflict, civil disturbances, or similar events. Paragraph 2, by contrast, creates an unconditional obligation to pay compensation for such losses when the losses result from requisitioning or from destruction not required by the necessity of the situation.

Article V (Transfers)

Article V protects investors from certain government exchange controls that limit current and capital account transfers, as well as limits on inward transfers made by screening authorities and, in certain circumstances, limits on returns in kind.

In paragraph 1, each Party agrees to "permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory." Paragraph 1 also provides a list of transfers that must be allowed. The list is non-exclusive, and is intended to protect flows to both affiliated and non-affiliated entities.

Paragraph 2 provides that each Party must permit transfers to be made in a "freely usable currency" at the market rate of exchange prevailing on the date of transfer. "Freely usable" is a term used by the International Monetary Fund; at present there are five "freely usable" currencies: the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling.

In paragraph 3, each Party agrees to permit returns in kind to be made where such returns have been authorized by an investment authorization or written agreement between a Party and a covered investment or a national or company of the other Party.

Paragraph 4 recognizes that, notwithstanding the obligations of paragraphs 1 through 3, a Party may prevent a transfer through

the equitable, non-discriminatory, and good faith application of laws relating to bankruptcy, insolvency, or the protection of the rights of creditors; securities; criminal or penal offenses; or ensuring compliance with orders or judgments in adjudicatory proceedings.

Article VI (Performance Requirements)

Article VI prohibits either Party from mandating or enforcing specified performance requirements as a condition for the establishment, acquisition, expansion, management, conduct, or operation of a covered investment. The list of prohibited requirements is exhaustive and covers domestic content requirements and domestic purchase preferences, the "balancing" of imports or sales in relation to exports or foreign exchange earnings, requirements to export products or services, technology transfer requirements, and requirements relating to the conduct of research and development in the host country. Such requirements are major burdens on investors and impair their competitiveness.

The last sentence of Article VI makes clear that a Party may, however, impose conditions for the receipt or continued receipt of benefits and incentives.

Article VII (Entry, Sojourn, and Employment of Aliens)

Paragraph 1 requires each Party to allow, subject to its laws relating to the entry and sojourn of aliens, the entry into its territory of the other Party's nationals for certain purposes related to a covered investment and involving the commitment of a "substantial amount of capital." This paragraph serves to render nationals of Honduras eligible for treaty-investor visas under U.S. immigration law. It also affords similar treatment for U.S. nationals entering Honduras. The requirement to commit a "substantial amount of capital" is intended to prevent abuse of treaty-investor status; it parallels the requirements of U.S. immigration law.

In addition, paragraph 1(b) prohibits labor certification requirements and numerical restrictions on the entry of treaty-investors.

Paragraph 2 requires that each Party allow covered investments to engage top managerial personnel of their choice, regardless of nationality. This provision does not require that such personnel be granted entry into a Party's territory. Such persons must independently qualify for an appropriate visa for entry into the territory of the other party. Nor does this provision create an exception to U.S. equal employment opportunity law.

Article VIII (State-State Consultations)

Article VIII provides for prompt consultation between the Parties, at either Party's request, on any matter relating to the interpretation or application of the Treaty or to the realization of the Treaty's objectives. A Party may thus request consultations for any matter reasonably related to the encouragement or protection of covered investment, whether or not a Party is alleging a violation of the Treaty.

Article IX (Settlement of Disputes Between One Party and a National or Company of the Other Party)

Article IX sets forth several means by which disputes brought against a Party by an investor (specifically, a national or company of the other Party) may be resolved.

Article IX procedures apply to an "investment dispute," which is any dispute arising out of or relating to an investment authorization, an investment agreement, or an alleged breach of rights conferred, created, or recognized by the Treaty with respect to a covered investment.

In the event that an investment dispute cannot be settled amicably, paragraph 2 gives an investor an exclusive (with the exception in paragraph 3(b) concerning injunctive relief, explained below) choice among three options to settle the dispute. These three options are: (1) submitting the dispute to the courts or administrative tribunals of the Party that is a party to the dispute; (2) invoking dispute-resolution procedures previously agreed upon by the national or company and the host country government; or (3) invoking the dispute-resolution mechanisms identified in paragraph 3 of Article IX.

Under paragraph 3(a), the investor can submit an investment dispute to binding arbitration 3 months after the dispute arises, provided that the investor has not submitted the claim to a court or administrative tribunal of the Party or invoked a dispute resolution procedure previously agreed upon. The investor may choose among the International Centre for Settlement of Investment Disputes (ICSID) (Convention Arbitration), the Additional Facility of ICSID (if Convention Arbitration is not available), ad hoc arbitration using the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or any other arbitral institution or rules agreed upon by both parties to the dispute.

Before or during such arbitral proceedings, however, paragraph 3(b) provides that an investor may seek, without affecting its right to pursue arbitration under this Treaty, interim injunctive relief not involving the payment of damages from local courts or administrative tribunals of the Party that is a party to the dispute for the preservation of its rights and interests. This paragraph does not alter the power of the arbitral tribunals to recommend or order interim measures they may deem appropriate.

Paragraph 4 constitutes each Party's consent to the submission of investment disputes to binding arbitration in accordance with the choice of the investor.

Paragraph 5 provides that any 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 Arbitral Awards. This provision facilitates enforcement of arbitral awards.

In addition, in paragraph 6, each Party commits to enforcing arbitral awards rendered pursuant to this Article. The Federal Arbitration Act (9 U.S.C. 1 et seq.) satisfies the requirement for the enforcement of non-ICSID Convention awards in the United States. The Convention on the Settlement of Investment Disputes Act of 1966 (22 U.S.C. 1650–1650a) provides for the enforcement of ICSID Convention awards.

Paragraph 7 ensures that a Party may not assert as a defense, or for any other reason, that the investor involved in the investment dispute has received or will receive reimbursement for the same damages under an insurance or guarantee contract.

Paragraph 8 provides that, for the purposes of this article, the nationality of a company in the host country will be determined by ownership or control, rather than by place of incorporation. This provision allows a company that is a covered investment to bring a claim in its own name.

Article X (Settlement of Disputes Between the Parties)

Article X provides for binding arbitration of disputes between the United States and Honduras concerning the interpretation or application of the Treaty that are not resolved through consultations or other diplomatic channels. The article specifies various procedural aspects of such arbitration proceedings, including time periods, selection of arbitrators, and distribution of arbitration costs between the Parties. The article constitutes each Party's prior consent to such arbitration.

