

No. 10324

**UNITED STATES OF AMERICA
and
BRAZIL**

**Investment Guaranty Agreement (with related notes). Signed
at Washington on 6 February 1965**

Authentic texts: English and Portuguese.

Registered by the United States of America on 4 March 1970.

**ÉTATS-UNIS D'AMÉRIQUE
et
BRÉSIL**

**Accord relatif à la garantie des investissements (avec notes
connexes). Signé à Washington le 6 février 1965**

Textes authentiques: anglais et portugais.

Enregistré par les États-Unis d'Amérique le 4 mars 1970.

INVESTMENT GUARANTY AGREEMENT ¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED STATES OF BRAZIL

The Government of the United States of America and the Government of the United States of Brazil,

Recalling the fourth fundamental objective of the Alliance for Progress as stated in the Charter of Punta del Este— ²

“To accelerate the process of rational industrialization so as to increase the productivity of the economy as a whole, taking full advantage of the talents and energies of both the private and public sectors, utilizing the natural resources of the country and providing productive and remunerative employment for unemployed or part-time workers”,

Recalling that the National Development Programs called for by the said Charter include—

“Promotion through appropriate measures... of conditions that will encourage the flow of foreign investments and help to increase the capital resources of participating countries in need of capital”,

Considering that both Governments believe that the attainment of these objectives would be facilitated through establishing among the members of the Alliance a uniform system of investment guaranties,

Desiring to encourage private participation in the development of economic resources and productive capacity through investment guaranties issued by the country of the investor, and to enhance the possibilities of multilateral arrangements on this subject,

Agree as follows:

Article I

When nationals of one Signatory Government propose to make investments, guaranteed pursuant to this Agreement, in a project or activity within the territorial jurisdiction of the other Signatory Government, the

¹ Came into force on 17 September 1965, the date of receipt of the note by which the Government of the United States of Brazil communicated to the Government of the United States of America that the Agreement had been approved in conformity with Brazil's constitutional procedures, in accordance with article VII.

² United States of America: Department of State Bulletin, Sept. 11, 1961, p. 463.

two Governments shall, upon the request of either, consult respecting the project or activity and its contribution to economic and social development.

Article II

The provisions of this Agreement shall be applicable only with respect to guaranteed investments in projects or activities approved for guaranty purposes by the Government in whose territory the project or activity will take place (hereafter referred to as "the Government of the Recipient Country"). The Government issuing guaranties pursuant to this Agreement (hereafter referred to as "the Guaranteeing Government") shall keep the Government of the Recipient Country currently informed on the types of investment guaranties it is prepared to issue, on the criteria it employs in determining whether to issue guaranties, as well as on the types and amounts of guaranties issued for projects or activities approved by the Government of the Recipient Country.

Article III

1. If the Guaranteeing Government makes payment in its national currency to any investor under a guaranty issued pursuant to the present Agreement, the Government of the Recipient Country shall, subject to the provisions of the following paragraph, recognize the transfer to the Guaranteeing Government of any currency, credits, assets, or investment on account of which such payment is made, as well as the succession of the Guaranteeing Government to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith

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

Article IV

1. Amounts in the lawful currency of the Recipient Country and credits thereof acquired by the Guaranteeing Governments, as subrogee in accordance with the provisions of the preceding Article, shall be accorded treatment neither less nor more favorable than that accorded to funds of nationals of the Guaranteeing Government deriving from investment like those of the subrogating investor, and such amounts and credits shall be

freely available to the Guaranteeing Government to meet its expenditures in the Recipient Country.

2. Whenever economic circumstances indicate the advisability of holding the surplus over expenditures referred to in the preceding paragraph of such currency and credits in a mutually agreed financial institution, the two Governments will consult concerning appropriate actions to be taken.

Article V

Nothing in this Agreement shall grant to the Guaranteeing Government other rights than those available to the subrogating investor with respect to any petition or claim or right to which the Guaranteeing Government may be subrogated.

Article VI

1. Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be settled, insofar as possible, through negotiations between them. If such a difference cannot be resolved within a period of six months following the request for such negotiations, it shall be submitted, at the request of either Government, to arbitration in accordance with paragraph 4 of this Article.

2. Any claim against either Government concerning an investment guaranteed in accordance with this Agreement which may constitute a matter involving public international law, shall, at the request of the Government presenting the claim, be submitted to negotiations. If at the end of six months following the request for negotiations the two Governments have not resolved the claim by mutual agreement, the claim, including the question of whether it constitutes a matter involving public international law, shall be submitted to arbitration in accordance with paragraph 4 of this Article.

