

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank)</p> <p>Petitioner,</p> <p>v.</p> <p>The Russian Federation,</p> <p>Respondent.</p>	<p>CIVIL ACTION</p> <p>NO. 1:23-cv-00764 (ACR)</p>
--	---

Expert Report of Alexandre Ponomarev

Contents

INTRODUCTION 1

ANALYSIS..... 2

I. Whether the English translation of Article 12 is accurate:”This Agreement shall apply to all investments, made by the investors of one contracting Party in the territory of the other Contracting Party as of January 1992.” 2

II. Whether the English translation “are invested” accurately reflects the meaning of Russian and Ukrainian terms used in the original text of the BIT Article 1(1) and denotes an action of making an investment (“The term "investments" means all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws [...]”). 3

III. Whether the English phrase “are invested” in the above translation of the Article 1(1) can be substituted with semantically passive English terms such as “are held”, “are owned”; “are possessed”, “are located”, “are present”, without distorting the meaning of the original text..... 4

IV. Whether the phrase “are invested” referring to the “assets and intellectual values” in BIT Article 1(1) can be read in isolation from the rest of the subordinate clause of this sentence containing three conditions: (i) by an investor of one Contracting Party, (ii) in the territory of the other Contracting Party, (iii) in conformity with its laws. 4

EXPERT’S STATEMENT 6

Introduction

1. My name is Alexandre Ponomarev. I am a professional translator and conference interpreter. I hold a Diploma summa cum laude (MA equivalent) in translation and interpretation (Russian, English, Danish) from the Moscow State Linguistic University and a Master's Degree in Conference Interpretation from the Monterey Institute of International Studies. With 30 years of experience in translation and conference interpretation, I have specialised in handling a wide array of legal documents, including bilateral investment agreements, translating between English, Russian as well as Ukrainian. My work also encompasses providing interpretation services for a wide variety of organisations and events, including diverse arbitration hearings, covering commercial disputes and sports arbitration cases at the highest level. My academic background along with professional and teaching experience is set forth in *Curriculum Vitae* attached hereto.
2. The law firm Marks & Sokolov, LLC, acting on behalf of the Russian Federation, asked me to opine on the accuracy of the translation of the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of the Ukraine on the Encouragement and Mutual Protection of Investments dated November 27, 1998 ("BIT") from Ukrainian and Russian into English.
3. More specifically, I was asked to answer the following questions:
 - i. Whether the English translation of Article 12 is accurate: "This Agreement shall apply to all investments, made by the investors of one Contracting Party in the territory of the other Contracting Party as of 1 January 1992."
 - ii. Whether the English translation of the phrase "are invested" accurately reflects the meaning of Russian and Ukrainian terms used in the original text of the BIT Article 1(1) and denotes an action of making an investment ("The term "investments" means all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws [..]").
 - iii. Whether the English phrase "are invested" in the above translation of the Article 1(1) can be substituted with semantically passive English terms such as "are held", "are owned"; "are possessed", "are located", "are present", without distorting the meaning of the original text.
 - iv. Whether the phrase "are invested" referring to the "assets and intellectual values" in BIT Article 1(1) can be read in isolation from the rest of the subordinate clause of this sentence containing three conditions: (i) by an investor of one Contracting Party, (ii) in the territory of the other Contracting Party, (iii) in conformity with its laws.

4. All of the conclusions and opinions set out in this expert report (“**Expert Report**”) are my own.
5. For the purposes of preparing the Expert Report, I was provided with the authentic text of the Agreement in Ukrainian and Russian accompanied by an English translation (Ex. 1, ECF 1-3, submitted as Exhibit B to the Petition in this action).

Analysis

I. Whether the English translation of Article 12 is accurate:”This Agreement shall apply to all investments, made by the investors of one contracting Party in the territory of the other Contracting Party as of January 1992.”

6. Having analysed the original text in Ukrainian and Russian, I am of the opinion that the above English translation is not entirely accurate and may cause the reader to misconstrue the original intent of the legal language.
7. In particular, in my opinion as a translation expert, the phrase "начиная с 1 января 1992 года" in Russian and “починаючи з 1 січня 1992 року” in Ukrainian should be rendered in English as "starting from 1 January 1992" rather than "as of 1 January 1992" for the following reasons:
 - i. Precision of meaning: "Starting from" accurately conveys the idea that the application of the Agreement begins from this specified date, emphasising the commencement of the agreement's coverage at that point in time.
 - ii. Clarity of timing: "Starting from" would clearly indicate the exact point at which the Agreement's applicability begins, whereas "as of" may be interpreted more ambiguously, potentially leading to confusion regarding whether the Agreement's coverage extends to investments made before or after the specified date.
 - iii. Continuation of action: "Starting from" implies an ongoing process or action from the specified date onward, reinforcing the idea that the Agreement's coverage extends into the future, while "as of" may suggest a more static point in time without emphasising the ongoing nature of the applicability, as in “as it stands on 1 January 1992” or “as at 1 January 1992”.
 - iv. Legal effectiveness: Using "starting from" ensures that the translation accurately reflects the legal intent of the original text, which is to establish the effective date from which the Agreement applies to investments made in the territory of the other Contracting Party.

- v. Consistency with legal terminology: In legal contexts, "starting from" is commonly used to denote the initiation or commencement of legal provisions or obligations from a specific date, making it a more appropriate and consistent choice in this particular case.

8. Overall, translating "начиная с 1 января 1992 года" in Russian and "починаючи з 1 січня 1992 року" in Ukrainian as "as of 1 January 1992" may cause confusion regarding the original intent of the legal instrument in question and is not entirely consistent with the legal terminology commonly used in such instances, whereas rendering it as "starting from 1 January 1992" would preserve the precise meaning and legal significance of the original phrase, ensuring clarity and accuracy in the interpretation of the Agreement's applicability to investments made within the specified timeframe.