Article XI (Preservation of Rights)

Article XI clarifies that the Treaty does not derogate from any obligation a Party might have to provide better treatment to the covered investment than is specified in the Treaty. Thus, the Treaty establishes a floor for the treatment of covered investments. A covered investment may be entitled to more favorable treatment through domestic legislation, other international legal obligations, or a specific obligation (e.g., to provide a tax holiday) assumed by a Party with respect to that covered investment.

Article XII (Denial of Benefits)

Article XII(a) preserves the right of each Party to deny the benefits of the Treaty to a company owned or controlled by nationals of a non-Party country with which the denying Party does not have normal economic relations, e.g., a country to which it is applying economic sanctions. For example, at this time the United States does not maintain normal economic relations with, among other countries, Cuba and Libya.

Article XII(b) permits each Party to deny the benefits of the Treaty to a company of the other Party if the company is owned or controlled by non-party nationals and if the company has no substantial business activities in the Party where it is established. Thus, the United States could deny benefits to a company that is a subsidiary of a shell company organized under the laws of Honduras if controlled by nationals of a third country. However, this provision would not generally permit the United States to deny benefits to a company of Honduras that maintains its central administration or principal place of business in the territory of, or has a real and continuous link with, Honduras.

Article XIII (Taxation)

Article XIII excludes tax matters generally from the coverage of the BIT, on the basis that tax matters should be dealt with in bilateral tax treaties. However, Article XIII does not preclude a na-

tional or company from bringing claims under Article IX that taxation provisions in an investment agreement or authorization have been violated. In addition, the dispute settlement provisions of Article IX and X apply to tax matters in relation to alleged violations of the BIT's expropriation article.

Under paragraph 2, a national or company that asserts in a dispute that a tax matter involves expropriation may submit that dispute to arbitration pursuant to Article IX(3) only if (1) the investor has first referred to the competent tax authorities of both Parties the issue of whether the tax matter involves an expropriation, and (2) the tax authorities have not both determined, within 9 months from the time of referral, that the matter does not involve an expropriation. The "competent tax authority" of the United States is the Assistant Secretary of the Treasury for Tax Policy, who will make such a determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.

Article XIV (Measures Not Precluded)

The first paragraph of Article XIV reserves the right of a Party to take measures for the fulfillment of its international obligations with respect to maintenance or restoration of international peace or security, as well as those measures it regards as necessary for the protection of its own essential security interests.

Under paragraph 3 of the Protocol to the Treaty, the parties expressed their understanding that international obligations with respect to maintenance or restoration of peace or security means obligations under the United Nations Charter. The pertinent portion of the Charter is Chapter VII "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." 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 interests of the Party involved. Measures to protect a Party's essential security interests are self-judging in nature, although each Party would expect the provisions to be applied by the other in good faith.

The second paragraph permits a Party to prescribe special formalities in connection with covered investments, provided that these formalities do not impair the substance of any Treaty rights. Such formalities could include reporting requirements for covered investments or for transfers of funds, or incorporation requirements.

Article XV (Application to Political Subdivisions and State Enterprises of the Parties)

Paragraph 1(a) makes clear that the obligations of the Treaty are applicable to all political subdivisions of the Parties, such as provincial, State, and local governments.

Paragraph 1(b) recognizes that under the U.S. federal system, States of the United States may, in some instance, treat out-of-State residents and corporations in a difference manner than they treat in-State residents and corporations. The Treaty provides that the national treatment committee, with respect to the States,

means treatment no less favorable than that provided by a State to U.S. out-of-State residents and corporations.

Paragraph 2 extends a Party's obligations under the Treaty to its state enterprises in the exercise of any delegated governmental authority. This paragraph is designed to clarify that the exercise of governmental authority by a state enterprise must be consistent with a Party's obligations under the Treaty.

Article XVI (Entry Into Force, Duration, and Termination)

Paragraph 1 stipulates that the Treaty enters into force 30 days after exchange of instruments of ratification. The Treaty remains in force for a period of 10 years and continues in force thereafter unless terminated by either Party as provided in paragraph 2. Paragraph 2 permits a Party to terminate the Treaty at the end of the initial 10 year period, or at any later time, by giving 1 year's written notice to the other Party. Paragraph 1 also provides that the Treaty applies to covered investments existing at the time of entry into force as well as to those established or acquired thereafter. The Treaty does not state an intention by the Parties to apply the Treaty's provisions retroactively. Thus, under customary international law, the Treaty does not apply to disputes with respect to acts or facts which took place before the Treaty came into force or to any situation which ceased to exist before the date of entry into force of the Treaty.

Paragraph 3 provides that, if the Treaty is terminated, all investments that qualified as covered investments on the date of termination (i.e., 1 year after the date of written notice of termination) continue to be protected under the Treaty for 10 years from that date as long as these investment qualify as covered investments. A Party's obligations with respect to the establishment and acquisition of investments would lapse immediately upon the date of termination of the Treaty.

Paragraph 4 stipulates that Annex and Protocol shall form an integral part of the Treaty.

Annex

U.S. bilateral investment treaties allow for exceptions to national and MFN treatment, where the Parties' domestic regimes do not afford national and MFN treatment, or where treatment in certain sectors or matters is negotiated in and governed by other agreements. Future derogations from the national treatment obligations of the Treaty are generally permitted only in the sectors or matters listed in the Annex, pursuant to Article II(2), and must be made on an MFN basis unless otherwise specified therein.

Under a number of statutes, many of which have a long historical background, the U.S. federal government or States may not necessarily treat investments of nationals or companies of Honduras as they do U.S. investments or investments from a third country. Paragraphs 1 through 3 of the Annex list the sectors or matters subject to U.S. exceptions.

The U.S. exceptions from its national treatment obligation are: atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees, and in-

surance; State and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; and landing of submarine cables.

The U.S. exceptions from its national and MFN treatment obligation are: fisheries; and air and maritime transport, and related activities.

During negotiations, the United States informed Honduras that if Honduras undertook acceptable commitments with respect to all or certain financial services, the United States would consider limiting its exceptions with respect to its national and MFN treatment obligations in financial services.

