

No. 24904

**CANADA
and
UNITED STATES OF AMERICA**

Agreement with respect to social security (with Supplementary Agreement of 10 May 1983). Signed at Ottawa on 11 March 1981

Authentic texts: English and French.

Registered by Canada on 16 July 1987.

**CANADA
et
ÉTATS-UNIS D'AMÉRIQUE**

Accord en matière de sécurité sociale (avec Accord supplémentaire du 10 mai 1983). Signé à Ottawa le 11 mars 1981

Textes authentiques : anglais et français.

Enregistré par le Canada le 16 juillet 1987.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO SOCIAL SECURITY

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

Resolved to co-operate in the field of social security,
Have decided to conclude an agreement for this purpose, and,
Have agreed as follows:

PART I. GENERAL PROVISIONS

Article I. For the purpose of this Agreement:

(1) “Territory” means,

— As regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and

— As regards Canada, the territory of Canada;

(2) “National” means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended; and as regards Canada, a citizen of Canada;

(3) “Laws” means, the laws and regulations specified in Article II;

(4) “Competent Authority” means,

— As regards the United States, the Secretary of Health and Human Services, and

— As regards Canada, the Minister or Ministers of the Crown responsible for the administration of the laws specified in Article II (1) (b);

(5) “Agency” means,

— As regards the United States, the Social Security Administration, and

— As regards Canada, for all matters other than those related to contributions: the Department of National Health and Welfare; for matters related to contributions: the Department of National Revenue — Taxation;

(6) “Period of coverage” means, a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage;

(7) “Benefit” means, any benefit provided for in the laws of either Contracting State;

¹ Came into force on 1 August 1984, i.e., the first day of the second month following the month of receipt of the last of the notifications by which the Parties had informed each other of the completion of the statutory and constitutional requirements, in accordance with article XXII.

(8) “Stateless person” means, a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;¹

(9) “Refugee” means, a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951,² and the Protocol to that Convention dated January 31, 1967.³

Article II. (1) For the purpose of this Agreement, the applicable laws are:

- (a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:
 - (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and
 - (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;
- (b) As regards Canada:
 - (i) The Old Age Security Act and regulations made thereunder, and
 - (ii) The Canada Pension Plan and regulations made thereunder.

(2) Unless otherwise provided in this Agreement, the applicable laws referred to in paragraph (1) of this Article do not include treaties or other agreements concluded between either Contracting State and a third State and laws or regulations promulgated for their implementation.

(3) This Agreement shall also apply to future laws amending the laws specified in paragraph (1) of this Article.

(4) Provincial social security legislation may be dealt with in understandings as specified in Article XX.

Article III. Unless otherwise provided, this Agreement shall apply to:

- (a) Nationals of either Contracting State,
- (b) Refugees,
- (c) Stateless persons,
- (d) Other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and
- (e) Nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article IV. (1) Unless otherwise provided in this Agreement, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment, with respect to the payment of benefits, with the nationals of that Contracting State.

(2) Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other

¹ United Nations, *Treaty Series*, vol. 360, p. 117.

² *Ibid.*, vol. 189, p. 137.

³ *Ibid.*, vol. 606, p. 267.

Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.

(3) Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article III who reside in the territory of the other Contracting State.

(4) As regards the laws of Canada, paragraph (1) of this Article is extended to persons designated in Article III (e).

PART II. PROVISIONS ON COVERAGE

Article V. (1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Contracting States shall, in respect of that work, be subject to the laws of only that Contracting State.

2. (a) Where an employed person is covered under the laws of one of the Contracting States in respect of work performed for an employer having a place of business in the territory of that Contracting State and is then required by that employer to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State does not exceed 60 months.

(b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Contracting State for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Contracting States, subparagraph (a) shall also apply:

- (i) Where the employer does not have a place of business in the territory of the first Contracting State, or
- (ii) Where the period of work in the other Contracting State exceeds or is expected to exceed 60 months.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961,¹ and of the Vienna Convention on Consular Relations of April 24, 1963,² unless such persons have waived their immunities and privileges with respect to the payment of social security contributions.

(4) (a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Contracting States.

(b) Where a person employed in the Government service of one of the Contracting States is covered under the laws of both Contracting States in respect of that employment, the following rules shall apply:

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 487.

