

No. 6648

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**UNITED STATES OF AMERICA  
and  
GUATEMALA**

**Exchange of notes constituting an agreement relating to  
investment guaranties. Guatemala, 9 August 1960  
(with related notes of 23 and 27 August 1962)**

*Official texts: English and Spanish.*

*Registered by the United States of America on 22 April 1963.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
GUATEMALA**

**Échange de notes constituant un accord relatif à la garantie  
des investissements. Guatemala, 9 août 1960 (avec  
notes connexes des 23 et 27 août 1962)**

*Textes officiels anglais et espagnol.*

*Enregistré par les États-Unis d'Amérique le 22 avril 1963.*

No. 6648. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND GUATEMALA RELATING TO INVESTMENT GUARANTIES. GUATEMALA, 9 AUGUST 1960

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## I

*The American Ambassador to the Guatemalan Minister of Foreign Relations*

EMBASSY OF THE UNITED STATES OF AMERICA

Guatemala, August 9, 1960

No. 17

Excellency :

As a result of negotiations that have taken place between our Governments, and with the desire to strengthen the friendly relations happily existing between our two countries, and to promote the investment in Guatemala of private capital originating in the United States of America which could stimulate the Guatemalan economy and increase its production as well as trade between the two Republics, I take pleasure in proposing the following agreement to Your Excellency's Government :

1. The Governments of the United States of America and of Guatemala, at the request of either of them, shall consult and exchange information with respect to projects for investments of substantially United States capital in the Republic of Guatemala proposed by citizens of the United States of America and specifically containing a request for governmental guaranties which may be authorized by the Government of the United States of America pursuant to its legislation, in order to insure investors against losses resulting from inconvertibility or expropriation.

2. The Government of the United States of America or any official agency which may be designated for this purpose, shall not authorize the guaranties referred to in the preceding paragraph for any project which has not had the prior written approval of the Government of Guatemala.

3. If the Government of the United States of America makes payment in dollars to any person under the guaranty relating to inconvertibility the Government of Guatemala shall recognize the transfer to the Government of the United States of America of any amounts in quetzales, or credits in quetzales, on account of which such payment has been made, and the subrogation of the Government of the United States of America to any right of the investor which existed in relation to such amounts or credits.

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<sup>1</sup> Came into force on 29 August 1962, the date of the note in which the Government of Guatemala informed the Government of the United States of America that the said Agreement had been ratified in conformity with the constitutional procedures of the Republic of Guatemala, in accordance with the terms of the said notes.

4. If the Government of the United States of America makes payment in dollars to any person under the guaranty relating to expropriation, the Government of Guatemala shall recognize, by that act, the transfer to the Government of the United States of America of any right, title, or interest of such person resulting from the investment on account of which such payment was made, and the subrogation of the Government of the United States of America to any action or claim that such person may have or that may exist in connection therewith. It is understood that the transfer and subrogation to which the present paragraph refers shall terminate automatically upon payment by the Government of Guatemala which is accepted by the Government of the United States of America as the appropriate indemnity as a result of direct negotiation, or upon payment by the Government of Guatemala pursuant to an arbitral award.

5. The Government of the United States of America shall immediately notify the Government of Guatemala, in writing, of all payments made according to the aforementioned paragraphs. Any sums in quetzales acquired by the Government of the United States of America in accordance with the transfers or subrogations which have been mentioned in the aforementioned paragraphs shall receive treatment no less favorable than that received by funds of any citizens of the United States of America in comparable situations. These funds shall be at the free disposition of the Government of the United States of America for administrative expenditures in Guatemala.

6. Any claim against the Government of Guatemala to which the Government of the United States of America has been subrogated pursuant to the provisions of this Agreement shall be the subject of direct negotiations between the two Governments. Such claim shall be settled or adjudicated in accordance with recognized principles of law.