Honduras offered to take no exceptions to the treaty's national or MFN treatment obligations with respect to banking, insurance, securities, and other financial services. Therefore in paragraph 3 of the Annex, the United States limited its exceptions with respect to banking, insurance, securities, and other financial services to afford treatment no less favorable than that accorded with respect to Canada and Mexico in the North American Free Trade Agreement.

Paragraph 4 of the Annex lists Honduras' exceptions from its national treatment obligation, which are: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline of land borders of Honduras; small scale industry and commerce with total invested capital of no more than US $40,000 or its equivalent in national currency; ownership, operation and editorial control of broadcast radio and television; ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

Honduras has taken no exception to its MFN treatment obligation.

Paragraph 5 of the Annex ensures that national treatment is granted by each Party in all leasing of minerals or pipeline rights-of-way on government lands. In so doing, this provision affects the implementation of the Mineral Lands Leasing Act (MLLA) (30 U.S.C. 181 et seq.) and 10 U.S.C. 7435, regarding Naval Petroleum Reserves, with respect to nationals and companies of Honduras. The Treaty provides for resort to binding international arbitration to resolve disputes, rather than denial of mineral rights or rights to naval petroleum shares to investors of the other Party, as is the current process under the statute, U.S. domestic remedies, would, however, remain available for use in conjunction with the Treaty's provisions.

The MLLA and 10 U.S.C. 7435 direct that a foreign investor be denied access to leases for minerals on on-shore federal lands, leases of land within the Naval Petroleum and Oil Shale Reserves, and rights-of-way for oil or gas pipelines across on-shore federal lands, if U.S. investors are denied access to similar or like privileges in the foreign country.

Honduras' extension of national treatment in these sectors will fully meet the objectives of the MLLA and 10 U.S.C. 7435. Honduras was informed during negotiations that, were it to include this sector in its list of treatment exemptions, the United States would (consistent with the MLLA and 10 U.S.C. 7435) exclude the leasing of minerals or pipeline rights-of-way on Government lands from the national and MFN treatment obligations of this Treaty.

The listing of a sector or matter in the Annex does not necessarily signify that domestic laws have entirely reserved it for nationals. And, pursuant to Article II(2), any additional restrictions or limitations that a Party may adopt with respect to listed sectors or matters may not compel the divestiture of existing covered investments.

Finally, listing a sector or matter in the Annex exempts a Party only from the obligation to accord national or MFN treatment. Both Parties are obligated to accord to covered investments in all sectors—even those listed in the Annex—all other rights conferred by the Treaty.

Protocol

Paragraph 1 of the Protocol clarifies that Honduras may restrict transfers under Article V(4)(a) through the application of portions of its labor laws designed to protect the rights of creditors so long as those laws are applied in an equitable, non-discriminatory, and good faith manner.

In paragraph 2, Honduras clarified that, notwithstanding its exception to its national treatment obligation with respect to "properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras," in considering applications by U.S. nationals or companies to possess or acquire real property within urban zones of these areas, Honduras will not reject or unduly delay such decisions on the basis of nationality.

As described under Article XIV, paragraph 3 states that, with respect to Article XIV, "obligations with respect to the maintenance or restoration of international peace or security" means obligations under the Charter of the United Nations.

Paragraph 4 clarifies that nothing in Article XIV(1) authorizes either Party to take measures in the territory of the other Party with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

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

Respectfully submitted.

MADELEINE ALBRIGHT.

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

The Government of the United States of America and the Government of the Republic of Honduras (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 a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Recognizing that the development of economic and business ties can promote respect for internationally recognized worker rights;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

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

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty,

(a) "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

(b) "company of a Party" means a company constituted or organized under the laws of that Party;

(c) "national" of a Party means a natural person who is a national of that Party under its applicable law;

(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

(i) a company;

(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

(iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

(iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including:

copyrights and related rights,

patents,

rights in plant varieties,

industrial designs,

rights in semiconductor layout designs,

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

trade and service marks, and

trade names; and

(vi) rights conferred pursuant to law, such as licenses and permits;

(e) "covered investment" means an investment of a national or company of a Party in the territory of the other Party;

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

(g) "investment authorization" means an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party;

(h) "investment agreement" means a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment.

(i) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

(j) "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and

(k) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE II

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a

third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment"). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments.

2. (a) A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in the Annex to this Treaty. In adopting such an exception, a Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.

(b) The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

3. (a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.

4. Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.

5. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

ARTICLE III

1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory 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).

2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken ("the date of expropriation"); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid -- converted into the currency of payment at the market rate of exchange prevailing on the date of payment -- shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

ARTICLE IV

1. Each Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.

2. Each Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

(a) requisitioning of all or part of such investments by the Party's forces or authorities, or

(b) destruction of all or part of such investments by the Party's forces or authorities that was not required by the necessity of the situation.

ARTICLE V

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement; and

(e) compensation pursuant to Articles III and IV, and payments arising out of an investment dispute.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Each Party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Party and a covered investment or a national or company of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

ARTICLE VI

Neither Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a governmental permission or authorization):

(a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;

(b) to limit imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;

(c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;

(d) to limit sales by the investment of products or services in the Party's territory in relation to a particular volume or value of production, exports or foreign exchange earnings;

(e) to transfer technology, a production process or other proprietary knowledge to a national or company in the Party's territory, except pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws; or

(f) to carry out a particular type, level or percentage of research and development in the Party's territory.

Such requirements do not include conditions for the receipt or continued receipt of an advantage.

ARTICLE VII

1. (a) Subject to its laws relating to the entry and sojourn of aliens, each Party shall permit to enter and to remain in its territory nationals 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 other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Neither Party shall, in granting entry under paragraph 1(a), require a labor certification test or other procedures of similar effect, or apply any numerical restriction.

2. Each Party shall permit covered investments to engage top managerial personnel of their choice, regardless of nationality.

ARTICLE VIII

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 or to the realization of the objectives of the Treaty.

ARTICLE IX

1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.

2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

(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 three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:

(i) to the Centre, if the Centre is available; or

(ii) to the Additional Facility of the Centre, if the Centre is not available; or

(iii) in accordance with the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

(b) a national or company, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3(a), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Party that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under paragraph 3(a)(i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3(a)(iv). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:

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

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

5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

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

7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

8. For purposes of Article 25(2)(b) of the ICSID Convention and this Article, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Party.