II. Whether the English translation "are invested" accurately reflects the meaning of Russian and Ukrainian terms used in the original text of the BIT Article 1(1) and denotes an action of making an investment ("The term "investments" means all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws [..]").

9. Article 1(1) ("Definitions") in the English Translation reads:

The term "investments" means all kinds of assets and intellectual values, which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in conformity with its laws, and in particular:

10. The original term "вкладываются" in Russian or "вкладаються" in Ukrainian is rendered in English as "invested". The verb "to invest" typically refers to the act of placing money, assets, or resources into a venture or enterprise with the expectation of gaining a return or benefit.

11. In my opinion, rendering the phrase "которые вкладываются" – "що вкладуються" as "which are invested" is appropriate in this context for several reasons:

- i. The verb "вкладываются" is derived from the root "вкладывать," "вкладати" which means "to invest", "to place" or to "put in";
- ii. The phrase is used in conjunction with the noun "инвестиции"- інвестиції (investments), suggesting a direct association with the act of investing.
- iii. The context of the sentence, which discusses assets and intellectual values being placed or invested by an investor, supports the translation choice.

12. Overall, "which are invested" accurately conveys the intended meaning of the original phrase within the context of investment-related terminology and legal discourse. In legal documents, precision in translation is crucial to maintain clarity and consistency of meaning. The choice of "which are invested" ensures that the English version of the paragraph accurately reflects the legal concept being discussed, namely, the act of placing assets or intellectual values in accordance with the laws of the relevant jurisdiction. In my view, this translation choice helps to avoid ambiguity and ensures that the English text accurately reflects the terms and intent of the original agreement.

III. Whether the English phrase “are invested” in the above translation of the Article 1(1) can be substituted with semantically passive English terms such as “are held”, “are owned”; “are possessed”, “are located”, “are present”, without distorting the meaning of the original text

13. It is my opinion that substituting the Russian term "вкладываются" or the Ukrainian term "вкладаються" with semantically passive English terms such as "are held," "are owned," "are possessed," "are located," or "are present" would not accurately convey the intended meaning of the original text because the term "вкладываются"/"вкладаються" implies an active and intentional act of investment, i.e. an action, rather than a passive state of possession or existence.

14. The term to "invest" denotes a proactive action involving the commitment or placement of assets or resources for the purpose of generating income, profit or benefits. By contrast, such terms as "held," "owned," "possessed," "located," or "present" suggest a static state of possession or existence, without the connotation of deliberate action inherent in the concept of investment.

15. In the legal context provided, the term "вкладываются" in Russian and "вкладаються" in Ukrainian specifically refers to the act of an investor placing assets or intellectual values into the territory of another contracting party in accordance with its laws. This action is fundamental to the definition of "investments" and cannot be adequately captured by passive terms that imply mere possession or presence without the active element of investment. Therefore, it is my opinion that rendering in English the verb "вкладываются" in Russian and "вкладаються" in Ukrainian, using such passive terms would distort the meaning of the original text and fail to convey the intended legal concept of investment as a proactive, intentional action.

IV. Whether the phrase “are invested” referring to the “assets and intellectual values” in BIT Article 1(1) can be read in isolation from the rest of the subordinate clause of this sentence containing three conditions: (i) by an investor of one Contracting Party, (ii) in the territory of the other Contracting Party, (iii) in conformity with its laws.

16. In my opinion as a translation expert, the phrase "are invested" in this text cannot be interpreted in isolation from the rest of the subordinate clause of the sentence for the following reasons:

- i. Contextual cohesion: The phrase "are invested" must be understood in conjunction with the entire subordinate clause to ensure coherence and consistency in the translation. Considering the broader context of the sentence helps maintain the logical flow and clarity of meaning.
- ii. Semantic accuracy: Translating "вкладываются" or "вкладываются" as "are invested" accurately reflects the action of placing assets or intellectual values by an investor, as indicated in the original Russian and Ukrainian texts. However, this action must be understood within the specific context outlined in the subordinate clause to capture the precise legal implications.
- iii. Legal compliance: The requirement for investments to be made "in conformity with its laws" emphasises the importance of legal compliance within the jurisdiction of the other Contracting Party. This condition shapes the interpretation of the term "investments" and underscores the need to consider the legal framework governing the investment process in this particular jurisdiction.
- iv. Investor identity and location: The presence of conditions specifying the identity of the investor and the location of the investment further contextualises the action of investment. Understanding these conditions alongside the phrase "are invested" provides clarity regarding the parties involved and the geographical scope of the investments.
- v. Preserving legal intent: Reading "are invested" in isolation from the conditions outlined in the subordinate clause could lead to a misinterpretation of the intended legal meaning. Therefore, to maintain fidelity to the original text and preserve the legal intent of the bilateral investment treaty (BIT) provisions, the entire context of the sentence must be considered.

17. In summary, interpreting the phrase "are invested" in this particular case requires careful consideration of the broader context provided by the subordinate clause, including the conditions related to the investor's identity, investment location, and legal compliance. This approach ensures semantic accuracy, legal coherence, and fidelity to the original text in conveying the intended meaning of the term "investments" within the context of the BIT.

Expert's Statement

18. I confirm that all matters, in respect of which I have provided my opinion, are within my area of expertise.
19. I prepared the Expert Report in English. I am a native Russian and Ukrainian speaker and I speak English in excellence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Geneva, Switzerland
March 01, 2024



Alexandre Ponomarev