3. There shall be excluded from the negotiations and the arbitral procedures herein contemplated matters which remains exclusively within the internal jurisdiction of a sovereign state. It is accordingly understood that claims arising out of the expropriation of property of private foreign investors do not present questions of public international law unless and until the judicial process of the Recipient Country has been exhausted, and there exists a denial of justice, as those terms are defined in public international law. The monetary amount of any claim submitted for negotiation or arbitration in accordance with the provisions of this Agreement shall not exceed the amount of compensation paid under guaranties issued in accordance with this Agreement with respect to the investment involved in the claim.

4. Matters arising under paragraphs 1, 2 and 3 of this Article shall be submitted at the request of either Government to an arbitral tribunal which shall be guided by the principles of public international law recognized in Articles 1 and 2 of the General Inter-American Arbitration Treaty signed in Washington on January 5, 1929¹. Only the respective governments may request the arbitral procedure and participate in it. The selection of arbiters and the method of their proceeding shall be in accordance with Articles 3, 4, 5 and 6 of the General Treaty of 1929; the finality of and technique for interpreting awards of the arbitral tribunal shall be in accordance with Article 7 of the General Treaty of 1929.

Article VII

This Agreement shall enter into force on the date of the receipt of the note by which the Government of the United States of Brazil communicates to the Government of the United States of America that the Agreement has been approved in conformity with Brazil's constitutional procedures.

Article VIII

When either of the Signatories to the present Agreement considers that multilateral arrangements in which both Governments may come to participate provide a framework for the operation of a program of investment guaranties similar to that herein contained, it may seek the concurrence of the other Government for the termination of the present Agreement. Such termination will become effective on the date of the receipt of the note expressing that concurrence, unless otherwise agreed.

Article IX

Unless terminated in accordance with Article VIII, this Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent no longer to be a party to the Agreement. In such event, the provisions of the Agreement with respect to guaranties issued while the Agreement was in force shall remain in force for the duration of those guaranties, in no case longer than twenty years after the denunciation of the Agreement.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed the present Agreement and affixed thereto their seals.

¹ League of Nations, *Treaty Series*, vol. CXXX, p. 135.

DONE in duplicate at Washington, in the English and Portuguese languages, both texts equally authentic, this 6th day of February, 1965.

For the Government of the United States of America:
David E. BELL

For the Government of the United States of Brazil:
Juracy MAGALHÃES

RELATED NOTES

I

Rio de Janeiro, February 8, 1965

No. 554

Excellency:

I have the honor to refer to the Investment Guaranty Agreement between our two Governments signed in Washington February 6, 1965, and to confirm the following understandings reached as a result of consultations in accordance with Article IV, Paragraph 2 of the Agreement:

(A) As used in the said Article IV, Paragraph 2, surplus shall be deemed to be that amount in excess of twice the total cruzeiro expenditures in Brazil of agencies of the Government of the United States during the preceding three-month period.

(B) Such surplus amounts shall be deposited for the account of the Government of the United States of America in the Banco do Brasil S.A. or such other official financial institution as may be mutually agreed.

(C) Such deposits may be withdrawn by the Government of the United States of America within three days after a request for withdrawal.

(D) The Government of the United States of America will request such withdrawals only (I) to meet its expenditures in Brazil, or (II) to present such cruzeiros for transfer into dollars in accordance with the first sentence of Article IV, Paragraph 1 of the Agreement.

I shall appreciate receiving Your Excellency's confirmation that the foregoing also represents the understanding of the Government of Brazil.

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

Lincoln GORDON

His Excellency Ambassador Vasco T. Leitão da Cunha
Minister of Foreign Affairs
Rio de Janeiro

II

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

MINISTERIO DAS RELAÇÕES EXTERIORES

Em 8 de fevereiro de 1965

DPF/DAI/DAS/34/550.31(22)

Senhor Embaixador,

Tenho a honra de acusar recebimento da nota de Vossa Excelência nº 554, datada de 8 de fevereiro de 1965, do teor seguinte:

[TRANSLATION ¹ — TRADUCTION ²]

MINISTRY OF FOREIGN AFFAIRS

DPF/DAI/DAS/34/550.31(22)

February 8, 1965

Mr. Ambassador:

I have the honor to acknowledge receipt of Your Excellency's note No. 554, dated February 8, 1965, reading as follows:

[See note I]

2. In reply, I take pleasure in informing Your Excellency that the Government of the United States of Brazil is in agreement with the terms indicated, and considers that this note and that of Your Excellency, transcribed above, constitute an agreement between our two Governments which will enter into force on the date on which the Investment Guaranty Agreement becomes effective.