ARTICLE X

1. Any dispute between the Parties concerning the interpretation or application of the Treaty, that 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 UNCITRAL Arbitration Rules shall govern, except to the extent these rules are (a) modified by the Parties or (b) modified by the arbitrators unless either Party objects to the proposed modification.

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 shall be a national of a third state. The UNCITRAL Arbitration Rules applicable to 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 arbitral panel 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 and other arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE XI

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favorable than that accorded by this Treaty:

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

(b) international legal obligations; or

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

ARTICLE XII

Each Party reserves the right to deny to a company of the other Party the benefits of this Treaty if nationals of a third country own or control the company and

(a) the denying Party does not maintain normal economic relations with the third country; or

(b) the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

ARTICLE XIII

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:

(a) Articles III, IX and X will apply with respect to expropriation; and

(b) Article IX will apply with respect to an investment agreement or an investment authorization.

2. A national or company, that asserts in an investment dispute that a tax matter involves an expropriation, may submit that dispute to arbitration pursuant to Article IX(3) only if:

(a) the national or company concerned has first referred to the competent tax authorities of both Parties the issue of whether the tax matter involves an expropriation; and

(b) the competent tax authorities have not both determined, within nine months from the time the national or company referred the issue, that the matter does not involve an expropriation.

ARTICLE XIV

1. This Treaty shall not preclude a Party from applying measures necessary for 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 a Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Party, or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XV

1. (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.

(b) With respect to the treatment accorded by a State, Territory or possession of the United States of America, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments 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.

2. A Party's obligations under this Treaty shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.

ARTICLE XVI

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. It shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

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

3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.

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

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

DONE in duplicate at Denver this first day of July, 1995, in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

ANNEX

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; and landing of submarine cables.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below:

fisheries; air and maritime transport, and related activities.

3. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments, provided that the exceptions do not result in treatment under this Treaty less favorable than the treatment that the Government of the United States of America has undertaken to accord in the North American Free Trade Agreement with respect to another party to that Agreement, in the sectors or with respect to the matters specified below:

banking, insurance, securities, and other financial services.

4. The Government of Honduras may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras; small scale industry and commerce with total invested capital of no more than US $40,000 or its equivalents in national currency; ownership, operation and editorial control of broadcast radio and

television; ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

5. Each Party agrees to accord national treatment to covered investments in the following sectors:

leasing of minerals or pipeline rights-of-way on government lands.

PROTOCOL

1. The Parties confirm their mutual understanding that Article V, paragraph 4(a) includes the equitable, non-discriminatory and good faith application by the Government of Honduras of its labor laws relating to the protection of preferential creditors' rights.

2. With respect to Article II(1) and paragraph (4) of the Annex, in considering applications by nationals or companies of the United States to possess or acquire real property within urban zones in or on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras, the Government of Honduras confirms that such applications will not be rejected, nor will decisions on applications be unduly delayed, on grounds of nationality.

3. The Parties understand that, with respect to rights reserved in paragraph 1 of Article XIV of the Treaty, "obligations with respect to the maintenance or restoration of international peace or security" means obligations under the Charter of the United Nations.

4. It is understood that nothing in paragraph 1 of Article XIV of the Treaty between the Government of the United States and the Government of Honduras Concerning the Encouragement and Reciprocal Protection of Investment, authorizes or has the intention of authorizing either Party to that Treaty to take measures in the territory of the other Party to fulfill its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

O

TRATADO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMERICA Y EL GOBIERNO DE HONDURAS RELATIVO AL FOMENTO Y LA PROTECCION RECIPROCA DE LA INVERSION

El Gobierno de los Estados Unidos de América y el Gobierno de Honduras, (en adelante, las Partes)

Deseando promover una mayor cooperación económica entre ellos, con respecto a las inversiones hechas por nacionales y sociedades de una Parte en el territorio de la otra Parte;

Reconociendo que el acuerdo sobre el trato que se otorgue a dichas inversiones estimulará el movimiento del capital privado y el desarrollo económico de las Partes;

Conviniendo que un marco estable para las inversiones rendirá la máxima utilización eficaz de los recursos económicos y mejorará el nivel de vida;

Reconociendo que el fomento de los vínculos económicos y comerciales puede promover el respeto por los derechos laborales reconocidos internacionalmente;

Conviniendo que estos objetivos pueden cumplirse sin relajar las medidas sanitarias, preventivas y ambientales de aplicación general, y

Habiendo resuelto concertar un tratado relativo al fomento y la protección recíproca de la inversión,

Han acordado lo siguiente:

ARTICULO I

I. A efectos del presente tratado:

a. por "sociedad" se entiende cualquier entidad constituida u organizada conforme a la legislación pertinente, persiga o no fines de lucro y sea de propiedad o control privado o estatal, lo cual comprende las sociedades anónimas, los fideicomisos, las sociedades colectivas, las empresas individuales, las sucursales, las empresas conjuntas, las asociaciones u otras empresas u organizaciones.

b. por "sociedad de una Parte" se entiende una sociedad constituida u organizada conforme a la legislación de esa Parte;

c. por "nacional" de una Parte se entiende una persona física que sea nacional de esa parte de conformidad con su legislación pertinente;

d. por "inversión" de un nacional o sociedad se entiende cualquier clase de inversión que posea o controle directa o indirectamente ese nacional o sociedad, lo que comprende las inversiones que adopten los siguientes aspectos o consistan en ellos.