7. **ARBITRATION AGREEMENT.** In the event that no agreement can be reached within a reasonable time through the direct negotiations referred to in the preceding paragraph, the Governments of the United States of America and of Guatemala agree on the following procedure :

- I. The claim shall be submitted to an Arbitration Tribunal when either signatory Government so requests of the other.
- II. The request for arbitration must be made in writing.
- III. The Arbitration Tribunal shall be set up as follows :
  - a) Each Government shall appoint an arbitrator within a period of two months from the date on which the request for arbitration is received ;
  - b) If at the end of the two-month period mentioned in the preceding clause one of the Governments has not appointed its arbitrator, the Government that has made its appointment may request the President of the International Court of Justice to appoint the second arbitrator ;
  - c) Within a period of one month from the date on which the second arbitrator has been appointed, the two arbitrators shall appoint a third member, who shall act as President of the Tribunal ;
  - d) If at the end of the one-month period referred to in the preceding clause the two arbitrators have not yet appointed the third member of the Arbitration Tribunal, this third member shall be a person appointed by the President of the International Court of Justice at the request of either Government.

IV. The matters for arbitration shall be as follows :

a) Any claim to which the Government of the United States of America has been subrogated as a result of payments covered by the guaranty relating to inconvertibility referred to in this Agreement ;

b) Any claim to which the Government of the United States of America has been subrogated as a result of payments covered by the guaranty relating to expropriation referred to in this Agreement.

V. The bases for arbitration shall be as follows :

a) The Arbitration Tribunal shall set a period of three months for filing the claim, and the defendant shall be given a like period for answering ;

b) The parties shall submit their evidence together with the claim and the reply ;

c) In order better to decide the case, the Arbitration Tribunal may request any documents it deems necessary, or order any steps taken which it considers appropriate ; for this purpose it shall fix a maximum period of three months ;

d) The decision of the Arbitration Tribunal shall be final and non-appealable.

8. The present note and Your Excellency's reply of the same date constitute an agreement between the Government of the United States of America and the Government of Guatemala which shall enter into force on the date of a note in which the Government of Guatemala informs the Government of the United States of America that the present Agreement has been ratified in conformity with the constitutional procedures of the Republic of Guatemala.

9. The present Agreement shall remain in force until the expiration of a period of ninety days from the date on which either Government gives the other written notice of its intention to consider the Agreement terminated.

10. All obligations, rights or actions arising from the present Agreement prior to its termination shall remain in force beyond the date of termination of the present Agreement until all obligations in connection with any guaranties issued by the Government of the United States of America in accordance with the present Agreement shall have been discharged.

11. The present Agreement shall replace and terminate the Agreement between our two Governments, on the same subject, concluded by an exchange of notes of March 23, 1955 ;<sup>1</sup> Provided that, all obligations, rights, or actions arising from that Agreement prior to its termination shall remain in force beyond the date of termination of that Agreement until all obligations in connection with any guaranties issued by the Government of the United States of America in accordance with the said Agreement of March 23, 1955 shall have been discharged.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

John J. MUCCIO

His Excellency Jesús Unda Murillo  
Minister of Foreign Relations  
Guatemala

<sup>1</sup> United Nations, *Treaty Series*, Vol. 252, p. 143.

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

MINISTRY OF FOREIGN RELATIONS  
REPUBLIC OF GUATEMALA

Diplomatic Section  
Treaty Office

Guatemala, August 9, 1960

18460

Excellency :

I have the honor to refer to Your Excellency's courteous note No. 17, of today's date, in which, as a result of negotiations that have taken place between our Governments, and with the desire to strengthen the friendly relations happily existing between our two countries, and to promote the investment in Guatemala of private capital originating in the United States of America that can stimulate the Guatemalan economy and increase its production as well as trade between the two Republics, Your Excellency's Government is pleased to propose the following Agreement to the Government of Guatemala :

[See paragraphs 1-5, note I]

6. Any claim against the Government of Guatemala to which the Government of the United States of America has been subrogated pursuant to the provisions of this Agreement shall be the subject of direct negotiations between the two Governments. Such claim shall be settled or adjudicated in accordance with the principles established by law.

[See paragraphs 7-11, note I]

I am happy to inform Your Excellency that the Government of Guatemala accepts every part of the Agreement which the Government of the United States has been good enough to propose, in the terms contained in this note, which are the same as those of Your Excellency's note No. 17 to which I have had the honor to refer.

