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COVER

An IADC/SPE paper discusses drilling horizontal wells in the harsh climate of Siberia. A preview of the technical presentations begins on page 28. An overview of safety, training and HSE culture initiatives implemented by drilling contractors and operators begins on page 12.

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CAPITAL WIRELINES

**Bush Administration Proposal
Clouds International E&P**

Brian T Petty, Senior Vice President-Government Affairs

E&P International Arbitration (Washington)—The international oil and gas industry has serious objections about the international arbitration provisions contained in the most recent draft US model Bilateral Investment Treaty (BIT). Those concerns are magnified because of an apparent intention by some policy advisors in the US Defense and Justice Departments to weaken these important investment provisions across the board.

The Department of Justice has proposed to limit, or even eliminate, requirements for investor-state arbitration in bilateral and/or multilateral US investment and trade agreements. For example, and more specifically with regard to the proposed model BIT, investor-state arbitration requirements would apparently not apply to existing investment agreements which affect areas of greatest concern to drilling contractors working abroad and to international E&P activities generally: natural resources or other assets controlled by foreign governments and their national oil companies.

As has often been the case in foreign contract disputes involving the E&P sector, especially in countries that have primitive legal systems or ones easily politicized or subject to corruption, it's vitally important to have the clearest and strongest possible opportunity for parties to avoid litigation in local courts and rely on recognized international arbitration authorities to settle contract disputes.

The impetus for the changes in the BIT protections now being proposed by the Bush Administration appears to result from a generalized concern that the US Government could face liability under global investment rules. Thus, there has been a push by some in the Administration to lower protections for US investors abroad in the belief that the US, as a potential defendant, would have less legal exposure. But in fact, while exposing US investors to greater risk abroad, it doesn't appreciably lessen the potential liability of the US because treaty rules are for the most part already reflected in US law.

In the wake of weakened treaty protections, foreign investors in the US would still enjoy access to an independent US judiciary applying the high level protections afforded by US law. By contrast, US investors abroad, in particular US oil and gas operating companies and US drilling contractors working for state-owned oil companies, could be left to the vagaries of foreign local laws and local courts.

The existing 1994 model BIT has strong investment protections, and IADC is urging that the 1994 model remain as the framework for all US trade agreements. The 1994 model BIT provides that investors may take a foreign government to arbitration if there is a breach of an "investment agreement", such as an agreement relating to natural resources or other assets controlled by the foreign government. But the proposed new model BIT provides access to arbitration on a prospective basis only, *i.e.*, for investment agreements signed after the BIT is in force. This would leave existing contracts at risk, essentially nullifying arbitration requirements. The result could seriously disrupt international E&P investment and drilling programs. ■