i. las sociedades;

ii. las acciones u otras formas de participación en el capital de una sociedad, y los bonos, las obligaciones y otras formas de intereses sobre la deuda de una sociedad;

iii. los derechos contractuales, como los contratos llave en mano o de construcción, contratos gerenciales, los contratos de producción o de participación en los ingresos, las concesiones u otros contratos similares;

iv. la propiedad tangible, comprendidos los bienes raíces, y la propiedad intangible, comprendidos los derechos, como los arriendos, las hipotecas, los privilegios de acreedor y las prendas;

v. la propiedad intelectual, que comprende: los derechos de autor y derechos afines; las patentes; los derechos en las variedades de vegetales; los diseños industriales; los derechos en el diseño de estampado de semiconductores; los secretos comerciales, comprendidos los conocimientos técnicos y la información comercial reservada; las marcas de fábrica y servicio, y nombres comerciales; y

vi. los derechos conferidos conforme a la ley, como las licencias y los permisos;

e. por "inversión protegida" se entiende la inversión de un nacional o sociedad de una Parte en el Territorio de la otra Parte;

f. por "empresa estatal" se entiende la sociedad que sea propiedad de una Parte o que esa Parte controle por medio de participación de capital;

g. por "autorización de inversión" se entiende la autorización concedida por la autoridad de una Parte en materia de inversiones extranjeras a una inversión protegida, o a un nacional o sociedad de la otra Parte;

h. por "acuerdo de inversión" se entiende el acuerdo por escrito entre las autoridades nacionales de una Parte y una inversión protegida, o un nacional o sociedad de la otra Parte:

i. por el que se conceden derechos con respecto a recursos naturales u otros bienes que controlen dichas autoridades nacionales; y

ii. del que depende la inversión, el nacional o la sociedad para fundar o adquirir una inversión protegida;

i. por "Convenio del CIADI" se entiende el Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de Otros Estados, hecho en Washington el 18 de marzo de 1965.

j. por "Centro" se entiende el Centro Internacional de Arreglo de Diferencias Relativas a Inversiones, fundado por el Convenio del CIADI;

k. por "Normas de Arbitraje de la CNUDMI" se entienden las normas de arbitraje de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional.

ARTICULO II

1. Con respecto a la fundación, la adquisición, la expansión, la dirección, la explotación, el funcionamiento y la venta u otra enajenación de las inversiones protegidas, cada Parte otorgará un trato no menos favorable que el que otorga, en situaciones similares, a las inversiones en su territorio de sus propios nacionales o sociedades (en adelante, "trato nacional") o a las inversiones en su territorio de los nacionales o las sociedades de un tercer país (en adelante, "trato de la nación más favorecida") cualquiera que sea el más favorable (en adelante, "trato nacional y de la nación más favorecida"). Cada Parte garantizará que sus empresas estatales, en el suministro de sus bienes o servicios, otorguen el trato nacional y de la nación más favorecida a las inversiones protegidas.

2. **a.** Cada Parte podrá adoptar o mantener excepciones a las obligaciones del párrafo 1 en las materias o en los sectores especificados en el Anexo del presente Tratado. Al adoptar dichas excepciones, la Parte no podrá exigir la desinversión total o parcial de las inversiones protegidas que existan en el momento de la entrada en vigor de la excepción.

   b. Las obligaciones del párrafo 1 no se aplicarán a los procedimientos previstos en los acuerdos multilaterales concertados bajo los suspicios de la Organización Mundial de la Propiedad Intelectual, relativos a la adquisición o conservación de los derechos de propiedad intelectual.

3. **a.** En todo momento, cada Parte otorgará a las inversiones protegidas un trato justo y equitativo y entera protección y seguridad, y en ningún caso les otorgará un trato menos favorable que el que exige el derecho internacional.

   b. Ninguna de las partes menoscabará en modo alguno, mediante la adopción de medidas arbitrarias y discriminatorias, la dirección, la explotación, el funcionamiento y la venta u otra disposición de las inversiones protegidas.

4. Cada Parte proporcionará medios eficaces de hacer valer las reivindicaciones y cumplir los derechos con respecto a las inversiones protegidas.

5. Cada Parte garantizará que su ordenamiento legal interno y sus prácticas y procedimientos administrativos de carácter general, así como sus decisiones judiciales, cuando se refieran o afecten a las inversiones protegidas, se publiquen o pongan a disposición del público con prontitud.

ARTICULO III

1. Ninguna de las partes expropiará ni nacionalizará una inversión protegida ni

directamente ni tampoco indirectamente por la aplicación de medidas equivalentes a la expropiación o nacionalización ("expropiación"), salvo que ello se efectúe con fines de interés público, de manera imparcial y mediante pago de una indemnización pronta, adecuada y efectiva, y de conformidad con el debido procedimiento legal y los principios generales de trato dispuestos en el párrafo 3 del Artículo II.

2. La indemnización se pagará sin demora, equivaldrá al valor justo en el mercado de la inversión expropiada inmediatamente antes de que se tomara la acción expropiatoria ("la fecha de expropiación"), y será enteramente realizable y libremente transferible. El valor justo en el mercado no se verá afectado por ningún cambio de valor debido a que la medida de expropiación llegara a conocerse antes de la fecha de expropiación.

3. En caso de que el valor justo en el mercado se exprese en una moneda libremente utilizable, la indemnización pagadera no será inferior al valor justo en el mercado en la fecha de expropiación, más los intereses devengados a una tasa comercialmente justificada para esa moneda desde la fecha de expropiación hasta la fecha de pago.

4. En caso de que el valor justo en el mercado se exprese en una moneda que no sea libremente utilizable la indemnización pagadera (convertida en la moneda de pago al cambio vigente en el mercado en la fecha de pago) no será inferior a:

    a. El valor justo en el mercado en la fecha de expropiación, convertido en una moneda libremente utilizable al cambio vigente en el mercado en dicha fecha, más

    b. Los intereses a una tasa comercialmente justificada para dicha moneda libremente utilizable, devengados desde la fecha de expropiación hasta la fecha de pago.

ARTICULO IV

1. Cada Parte concederá el trato nacional y de nación más favorecida a las inversiones protegidas con respecto a toda medida relativa a las pérdidas que las inversiones sufran en su territorio por guerra u otro conflicto armado, revolución, estado nacional de emergencia, insurrección, disturbio civil o cualquier otro acontecimiento similar.

2. Cada Parte concederá la restitución o pagará la indemnización, conforme a los párrafos 2, 3 y 4 del Artículo III, en caso de que las inversiones protegidas sufran pérdidas en su territorio por guerra u otro conflicto armado, revolución, estado nacional de emergencia, insurrección, disturbio civil o cualquier otro acontecimiento similar, a consecuencia de:

    a. la requisa total o parcial de dichas inversiones por las fuerzas o autoridades de la Parte, o

    b. la destrucción total o parcial de dichas inversiones, no exigida por

la necesidad de la situación, por las fuerzas o autoridades de la Parte.