- (i) A person in the Government service of one Contracting State who is sent to work within the territory of the other Contracting State shall be subject to the laws of only the first Contracting State in respect of that service;
- (ii) A person hired locally to work in the Government service of one Contracting State within the territory of the other Contracting State shall be subject to the laws of only the other Contracting State in respect of that service.
- (c) For the purpose of this paragraph, “Government service” means,
- (i) As regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;
- (ii) As regards Canada, service in the employ of the Government of Canada or a Province of Canada or a Canadian municipality.
- (5) Where, but for this Article, a person would be covered under United States laws as well as under the Canada Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Canada Pension Plan if that person is a resident of Canada, and only to United States laws in any other case.
- (6) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Canada if that person is considered to be resident in Canada for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.
- (7) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of an activity that is considered to be self-employment by one of the Contracting States and employment by the other Contracting State, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Contracting State and according to the provisions of this Article respecting employment in any other case.
- (8) Where, by virtue of this Article, a person would be subject to the laws of Canada but coverage is not effected under those laws, the person shall be subject to United States laws.
- (9) The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.
- (10) Where a person covered under the laws of a Contracting State in accordance with this Agreement is also covered under the laws of the other Contracting State or a third State in accordance with the provisions of an agreement between a Contracting State and a third State, the Competent Authorities of the two Contracting States may agree to exclude the person from the application of this Agreement.
- (11) The Competent Authorities of the two Contracting States may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.
- (12) The application of this Article shall be subject to such rules as the Competent Authorities of the two Contracting States may prescribe through arrangements made pursuant to Article XII (a) of this Agreement.

Article VI. (1) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to the laws of Canada, or the comprehensive pension plan of a province, during any period of residence in the territory of the United States, that period of residence, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

(2) Any calendar quarter during which a spouse or a dependant of a person referred to in Article V(2) is credited with a period of coverage under United States laws shall not be counted as residence in Canada for the purposes of the Old Age Security Act.

(3) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to United States laws during any period of residence in the territory of Canada, that period, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall not be treated as residence in Canada for the purposes of the Old Age Security Act.

(4) Except as otherwise provided in this Article, periods during which the spouse or dependant referred to in paragraph (3) of this Article is contributing to the Canada Pension Plan or the comprehensive pension plan of a province as a result of employment or self-employment shall be treated as periods of residence in Canada for the purposes of the Old Age Security Act.

(5) Except as otherwise provided in this Article, any person who resides in the United States, is employed in Canada and is subject to the Canada Pension Plan or the comprehensive pension plan of a province shall be credited with one year of residence under the Old Age Security Act for each year of contributions under the Canada Pension Plan or the comprehensive pension plan of a province.

(6) If a person referred to in paragraph (4) or (5) of this Article performs services which are covered as employment or self-employment under United States laws and simultaneously performs other services which are covered as employment or self-employment under the Canada Pension Plan or a comprehensive pension plan of a province, that period of employment or self-employment shall not be treated as a period of residence for the purposes of the Old Age Security Act.

PART III. PROVISIONS ON BENEFITS

Chapter 1. PROVISIONS APPLICABLE TO THE UNITED STATES

Article VII. (1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Canada Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Canada Pension Plan certified as creditable by the agency of Canada; however, no quarter of coverage shall be credited for any

calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

(4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

Chapter 2. PROVISIONS APPLICABLE TO CANADA

Article VIII. (1) In this Article, "pension" means a monthly pension under Part I of the Old Age Security Act.

(2) (a) If a person is entitled to a pension under paragraph 3 (1) (a) or (b) of the Act, the totalization provisions of subparagraphs (3) (a) and (b) of this Article may be used, if necessary, to accumulate the required 20 years of residence in Canada for payment of a pension in the United States. Only a partial pension calculated in accordance with the Act may be paid.

(b) If a person is entitled to a partial pension under subsection 3 (1.1) of the Act, that pension may be paid in the United States if the periods totalized according to subparagraphs (3) (a) and (b) of this Article equal not less than 20 years.

(3) (a) If a person is not entitled to a pension under the Old Age Security Act because of insufficient periods of residence, entitlement to a pension may be determined by totalizing periods of residence in Canada on or after January 1, 1952 and after the attainment of age 18, and periods of coverage under United States laws as specified in subparagraph (3) (b) of this Article, but where the periods coincide, only one period shall be counted.

