

**No. 3562**

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**UNITED STATES OF AMERICA  
and  
COSTA RICA**

**Exchange of notes constituting an agreement relating to the  
guaranty of private investments pursuant to section  
413 (b) (4) of the Mutual Security Act (with enclosure).  
San José, 23, 25 and 26 February 1955**

*Official texts: English and Spanish.*

*Registered by the United States of America on 11 October 1956.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
COSTA-RICA**

**Échange de notes constituant un accord relatif à la garantie  
des investissements privés en application du para-  
graphe b, 4, de l'article 413 de la loi sur la sécurité  
mutuelle (avec pièce jointe). San-José, 23, 25 et 26  
février 1955**

*Textes officiels anglais et espagnol.*

*Enregistré par les États-Unis d'Amérique le 11 octobre 1956.*

No. 3562. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND COSTA RICA RELATING TO THE GUARANTY OF PRIVATE INVESTMENTS PURSUANT TO SECTION 413 (b) (4) OF THE MUTUAL SECURITY ACT. SAN JOSÉ, 23, 25 AND 26 FEBRUARY 1955

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I

*The American Ambassador to the Costa Rican Acting Minister  
of Foreign Affairs*

AMERICAN EMBASSY. SAN JOSÉ

No. 80

February 23, 1955

Excellency :

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments, relating to guaranties authorized by Section 413 (b) (4) of the Mutual Security Act of 1954, a copy of which is enclosed.<sup>2</sup> I also have the honor to confirm the understandings reached as a result of these conversations as follows :

The Governments of Costa Rica and of the United States of America will, upon the request of either of them, consult respecting projects in Costa Rica proposed by nationals of the United States of America with regard to which guaranties under Section 413 (b) (4) of the Mutual Security Act of 1954, have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of Costa Rica in accordance with the provisions of the aforesaid Section, the Government of Costa Rica agrees :

a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of Costa Rica will recognize the transfer to the Government of the United States of America of any right, title, or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the Government of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of Costa Rica shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from any source other than the Government of the United States of America;

b. That colón amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that

<sup>1</sup> Came into force on 25 February 1955 by the exchange of the said notes.

<sup>2</sup> See p. 131 of this volume.

accorded, at the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such colón amounts will be freely available to the Government of the United States of America for administrative expenditures;

c. That any claim against the Government of Costa Rica to which the Government of the United States of America may be subrogated as the result of any payment under such a guaranty shall be the subject of direct negotiations between the two Governments. If, within a reasonable period, the two Governments are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Costa Rica, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of Your Excellency's note in reply.

Please accept, Excellency, the assurances of my highest and most distinguished consideration.

Robert F. WOODWARD

Enclosure :

Copy of Section 413 of the Mutual Security Act of 1954.

His Excellency Lic. Fernando Fournier Acuña  
Acting Minister of Foreign Affairs  
San José, Costa Rica

## SECTION 413 OF THE MUTUAL SECURITY ACT OF 1954

### *Sec. 413. ENCOURAGEMENT OF FREE ENTERPRISE AND PRIVATE PARTICIPATION.—*

(a) The Congress recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to the economic progress and defensive strength of the free world. Accordingly, it is declared to be the policy of the United States to encourage the efforts of other free nations to increase the flow of international trade, to foster private initiative and competition, to discourage monopolistic practices, to improve the technical efficiency of their industry, agriculture and commerce, and to strengthen free labor unions; and to encourage the contribution of United States enterprise toward the economic strength of other free nations, through private trade and investment abroad, private participation in the programs carried out under this Act (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this section.

(b) In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President :

(1) Shall make arrangements to find and draw the attention of private enterprise to opportunities for investment and development in other free nations;

(2) Shall accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to nations participating in programs under this Act;

(3) shall, consistent with the security and best interests of the United States, seek compliance by other countries or a dependent area of any country with all treaties for commerce and trade and taxes and shall take all reasonable measures under this Act or other authority to secure compliance therewith and to assist United States citizens in obtaining just compensation for losses sustained by them or payments exacted from them as a result of measures taken or imposed by any country or dependent area thereof in violation of any such treaty; and

(4) may make, until June 30, 1957, under rules and regulations prescribed by him, guaranties to any person of investments in connection with projects, including expansion, modernization, or development of existing enterprises, in any nation with which the United States has agreed to institute the guaranty program : Provided that :

(A) such projects shall be approved by the President as furthering any of the purposes of this Act, and by the nation concerned;

(B) the guaranty to any person shall be limited to assuring any or all of the following :

- (i) the transfer into United States dollars of other currencies, or credits in such currencies, received by such person as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof;
- (ii) the compensation in United States dollars for loss of all or any part of the investment in the approved project which shall be found by the President to have been lost to such person by reason of expropriation or confiscation by action of the government of a foreign nation;

(C) when any payment is made to any person pursuant to a guaranty as hereinbefore described, the currency, credits, assets, or investment on account of which such payment is made shall become the property of the United States Government, and the United States Government shall be subrogated to any right, title, claim or cause of action existing in connection therewith;