ARTICULO V

1. Cada Parte permitirá que todas las transferencias relativas a una inversión protegida se efectúen libremente y sin demora en su territorio o desde el mismo. Dichas transferencias comprenderán:

    a. los aportes de capital;

    b. los beneficios, los dividendos, las plusvalías y el producto de la venta parcial o total de la inversión o de la liquidación parcial o completa de la inversión;

    c. los intereses, los derechos de patente, los honorarios de gestión y de asistencia técnica y otros honorarios;

    d. los pagos efectuados conforme a contrato, comprendidos los convenios de préstamo; y

    e. las indemnizaciones conforme a los Artículos III y IV y los pagos resultantes de las diferencias relativas a inversiones.

2. Cada Parte permitirá que las transferencias se efectúen en moneda libremente utilizable al cambio vigente en el mercado en la fecha de la transferencia.

3. Cada Parte permitirá las rentas en especie, según se autorice o especifique en una autorización de inversión, acuerdo de inversión u otro acuerdo por escrito entre la Parte y una inversión protegida o un nacional o sociedad de la otra Parte.

4. Sin perjuicio de los párrafos 1 a 3, cada Parte podrá impedir transferencias mediante el cumplimiento equitativo, no discriminatorio y de buena fe de su legislación relativa a:

    a. las quiebras, las insolvencias o la protección de los derechos de los acreedores;

    b. la emisión, el comercio o el corretaje de valores;

    c. las infracciones criminales o penales;

    d. la garantía del cumplimiento de mandamientos o fallos en actuaciones judiciales.

ARTICULO VI

Ninguna de las Partes dispondrá ni hará cumplir, como condición para la fundación, la adquisición, la expansión, la dirección, la explotación o el funcionamiento de una inversión protegida, cualquier requisito que obligue

(lo cual comprende las garantías o compromisos que se relacionen con la concesión de permisos o autorizaciones oficiales):

a. alcanzar un cierto nivel o proporción de contenido nacional, o a comprar, utilizar o de alguna forma preferir los productos o servicios de origen nacional o de cualquier procedencia interna;

b. limitar las importaciones de productos o servicios que efectúe la inversión, proporcionalmente a un determinado volumen o valor de la producción, las exportaciones o las ganancias en divisas;

c. un cierto tipo, nivel o proporción de los productos o servicios, bien en términos generales o bien en términos del mercado de una región en particular;

d. limitar las ventas de productos o servicios que efectúe la inversión en el territorio de la Parte, conforme a un determinado volumen o valor de la producción, la exportación o las ganancias en divisas;

e. transferir tecnología, procedimientos de producción u otros conocimientos patrimoniales a un nacional o sociedad en el territorio de la Parte, salvo mediante un mandamiento, compromiso o garantía que haga cumplir alguna autoridad jurídica, administrativa o de competencia, a fin de remediar una infracción supuesta o fallada de las leyes relativas a la competencia, o

f. llevar a cabo cierta clase, nivel o proporción de la investigación y del desarrollo en el territorio de la Parte.

Dichos requisitos no comprenden las condiciones para la concesión o la continuidad de la concesión de alguna ventaja.

ARTICULO VII

1. **a.** con sujeción a la legislación relativa a la entrada y permanencia de extranjeros, se permitirá a los nacionales de cada Parte la entrada y permanencia de el territorio de la otra Parte a fines de fundar, desarrollar o administrar una inversión, o de asesorar en su explotación, en la cual ellos o una sociedad de la otra Parte que los emplee, hayan comprometido o están a punto de comprometer, una cantidad importante de capital u otros recursos;

   b. al autorizar la entrada conforme al inciso (a) del párrafo 1, ninguna de las Partes exigirá una prueba de certificación laboral u otros procedimientos de parecido efecto ni aplicará ninguna restricción numérica.

2. Cada Parte permitirá que las inversiones protegidas contraten al personal administrativo superior que deseen, sea cual fuere la nacionalidad de dicho personal.

ARTICULO VIII

Las Partes convienen en consultarse con prontitud, a solicitud de cualquiera de ellas, para resolver las diferencias que surjan en relación con el presente Tratado o para considerar cualquier cuestión referente a la interpretación o aplicación del mismo o al cumplimiento de sus objetivos.

ARTICULO IX

1. A efectos del presente Tratado una diferencia relativa a inversiones es una diferencia entre una Parte y un nacional o sociedad de la otra Parte que surja de una autorización de inversión, un acuerdo de inversión o una supuesta infracción de cualquier derecho conferido, generado o reconocido por el presente Tratado, o que se relacione con dicha autorización, acuerdo o infracción, con respecto a una inversión protegida.

2. El nacional o la sociedad que sea parte en una diferencia relativa a inversiones podrá someter la diferencia para su resolución según una u otra de las siguientes opciones:

    a. a las Cortes o Tribunales Administrativos de la Parte que sea parte en la diferencia, o

    b. conforme a cualquier procedimiento pertinente previamente acordado para la resolución de diferencias, o

    c. conforme a los términos del párrafo 3.

3. **a.** Siempre y cuando el nacional o la sociedad en cuestión no haya sometido la diferencia para su resolución según el inciso (a) o el (b) del párrafo 3, y hayan transcurrido tres meses a partir de la fecha en que surgió la diferencia, el nacional o la sociedad en cuestión podrá someter la diferencia para su resolución mediante el arbitraje vinculante:

    i. al centro si éste está disponible, o

    ii. de no estar disponible el centro, al mecanismo complementario del centro, o

    iii. conforme a las normas de arbitraje de la CNUDMI, o

    iv. si convienen en ello las dos partes en la diferencia, a cualquier otra institución de arbitraje o conforme a cualesquiera otras normas de arbitraje.

    b. Un nacional o una sociedad, aunque haya sometido la diferencia al arbitraje vinculante conforme al inciso (a) del párrafo 3, podrá pedir el desagravio provisional por mandato, cuando éste no signifique el pago de daños y perjuicios, a los tribunales judiciales o administrativos de la Parte que sea parte en la diferencia, antes de que se entable el procedimiento de

arbitraje o durante el transcurso del mismo, a fin de conservar sus derechos e intereses.