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

[SEAL]

J. UNDA MURILLO

His Excellency John Joseph Muccio  
Ambassador Extraordinary and Plenipotentiary  
of the United States of America  
Guatemala

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

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

## RELATED NOTES

## I

*The Guatemalan Minister of Foreign Relations to the American Ambassador*

[SPANISH TEXT — TEXTE ESPAGNOL]

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

MINISTERIO DE RELACIONES EXTERIORES  
 REPÚBLICA DE GUATEMALA  
 Sección Diplomática  
 Dirección de Tratados

MINISTRY OF FOREIGN RELATIONS  
 REPUBLIC OF GUATEMALA  
 Diplomatic Division  
 Treaty Section

Guatemala, 23 de agosto de 1962

Guatemala, August 23, 1962

20566

20566

Señor Embajador :

Mr. Ambassador :

Tengo el honor de dirigirme a Vuestra Excelencia en relación al Acuerdo sobre Garantías de Inversiones formalizados entre nuestros dos Gobiernos por el canje de notas de fecha 9 de agosto de 1960.

I have the honor to address Your Excellency with reference to the Investment Guaranty Agreement formalized between our two Governments by the exchange of notes dated August 9, 1960.<sup>3</sup>

En la parte final de la Cláusula 6 de la versión inglesa del Acuerdo, contenida en la nota de esa Embajada número 17, se dice : « Such claim shall be settled or adjudicated in accordance with recognized principles of law. » En la versión española, contenida en la nota de este Ministerio número 18460, esta frase fué traducida así : « Tal reclamo se decidirá o adjudicará de conformidad con los principios establecidos por la Ley. »

The last part of Clause 6 of the English version of the Agreement, contained in your Embassy's note No. 17, reads : "Such claim shall be settled or adjudicated in accordance with recognized principles of law." In the Spanish version, contained in this Ministry's note No. 18460, this sentence was translated as follows : "Tal reclamo se decidirá o adjudicará de conformidad con los principios establecidos por la Ley."<sup>4</sup>

En opinión de mi Gobierno, esta frase en español debe leerse así : « Tal reclamo se decidirá o adjudicará de conformidad con principios reconocidos de Derecho. »

In the opinion of my Government, this sentence should read as follows in Spanish : "Tal reclamo se decidirá o adjudicará de conformidad con principios reconocidos de Derecho."<sup>5</sup>

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

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

<sup>3</sup> See p. 16 of this volume.

<sup>4</sup> "Such claim shall be settled or adjudicated in accordance with the principles established by law."

<sup>5</sup> "Such claim shall be settled or adjudicated in accordance with recognized principles of law."

En el caso de que el Ilustrado Gobierno de Vuestra Excelencia estuviere de acuerdo en que esta es la traducción correcta al español de esa frase, esta nota y la de respuesta de Vuestra Excelencia serán consideradas como un acuerdo que enmienda, en el sentido indicado, la frase final de la citada Cláusula 6 del texto español del Acuerdo a que me refiero.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi consideración más alta y distinguida,

J. UNDA MURILLO

Excelentísimo Señor John O. Bell  
Embajador Extraordinario y Plenipotenciario de los Estados Unidos de América  
Ciudad

In the event that Your Excellency's Government agrees that this is the correct Spanish translation of that sentence, this note and Your Excellency's note in reply shall be considered an agreement amending, as indicated, the last sentence of Clause 6 of the Spanish text of the Agreement to which I refer.

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

J. UNDA MURILLO

His Excellency John O. Bell  
Ambassador Extraordinary and Plenipotentiary of the United States of America  
City

## II

### *The American Ambassador to the Guatemalan Minister of Foreign Relations*

Guatemala, August 27, 1962

No. 34

Excellency :

I have the honor to refer to Your Excellency's note No. 20566 of August 23, 1962, regarding the Investment Guaranty Agreement of August 9, 1960.

My Government has authorized me to state that it is in agreement with Your Government that the correct Spanish language version of the last sentence of Article 6 of the Agreement should read : "Tal reclamo se decidirá o adjudicará de conformidad con los principios reconocidos de Derecho." The exchange of notes accomplished by Your Excellency's note No. 20566 and this note therefore constitute, as Your Excellency proposed, an agreement to amend the last sentence of Article 6 in the Spanish version of the Investment Guaranty Agreement in the sense indicated above.

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

John O. BELL

His Excellency Jesús Unda Murillo  
Minister for Foreign Relations  
Guatemala