

No. 18040

**UNITED STATES OF AMERICA
and
BANGLADESH**

Exchange of notes constituting an agreement concerning investment guaranties (with related letters). Dacca, 17 and 20 January 1975

Authentic text: English.

Registered by the United States of America on 14 November 1979.

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

Échange de notes constituant un accord relatif à la garantie des investissements (avec lettres connexes). Dacca, 17 et 20 janvier 1975

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 14 novembre 1979.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND BANGLADESH CON- CERNING INVESTMENT GUARANTIES

I

No. 04

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the People's Republic of Bangladesh and has the honor to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Bangladesh which promote the development of the economic resources and productive capacities of Bangladesh and to insurance and guaranties of such investments issued as an incentive by the Government of the United States of America. It also has the honor to confirm the following understandings reached as a result of those conversations:

1. When an investor proposes to invest in a project or activity within Bangladesh, with the assistance of insurance or guaranties (hereinafter referred to as "coverage") issued pursuant to this Agreement by the Government of the United States of America, the Government of the United States of America (the Issuing Government) and the Government of Bangladesh (the Host Government) shall, upon the request of either, consult respecting the nature of the project or activity.

2. The procedures set forth in this Agreement shall apply with respect to coverage of investments in projects or activities hereafter approved by the Host Government.

3. If the Issuing Government makes payment to any investor under coverage referred to in Paragraph 2 of this Agreement, the Host Government shall, subject to the provisions of Paragraph 4, recognize the transfer to the Issuing Government of any currency, credits, assets, or investment on account of which payment under such coverage is made as well as the succession of the Issuing Government to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith. The Issuing Government shall assert no greater rights than those of the transferring investor with respect to any interests transferred or succeeded to under this paragraph. The Issuing Government does, however, reserve its rights to assert a claim in its sovereign capacity under international law.

4. To the extent that the laws of the Host Government partially or wholly invalidate or prohibit the acquisition from a covered investor of any interests in any property within its territory by the Issuing Government, the Host Government shall permit such investor and the Issuing 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 Host Government.

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Issuing Government under coverage referred to in Paragraph 2 of this Agreement shall be accorded treatment no less favorable than that accorded to funds of nationals of the United States of America deriving from investment activities like those in which the investor has been engaged, and such amounts and credits shall be freely available to the Issuing Government for its use in the territory of the Host Government.

¹ Came into force on 30 October 1978, the date on which the Government of the United States of America received a note from the Government of Bangladesh indicating that the necessary constitutional requirements had been fulfilled, in accordance with section 8.

6. (a) Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be resolved, insofar as possible, through negotiations between the two Governments. If such a difference 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 arbitral tribunal for resolution in accordance with Paragraph 6(c). This three-month period may be extended by agreement between the two Governments.

(b) Any claim, arising out of any investment referred to in Paragraph 2 of this Agreement, against either of the two Governments, which, in the opinion of the other, presents a question of public international law shall, at the request of the Government presenting the claim, be submitted to negotiations. If at the end of three months or at the end of a mutually agreeable extension following the request for negotiations, the two Governments have not resolved the claim by mutual agreement, the claim, including the question of whether it presents a question of public international law, shall be submitted, at the request of either Government, to an arbitral tribunal for resolution in accordance with Paragraph 6(c).

(c) The arbitral tribunal for resolution of disputes pursuant to Paragraphs 6(a) and 6(b) shall be established and function as follows:

- (i) Each Government shall appoint one arbitrator; these two arbitrators shall designate a President by common agreement who shall be a citizen of a third State and be appointed by the two Governments. The arbitrators shall be appointed within two months and the President within three months of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time-limits, 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.
- (ii) The arbitral tribunal shall base its decision on the applicable principles and rules of public international law. The arbitral tribunal shall decide by majority vote. Its decision shall be final and binding. Only the two Governments may request the arbitral procedure and participate in it.
- (iii) Each of the Governments shall pay the expense of its arbitrator and of its representation in the proceedings before the arbitral tribunal; the expenses of the President and the other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt regulations concerning the costs, consistent with the foregoing.
- (iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

7. 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 coverage referred to in Paragraph 2 which is issued before termination of the Agreement shall remain in force for the duration of such coverage, but in no case longer than twenty years after the denunciation of the Agreement.

8. This Agreement shall enter into force on the date of the note by which the Host Government communicates to the Issuing Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures.