4. Por el presente, cada Parte consciente en someter cualquier diferencia relativa a inversiones para su resolución mediante el arbitraje vinculante según la opción del nacional, o de la sociedad conforme a las cláusulas (i), (ii), o (iii), del inciso (a), párrafo 3, o según el mutuo acuerdo entre las dos partes en la diferencia conforme a la cláusula (iv) del mismo inciso y párrafo. Este consentimiento y el sometimiento de la diferencia por un nacional o sociedad según el inciso (a) del párrafo 3, satisfará los requisitos de:

    a. El Capítulo II del Convenio del CIADI (competencia del Centro) y las normas del mecanismo complementario acerca del consentimiento por escrito de las partes en la diferencia, y

    b. El Artículo II de la Convención de las Naciones Unidas sobre el Reconocimiento y Ejecución de las Sentencias Arbitrales Extranjeras, hecha en Nueva York el 10 de junio de 1958, acerca del "Acuerdo por escrito".

5. Los arbitrajes según las cláusulas (ii), (iii) o (iv) del inciso a), párrafo 3, tendrán lugar en un Estado que sea Parte en la Convención de las Naciones Unidas sobre el Reconocimiento y Ejecución de las Sentencias Arbitrales Extranjeras, hecha en Nueva York el 10 de junio de 1958.

6. Cualquier sentencia arbitral pronunciada conforme al presente Artículo será definitiva y vinculante para las Partes en la diferencia. Cada Parte cumplirá sin demora las disposiciones de la sentencia y tomará en su territorio las medidas del caso para la ejecución de la misma.

7. En las actuaciones acerca de cualquier diferencia relativa a inversiones, una Parte no empleará como defensa, reconvención, derecho de indemnización ni de ninguna otra forma el hecho de que se haya recibido o vaya a recibirse indemnización u otra compensación total o parcial por los supuestos daños, según un contrato de seguro o garantía.

8. A efectos del apartado (b) del párrafo 2. Artículo 25 del Convenio del CIADI, y del presente Artículo, la sociedad de una Parte que, inmediatamente antes de ocurrir el suceso o los sucesos que dieran lugar a la diferencia, constituya una inversión protegida, se tratará como sociedad de la otra Parte.

ARTICULO X

1. Cualquier diferencia entre las Partes concerniente a la interpretación o aplicación del presente Convenio que no se resuelva mediante consultas o por otra vía diplomática, se someterá, a solicitud de cualquiera de las Partes, a un tribunal de arbitraje para que llegue a una decisión vinculante conforme a las normas pertinentes del derecho internacional. Salvo acuerdo en contrario entre las Partes, regirán las Normas de Arbitraje de la CNUDMI, excepto en la medida en que dichas normas hayan sido (a) modificadas por las Partes o (b) modificadas por los

Arbitros, a menos que cualquiera de las Partes se oponga a la modificación propuesta.

2. En el plazo de dos meses a partir de la recepción de la solicitud, cada Parte nombrará a un árbitro. Los dos árbitros nombrarán como Presidente a un tercer árbitro que sea nacional de un tercer Estado. Las Normas de Arbitraje de la CNUDMI relativas al nombramiento de vocales para juntas de tres se aplicarán, mutatis mutandi, al nombramiento del tribunal de arbitraje, salvo que la autoridad denominativa a la que se refieren esas reglas sea el Secretario General del Centro.

3. Salvo acuerdo en contrario todos los casos se presentarán y las audiencias concluirán en el plazo de seis meses contados desde la fecha del nombramiento del tercer árbitro, y el tribunal de arbitraje pronunciará las sentencias en un plazo de dos meses a partir de la fecha de las presentaciones finales o de la fecha de clausura de las audiencias, si ésta última fuese posterior.

4. Los gastos incurridos por el Presidente y los otros árbitros, así como los demás costos de la actuación, serán sufragados a partes iguales por las Partes. Sin embargo, el Tribunal, a su criterio, podrá ordenar que una de las Partes pague una mayor proporción de los costos.

ARTICULO XI

El presente Tratado no menoscabará las siguientes obligaciones, cuando den derecho a las inversiones protegidas a un trato más favorable que el que les concede el presente Tratado.

a. las leyes y los reglamentos, las prácticas o los procedimientos administrativos o las sentencias administrativas o judiciales de una Parte;

b. las obligaciones jurídicas internacionales; o

c. las obligaciones asumidas por una Parte, incluidas las que están incorporadas a los Acuerdos o autorizaciones de inversión.

ARTICULO XII

Cada Parte se reserva el derecho a denegar a cualquier sociedad de la otra Parte los beneficios del presente Tratado si dicha sociedad es de propiedad de nacionales de un tercer país o está bajo su control, y si:

a. la Parte denegante no mantiene relaciones económicas normales con el tercer país: o

b. la sociedad no tiene actividades comerciales sustanciales en el territorio de la Parte según cuya legislación está constituida.

ARTICULO XIII

1. Las disposiciones del presente Tratado no impondrán obligaciones con respecto a

asuntos fiscales, salvo que:

a. regirán los Artículos III, IX y X con respecto a las expropiaciones; y

b. regirá el Artículo IX con respecto a los acuerdos o las autorizaciones de inversión.

2. El nacional o la sociedad que asevere en una diferencia relativa a inversión que un asunto fiscal representa una expropiación, podrá someter la diferencia al arbitraje conforme el párrafo 3 del Artículo IX solamente si:

a. el nacional o la sociedad en cuestión ha remitido previamente a las autoridades fiscales competentes de las dos Partes la cuestión de si ese asunto fiscal representa una expropiación; y

b. las dos autoridades fiscales competentes no han concluido, en el plazo de nueve meses a partir de la fecha en que el nacional, o la sociedad les remitió la cuestión, que el asunto no representa una expropiación.

ARTICULO XIV

1. El presente Tratado no impedirá la aplicación por una Parte de las medidas necesarias para el cumplimiento de sus obligaciones con respecto al mantenimiento o restauración de la paz o seguridad internacional, o para la protección de sus propios intereses esenciales de seguridad.

2. El presente Tratado no impedirá que una Parte prescriba formalidades especiales con respecto a las inversiones protegidas, como el requisito de que dichas inversiones se constituyan legalmente conforme al ordenamiento interno de esa Parte, o que se notifiquen las transferencias de moneda o de otros instrumentos monetarios, siempre y cuando dichas formalidades no menoscaben la esencia de cualquiera de los derechos que se enuncian en el presente Tratado.