(D) the guaranty to any person shall not exceed the amount of dollars invested in the project by such person with the approval of the President plus actual earnings or profits on said project to the extent provided by such guaranty, and shall be limited to a term not exceeding twenty years from the date of issuance;

(E) a fee shall be charged in an amount not exceeding 1 per centum per annum of the amount of each guaranty under clause (i) of subparagraph (B), and not exceeding 4 per centum of the amount of each guaranty under clause (ii) of such subparagraph, and all fees collected hereunder shall be available for expenditure in discharge of liabilities under guaranties made under this section until such time as all such liabilities have been discharged or have expired, or until all such fees have been expended in accordance with the provisions of this section;

(F) the President is authorized to issue guaranties up to a total of \$200,000,000 : *Provided* that any funds allocated to a guaranty and remaining after all liability of the

United States assumed in connection therewith has been released, discharged, or otherwise terminated, shall be available for allocation to other guaranties, the foregoing limitation notwithstanding. Any payments made to discharge liabilities under guaranties issued under this subsection shall be paid out of fees collected under subparagraph (E) as long as such fees are available, and thereafter shall be paid out of funds realized from the sale of notes which have been issued under authority of paragraph 111 (c) (2) of the Economic Cooperation Act of 1948, as amended, when necessary to discharge liabilities under any such guaranty;

(G) the guaranty program authorized by this paragraph shall be used to the maximum practicable extent and shall be administered under broad criteria so as to facilitate and increase the participation of private enterprise in achieving any of the purposes of this Act;

(H) as used in this paragraph :

- (i) the term "person" means a citizen of the United States or any corporation, partnership, or other association created under the law of the United States or of any State or Territory and substantially beneficially owned by citizens of the United States, and
- (ii) the term "investment" includes any contribution of capital goods, materials, equipment, services, patents, processes, or techniques by any person in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such project, and (4) the furnishing of capital goods items and related services pursuant to a contract providing for payment in whole or in part after the end of the fiscal year in which the guaranty of such investment is made.

## II

*The Costa Rican Acting Minister of Foreign Affairs to the American Ambassador*

[SPANISH TEXT — TEXTE ESPAGNOL]

REPÚBLICA DE COSTA RICA

MINISTERIO DE RELACIONES EXTERIORES Y CULTO

No. DM-4514-B

San José, febrero 25 de 1955

Señor Embajador :

Tengo el honor de referirme a la nota de Vuestra Excelencia de fecha febrero 23 de 1955, que literalmente dice :

[See note I — Voir note I]

y a ese respecto, en nombre del Gobierno de Costa Rica, manifestar a Vuestra Excelencia que el Convenio entre el Ilustrado Gobierno de los Estados Unidos de América y el nuestro, tal como Vuestra Excelencia lo expone en la mencionada

nota, es correcto y tenemos mucho gusto en confirmarlo en lo que al Gobierno de Costa Rica se refiere.

Aprovecho esta oportunidad, para reiterar al Excelentísimo Señor Embajador los sentimientos de mi más alta y distinguida consideración.

Fernando FOURNIER  
Vice-Ministro de Relaciones Exteriores

Excelentísimo Señor Robert F. Woodward  
Embajador de los Estados Unidos de América  
Ciudad

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

REPUBLIC OF COSTA RICA  
MINISTRY OF FOREIGN AFFAIRS AND WORSHIP

No. DM-4514-B

San José, February 25, 1955

Mr. Ambassador :

I have the honor to refer to Your Excellency's note dated February 23, 1955, which, word for word, reads :

[*See note I*]

and in regard thereto, on behalf of the Government of Costa Rica, to inform Your Excellency that the Agreement between the Government of the United States of America and ours, as set forth by Your Excellency in the aforementioned note, is correct and we take great pleasure in confirming it in so far as it relates to the Government of Costa Rica.

I avail myself of this opportunity to renew to His Excellency the Ambassador the assurances of my highest and most distinguished consideration.

Fernando FOURNIER  
Acting Minister of Foreign Affairs

His Excellency Robert F. Woodward  
Ambassador of the United States of America  
City

<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des États-Unis d'Amérique.

## III

*The American Ambassador to the Costa Rican Acting Minister  
of Foreign Affairs*

AMERICAN EMBASSY

No. 83

San José, February 26, 1955

Excellency :

In acknowledging with appreciation Your Excellency's Note No. DM-4514-B, dated February 25, 1955, I have the honor to inform Your Excellency that I am also authorized by my Government to state that only after consulting with and obtaining the approval of the Government of Costa Rica will the Government of the United States of America issue a guaranty with regard to any project in Costa Rica proposed by nationals of the United States of America under Section 413 (b) (4) of the Mutual Security Act of 1954. Moreover, the Government of the United States of America will, upon the request of the Government of Costa Rica, be glad to consult respecting projects in Costa Rica with regard to which guaranties have been made or are under consideration.

Please accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

Robert F. WOODWARD

His Excellency Fernando Fournier Acuña  
Acting Minister of Foreign Affairs  
San José, Costa Rica

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