Upon receipt of a note indicating that the foregoing provisions are acceptable to the Government of Bangladesh, the Government of the United States of America will consider that this note and the reply thereto constitute an Agreement between our two Governments on this subject, the Agreement to enter into force in accordance with Paragraph 8.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the People's Republic of Bangladesh the assurances of its highest consideration.

Embassy of the United States of America

Dacca, January 17, 1975

II

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF INDUSTRIES
(Industries Division)
DACCA

The Government of the People's Republic of Bangladesh presents its best compliments to the Government of the United States and has the honour to refer to conversations which have recently taken place between representatives of our two Governments relating to the United States investments in Bangladesh which promote the development of the economic resources and productive capacities of Bangladesh and to insurance and guarantees of such investments issued as an incentive by the Government of the United States of America. It also has the honour to confirm that the following understandings reached as a result of those conversations are acceptable to the Government of the People's Republic of Bangladesh.

[See note I]

The Government of the People's Republic of Bangladesh avails itself of this opportunity to renew to the Government of the United States the assurances of its highest consideration.

[Signed]

A. B. M. GHULAM MOSTAFA
Secretary

[January 20, 1975]

RELATED LETTERS

I a

Dacca, Bangladesh, January 17, 1975

Dear Mr. Secretary,

I refer to our past discussions regarding the outstanding claim of Belbagco Incorporated (Bangladesh Fabrics Ltd.) for compensation for its nationalized assets.

In the event that the Overseas Private Investment Corporation (OPIC) settles the claim of Belbagco Inc., the Government of Bangladesh recognizes OPIC's right of subrogation.

Amounts in the lawful currency of the Government of Bangladesh acquired by OPIC from the Government of Bangladesh for compensation of the nationalized

assets of Belbagco shall be freely available to the United States Government for its use in the territory of the Government of Bangladesh.

Differences between the two Governments concerning the compensation for the nationalized assets of Belbagco shall be resolved, insofar as possible, through negotiations between the two Governments. If such a difference cannot be resolved within a period of twelve months following the request for such negotiations, it shall be submitted to a mutually agreed upon arbitrator whose decision shall be final. If the two Governments are unable to select a mutually acceptable arbitrator within three months after indication by either Government of its desire for arbitration following expiration of the above negotiating period, either Government may request the President of the International Court of Justice to designate an arbitrator whose decision shall be final.

I would appreciate your confirmation that this is also the understanding of the Government of Bangladesh.

Very truly yours,

[Signed]

DANIEL PARKER
Chairman of the Board
Overseas Private Investment Corporation

Mr. A. B. M. Golam Mustafa
Secretary
Ministry of Industries

II a

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF INDUSTRIES
(Industries Division)
DACCA

January 20, 1975

Dear Mr. Parker,

I refer to your note dated January 17, 1975, regarding the outstanding claims of Belbagco Incorporated (Bangladesh Fabrics Ltd.) and confirm the position as noted below:

[See letter I a]

Very truly yours,

[Signed]

A. B. M. GHULAM MOSTAFA
Secretary

Mr. Daniel Parker
Chairman of the Board
Overseas Private Investment Corporation

I b

Dacca, Bangladesh, January 17, 1975

Dear Mr. Secretary,

I refer to our past discussions and the Investment Incentive Agreement to be signed today between our two Governments.

The terms of that agreement shall be deemed to apply to any claim arising subsequent to the signing of that agreement involving the investment of E. R. Squibb and Sons, Inc. in Squibb of Bangladesh.

I would appreciate your confirmation that this is also the understanding of the Government of Bangladesh.

Very truly yours,

[Signed]

DANIEL PARKER
Chairman of the Board
Overseas Private Investment Corporation

Mr. A. B. M. Golam Mustafa
Secretary
Ministry of Industries

II b

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF INDUSTRIES
(Industries Division)
DACCA

January 20, 1975

Dear Mr. Parker,

I refer to your note dated January 17, 1975, regarding the outstanding claims of Squibb of Bangladesh and confirm the position as noted below:

The terms of the OPIC Agreement shall be deemed to apply to any claim arising subsequent to the signing of that agreement involving the investment of E. R. Squibb and Sons, Inc. in Squibb of Bangladesh.

Very truly yours,

[Signed]

A. B. M. GHULAM MOSTAFA
Secretary

Mr. Daniel Parker
Chairman of the Board
Overseas Private Investment Corporation