ARTICULO XV

1. **a)** Las obligaciones del presente Tratado regirán para las subdivisiones políticas de las Partes.

b) Con respecto al trato otorgado por un Estado, Territorio o posesión de los Estados Unidos de América, por trato nacional se entiende un trato no menos favorable que el que otorgue, en situaciones similares, a las inversiones de los nacionales de los Estados Unidos de América que residan en otros Estados, territorios o posesiones de los Estados Unidos de América y de las sociedades legalmente constituidas conforme al ordenamiento interno de dichos otros Estados, territorios o posesiones.

2. Las obligaciones de una Parte bajo este Tratado se aplicarán a una empresa estatal en el ejercicio de cualquier autoridad regulatoria, administrativa o gubernamental

delegada por esa Parte.

ARTICULO XVI

1. El presente Convenio entrará en vigor treinta días después de la fecha de canje de los instrumentos de ratificación, permanecerá en vigor por un período de diez años y continuará en vigor a menos que se denuncie de conformidad con el párrafo 2. Se aplicará a las inversiones protegidas existentes en el momento de su entrada en vigor y a las que se funden o adquieran posteriormente.

2. Una Parte podrá denunciar el presente Tratado al concluir el período inicial de diez años o en cualquier momento posterior, por medio de notificación por escrito a la otra Parte con un año de antelación.

3. Durante un período de diez años después de la fecha de denuncia, los demás artículos seguirán rigiendo para las inversiones protegidas que fueron establecidas o adquiridas antes de la fecha de denuncia, salvo en cuanto dichos artículos se refieren a la fundación o adquisición de inversiones protegidas.

4. El Anexo y el Protocolo formarán parte integral del presente Convenio.

En fe de lo cual, los respectivos plenipotenciarios han firmado el presente Tratado. Hecho en duplicado en Denver, el primero de julio del año de mil novecientos noventa y cinco, en los idiomas español e inglés, siendo ambos textos igualmente auténticos.

POR EL GOBIERNO DE
LOS ESTADOS UNIDOS
DE AMERICA

POR EL GOBIERNO
DE HONDURAS

ANEXO

1. El Gobierno de los Estados Unidos de América podrá adoptar o mantener excepciones a la obligación de otorgar trato nacional a las inversiones protegidas en los siguientes sectores o títulos:

    - La energía atómica; el corretaje de aduanas; las licencias para estaciones de radiodifusión, empresas de telecomunicaciones públicas o de radio aeronáutico; la COMSAT ("Communications Satellite Corporation"); las subvenciones o donaciones, incluidos los préstamos, las garantías y seguros de respaldo oficial; las medidas estatales y locales extentas del Artículo 1102 del Tratado de Libre Comercio de América del Norte con arreglo al Artículo 1108 del mismo; y el amarre de cables submarinos.

En los sectores y asuntos arriba indicados se concederá el trato de nación más favorecida.

2. El Gobierno de los Estados Unidos de América podrá adoptar o mantener excepciones a la obligación de otorgar trato nacional y de nación más favorecida a las inversiones protegidas en los siguientes sectores o títulos:

   la pesca; el transporte aéreo y marítimo y las actividades relacionadas.

3. El Gobierno de los Estados Unidos de América podrá adoptar o mantener excepciones a la obligación de otorgar trato nacional o de nación más favorecida a las inversiones protegidas, a condición de que dichas excepciones no podrán tener un trato menos favorable que el otorgado por el Gobierno de los Estados Unidos de América en el Tratado de Libre Comercio de América del Norte a las otras Partes Contratantes, en los sectores o con respecto a los materias específicas abajo descritas:

   banca, seguros, valores y otros servicios financieros.

4. El Gobierno de Honduras podrá adoptar o mantener excepciones a la obligación de otorgar trato nacional a las inversiones protegidas en los sectores, o con respecto a las materias, específicas abajo descritas:

   - propiedades en cayos, arrecifes, escolladeros, peñones, sirtes o bancos de arena o en las islas o cualquier propiedad situada dentro del kilómetro cuarenta (40) hacia el interior de la línea costera o de las zonas limítrofe de Honduras;
   - industria y comercio en pequeña escala con una inversión total no mayor a cuarenta mil dólares ($40,000,000) o su equivalente en moneda nacional;
   - la propiedad, operación y dirección de radiodifusión y televisión;
   - la propiedad, operación y dirección de actividades relacionadas con el negocio de publicación de periódicos de interés general y de noticias en Honduras.

5. En los sectores y asuntos indicados en lo anterior se concederá el trato de nación más favorecida.

6. Cada Parte conviene en conceder el trato nacional a las inversiones protegidas en los sectores siguientes:

   el arrendamiento de minerales o de derechos de vía de oleoductos o gaseoductos en terrenos públicos.

PROTOCOLO

1. Las Partes confirman su mutuo entendimiento de que el Artículo V, párrafo 4 (a) incluye la aplicación equitativa no discriminatoria y de buena fe por parte del

Gobierno de Honduras de su legislación laboral relacionada con la protección de los derechos de los acreedores preferentes.

2. Respecto al Artículo II (1) y el párrafo 4 del anexo en lo que se refiere a las solicitudes de nacionales o sociedades de los Estados Unidos de América para poseer o adquirir bienes raíces dentro de la zona urbana en los cayos, arrecifes, escolladeros, peñones, sirtes, bancos de arena, o en las islas o cualquier propiedad situada dentro del kilómetro 40 hacia el interior de la línea costera o de las zonas limítrofe de Honduras, el Gobierno de Honduras confirma que tales solicitudes no serán rechazadas en consideración a nacionalidad y que las decisiones de estas solicitudes serán tramitadas en forma expedita.

3. Las Partes confirman su mutuo entendimiento con respecto a derechos reservados en el párrafo 1 del Artículo XIV de este Tratado, por las "obligaciones con respecto al mantenimiento o restauración de la paz o seguridad internacional", significa obligaciones dispuestas por la Carta de las Naciones Unidas.

4. Es entendido que nada de lo contenido en el párrafo 1 del Artículo XIV del Tratado entre el Gobierno de Estados Unidos de América y el Gobierno de Honduras sobre el estímulo y la protección recíproca de inversiones autoriza o tiene la intención de autorizar a ambas Partes de este Tratado para tomar medidas en el territorio de la otra Parte en cumplimiento de sus obligaciones con respecto al mantenimiento o restauración de la paz o seguridad internacional o la protección de sus propios intereses esenciales de seguridad.