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

V. DA CUNHA

His Excellency Lincoln Gordon
Ambassador of the United States
of America

III

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

MINISTERIO DAS RELAÇÕES EXTERIORES

DPF/DAI/DAS/219/550.31(22)

Em 2 de setembro de 1965

Senhor Embaixador,

Tenho a honra de informar Vossa Excelência de que o Congresso Nacional aprovou o Acórdo sobre Garantia de Investimentos, firmado entre nossos dois Governos em 6 de fevereiro de 1965, pelo Decreto Legislativo nº 69, de 15 de julho de 1965, publicado no *Diário Oficial* de 19 do mesmo mês, nos seguintes termos:

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

Decreto Legislativo nº 69, de 1965.

Aprova o Acôrdo de Garantia de Investimentos entre os Estados Unidos do Brasil e os Estados Unidos da América, assinado em Washington em 6 de fevereiro de 1965.

Art. 1º — Fica aprovado o Acôrdo de Garantia de Investimentos entre os Estados Unidos do Brasil e os Estados Unidos da América, assinado em Washington, em 6 de fevereiro de 1965.

Art. 2º — Ressalva-se que por denegação de justiça, nos termos do art. VI, § 3º, se entende: a inexistência de tribunais regulares, ou de vias normais de acesso á justiça; a recusa de julgar, de parte da autoridade competente; o retardamento injustificável da decisão judicial, com violação da lei processual interna.

Art. 3º — Este Decreto Legislativo entra em vigor na data de sua publicação.

Art 4º — Revogam-se as disposições em contrário.

2. Por conseguinte, foram satisfeitas as formalidades constitucionais no Brasil, nos termos do art. VII do referido Acôrdo.

Aproveito a oportunidade para renovar a Vossa Excelência os protestos da minha mais alto consideração.

V. DA CUNHA

A Sua Excelência o Senhor Lincoln Gordon
Embaixador dos Estados Unidos da América

[TRANSLATION ¹ — TRADUCTION ²]

DPF/DAI/DAS/219/550.31(22)

September 2, 1965

Mr. Ambassador,

I have the honor to inform Your Excellency that the National Congress approved the Investment Guaranty Agreement signed by our two Governments on February 6, 1965, by Legislative Decree No. 69, of July 15, 1965, published in the *Diário Oficial* of July 19, 1965, in the following terms:

Legislative Decree No. 69, of 1965.

Approving the Investment Guaranty Agreement between the United States of Brazil and the United States of America, signed in Washington on February 6, 1965.

Article 1. The Investment Guaranty Agreement between the United States of Brazil and the United States of America, signed in Washington on February 6, 1965, is hereby approved.

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

Article 2. Reservation is made that “denial of justice,” as used in Article VI para (3), is understood to mean: the nonexistence of regular courts or of normal means of access to justice; refusal to judge on the part of the competent authority; unjustifiable delay in judicial decision in violation of domestic procedural law.

Article 3. This legislative decree enters into force on the date of its publication.

Article 4. All provisions contrary to this decree are hereby revoked.

2. Accordingly, the constitutional formalities of Brazil, in the terms of Article VII of the cited Agreement, have been satisfied.

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

V. DA CUNHA

His Excellency Lincoln Gordon
Ambassador of the United States
of America

IV

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

MINISTERIO DAS RELAÇÕES EXTERIORES

DPF/DAI/DAS/234/550.31(22)

Em 16 de setembro de 1965

Senhor Embaixador,

Tenho a honra de levar ao conhecimento de Vossa Excelência que o Governo brasileiro registrou com satisfação a conclusão de processo legislativo que conduziu à aprovação do Acôrdo de Garantia de Investimentos entre os Estados Unidos da América e os Estados Unidos do Brazil de 6 de fevereiro de 1965, cuja ratificação tive a oportunidade de comunicar pela nota nº DPF/DAI/DAS/219/550.31 (22), de 2 de setembro do corrente ano.

2. A propósito, informo Vossa Excelência de que a Câmara dos Deputados aprovou o referido Acôrdo com uma ressalva ao Art. 6º, parágrafo 3º, nos seguintes termos:

Decreto Legislativo nº 69, de 1965.

