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## Canada Treaty Information

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E101468 - RTC 1977 No. 19

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF ANTIGUA RELATING TO CANADIAN INVESTMENTS IN ANTIGUA INSURED BY THE GOVERNMENT OF CANADA THROUGH ITS AGENT, THE EXPORT DEVELOPMENT CORPORATION

I

*The Commissioner for Canada to Premier of Antigua*

BRIDGETOWN, June 8, 1977

The Hon. Vere C. Bird, Sr.,  
Premier of Antigua,  
St. John's, Antigua

Sir,

I have the honour to refer to discussions which have recently taken place between representatives of our two Governments relating to investments in Antigua which would further the development of economic relations between Antigua and Canada and to insurance of such investments by the Government of Canada, through its agent the Export Development Corporation. I also have the honour to confirm the following understandings reached as a result of those discussions:

1. In the event of a payment by the Export Development Corporation under a contract of insurance for any loss by reason of:

- (a) war, riot, insurrection, revolution or rebellion in Antigua;
- (b) the arbitrary seizure, expropriation, confiscation or deprivation of use of any property by a Government, or agency thereof, in Antigua;
- (c) any action by a Government, or agency thereof, in Antigua, other than action of the kind described in sub-paragraph (b) that deprives the investor of any right in, or in connection with, an investment; and
- (d) any action by a Government, or agency thereof, in Antigua, that prohibits or restricts transfer of any money or removal of any property from that country;

the said Corporation, hereinafter called the "Insuring Agency" shall be authorized by the Government of Antigua to exercise the rights having devolved on it by law

or having been assigned to it by the predecessor in title.

2. But to the extent that the laws of Antigua partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Insuring Agency, the Government of Antigua shall permit the investor and the Insuring Agency to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of Antigua.

3. The Insuring Agency shall assert no greater rights than those of the transferring investor under the laws of Antigua with respect to any interest transferred or succeeded to as contemplated in paragraph 1. The Government of Canada does, however, reserve its right to assert a claim in its sovereign capacity in the event of a denial of justice or other question of state responsibility as defined in international law.

4. Should the said Insuring Agency acquire, under investment insurance contracts, amounts and credits of the lawful currency of the Government of Antigua, the said Government of Antigua shall accord to those funds treatment no different than that which it would accord if such funds were to remain with the investor, and such funds shall be freely available to the Government of Canada to meet its expenditures in the national territory of Antigua.

5. This Agreement shall apply only with respect to insured investments in projects or activities approved in writing by the Government of Antigua.

6. Differences between the two Governments concerning the interpretation and application of provisions of this Agreement or any claim arising out of investments insured in accordance with this Agreement, against either of the two Governments, which in the opinion of the other presents a question of public international law, shall be settled, insofar as possible, through negotiations between the Governments. If such differences cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Government, to an *ad hoc* tribunal for settlement in accordance with applicable principles and rules of public international law. The arbitral tribunal shall consist of three members and shall be established as follows: each Government shall appoint one arbitrator; a third member, who shall act as Chairman, shall be appointed by the other two members. The Chairman shall not be a national of either country. The arbitrators shall be appointed within two months and the Chairman within three months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments and both Governments agree to accept such appointment or appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the Vice-President; and if the latter is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the next senior judge of this Court who is not a national of either country. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding on both Governments. Each of the Governments shall pay the expense of its member and its representation in the proceedings before the arbitral tribunal; expenses of the Chairman and other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt other regulations concerning costs. In all other matters, the arbitral tribunal shall regulate its own procedures. Only the respective Governments may request arbitral procedure and participate in it.

7. (a) If either Government considers it desirable to modify the provisions of this Agreement, this procedure may be carried out through a request for consultations and/or by correspondence and shall begin not later than 60 days from the date of the request.

(b) The modifications of the Agreement agreed between the two Governments shall enter into force upon their confirmation on the date which shall be mutually agreed upon by an Exchange of Notes.

I have the honour to propose that, if the foregoing is acceptable to your



Government, this Note, which is authentic in English and French, and your reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. This Agreement shall continue in force until terminated by either Government on six months' notice in writing to the other. In the event of termination, the provisions of the Agreement shall continue to apply, in respect of insurance contracts issued by the Government of Canada while the Agreement was in force, for the duration of these contracts; provided that in no case shall the Agreement continue to apply to such contracts for a period longer than 15 years after the termination of this Agreement.

Accept, Sir, renewed assurances of my highest consideration.

L. A. H. Smith

Commissioner for Canada

II

*The Premier of Antigua to the Commissioner for Canada*

ST. JOHN'S ANTIGUA, June 8, 1977

H. E. Lawrence A. H. Smith,  
Commissioner for Canada,  
Bridgetown, Barbados

Excellency,

I have the honour to refer to your Note No. 18 of June 8, 1977 relating to investments in Antigua which would further the development of economic relations between Antigua and Canada, and to guarantees of such investments by the Government of Canada, through its agent, the Export Development Corporation.

I have the honour to confirm that the arrangements governing the guarantee of Canadian investment in Antigua as contained in your Note meet with the approval of my Government, I therefore agree to your proposal that Your Excellency's Note and this reply shall constitute an Agreement between our two Governments.

Accept, Excellency, the renewed assurances of my highest consideration.

Vere C. Bird, Sr.

Premier

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