Art. 2º — Ressalva-se que por denegação de justiça, nos termos do Art. 6º, § 3º, se entende: a inexistência de tribunais regulares, ou de vias normais de acesso à justiça; a recusa de julgar, de parte da autoridade competente; o retardamento injustificável da decisão judicial, com violação da lei processual interna.

3. O Senado aprovou a ressalva da Câmara com a seguinte emenda abaixo assinalada:

... Ressalva-se que, *para fins de arbitramento*, por denegação de justiça entende-se, nos termos do Art. 6º, § 3º: a inexistência de tribunais regulares, ou de vias normais de acesso à justiça; a recusa de julgar, de parte da autoridade competente; o retardamento injustificável da decisão judicial, com violação da lei processual interna.

4. A Câmara dos Deputados, ao apreciar o aditivo do Senado, rejeitou-o, tendo os pronunciamentos feitos em Plenário sobre aquele aditivo acentuado que o mesmo era ocioso e redundante, uma vez que a ressalva originária da Câmara se referia somente a arbitramento.

5. Nessas condições, o Governo brasileiro entende que a reserva se restringe ao processo de arbitramento previsto no Artigo 6º do Acôrd, ficando tal processo sujeito às limitações na mesma contidas. A referida reserva não afeta o processo de negociações sobre que dispõe o Acôrd.

Aproveito a oportunidade para renovar a Vossa Excelência os protestos da minha mais alta consideração.

V. DA CUNHA

A Sua Excelência o Senhor Lincoln Gordon
Embaixador dos Estados Unidos da América

[TRANSLATION ¹ — TRADUCTION ²]

MINISTRY OF FOREIGN AFFAIRS

DPF/DAI/DAS/234/550.31(22)

September 16, 1965

Mr. Ambassador:

I have the honor to inform Your Excellency that the Brazilian Government has noted with satisfaction the conclusion of the legislative process that led to approval of the Investment Guaranty Agreement between the United States of America and the United States of Brazil of February 6, 1965, the ratification of which I had the opportunity to communicate by Note No. DPF/DAI/DAS/219/550.31(22) of September 2 of this year.

2. In this connection I inform Your Excellency that the Chamber of Deputies approved the Agreement with a reservation to Article VI, para (3) in the following terms:

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

Legislative Decree No. 69, of 1965

Article 2. Save that by denial of justice according to the terms of Article VI, para (3) is understood: the nonexistence of regular courts or normal means of access to justice; the refusal to render judgment on the part of competent authority; unjustifiable delay in rendering judicial decision in violation of internal procedural law.

3. The Senate approved the reservation of the Chamber with the following amendment underlined below:

... Save that, *for purposes of arbitration*, by denial of justice according to the terms of Article VI, para 3 is understood: "the nonexistence of regular courts or of normal means of access to justice; the refusal to render judgment on the part of competent authority; unjustifiable delay in rendering judicial decision in violation of internal procedural law.

4. The Chamber of Deputies, on examining the Senate amendment: rejected it, the statement made on the floor of the Chamber regarding the amendment having emphasized that the amendment was superfluous and redundant since the reservation originating in the Chamber referred only to arbitration.

5. In these circumstances, the Government of Brazil understands that the effects of the reservation are restricted to the process of arbitration provided for in Article VI of the Agreement, which will be subject to the limitations contained in the reservation. However, the reservation does not affect the process of negotiations provided for in the Agreement.

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

V. DA CUNHA

His Excellency Lincoln Gordon
Ambassador of the United States
of America

V

No. 258

Rio de Janeiro, September 17, 1965

Excellency:

I have the honor to acknowledge receipt of Your Excellency's Notes No. 219, dated September 2, 1965, and No. 234, dated September 16, 1965, and to inform Your Excellency that in accordance with Paragraph 5 of the second of the Notes referred to above, the Government of the United States accepts the reservation on the understanding that it is restricted to the

scope of the arbitration provisions of the Agreement, and does not affect the scope of the negotiations provided for in the Agreement. This acceptance is without prejudice to the position of the United States Government with respect to the interpretation of the term “denial of justice” as a principle of international law. As was pointed out by representatives of the United States Government in the course of the negotiations leading to the conclusion of the Agreement, the Government of the United States holds to the position that this term has a broader scope than the definition set forth in the reservation made by the Brazilian Congress.

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

Lincoln GORDON

His Excellency Vasco T. Leitão da Cunha
Minister of Foreign Affairs
Rio de Janeiro