(b) For the purposes of establishing entitlement to a pension by means of totalization, a quarter of coverage under United States laws on or after January 1, 1952 and after the attainment of age 18, shall be counted as three months of residence in Canada.

(c) The agency of Canada shall calculate the amount of the pro-rated pension at the rate of 1/40th of the full pension for each year of residence in Canada which is recognized as such in subparagraph (3) (a) of this Article or deemed as such under Article VI of this Agreement.

(4) If the total duration of the periods of residence completed in Canada in accordance with subparagraph (3) (a) of this Article or Article VI of this Agreement is less than one year, the agency of Canada shall not pay a pension in respect of those periods.

Article IX. (1) In this Article, “spouse’s allowance” means a partial spouse’s allowance under Part II.1 of the Old Age Security Act.

(2) If a person is not entitled to a spouse’s allowance under the Act because of insufficient periods of residence, entitlement to a spouse’s allowance may be determined by totalizing periods of residence in accordance with subparagraph (3) (a) of Article VIII and periods of coverage under United States laws in accordance with subparagraph (3) (b) of Article VIII, but where the periods coincide, only one period shall be counted.

Article X. Article IV of this Agreement does not affect the provisions of the Old Age Security Act governing the payment of the guaranteed income supplement and the spouse’s allowance to persons not resident in Canada.

Article XI. (1) In this Article, “benefit” means,

- (a) An orphan’s benefit or a disabled contributor’s child’s benefit,
- (b) A death benefit,
- (c) A disability pension, or
- (d) A survivor’s pension

payable under the Canada Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Canada Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Contracting States in accordance with paragraph (3) of this Article, to the extent that they do not coincide.

(3) (a) Subject to the provisions governing the contributory period under the Canada Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under United States laws shall be deemed to be a year in which contributions were made under the Canada Pension Plan.

(b) The agency of Canada shall calculate the earnings-related portion of the benefit directly and exclusively on the basis of the periods of coverage completed under the Canada Pension Plan.

(c) The amount of the flat-rate benefit under the Canada Pension Plan is the amount obtained by multiplying:

- (i) The amount of the flat-rate benefit determined under the provisions of the Canada Pension Plan; by
- (ii) The ratio that the periods of coverage under the Canada Pension Plan represent in relation to the total of the periods of coverage under the Canada Pension Plan and of only those periods of coverage under United States laws required to satisfy the minimum requirements for entitlement under the Canada Pension Plan.

PART IV. MISCELLANEOUS PROVISIONS

Article XII. The Competent Authorities of the two Contracting States shall:

- (a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Agreement;

- (b) Communicate to each other information concerning the measures taken for the application of this Agreement; and
- (c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article XIII. The Competent Authorities and agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement.

Article XIV. (1) Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XV. (1) The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official languages of either Contracting State.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in an official language of the other Contracting State.

Article XVI. (1) A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant: (a) requests that it be considered an application under the laws of the other Contracting State; or (b) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

(2) An application for benefits under the laws of one Contracting State which is filed with the agency of the other Contracting State in accordance with paragraph (1) of this Article, shall be adjudicated by the agency of the first Contracting State under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

(4) The provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article XVII. (1) A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting

State. The appeal shall be dealt with according to the appeal procedure of the laws of the Contracting State whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same prescribed period with the agency of the other Contracting State, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Contracting State.

Article XVIII. Unless disclosure is required under the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State is confidential and shall be used exclusively for the purposes of implementing this Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

PART V. TRANSITIONAL AND FINAL PROVISIONS

Article XIX. (1) No provision of this Agreement shall confer any right

- (a) To receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement, or
- (b) To receive a lump-sum death benefit if the person died before the entry into force of the Agreement.

(2) In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Agreement, except that neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

(4) This Agreement shall not result in the reduction of benefit amounts because of its entry into force.

(5) The period of work referred to in the last sentence of Article V (2) (a) shall be measured beginning on or after the date on which this Agreement enters into force.

Article XX. The Competent Authority of the United States and the authorities of the provinces of Canada may conclude understandings concerning any social security legislation within the provincial jurisdiction insofar as those understandings are not inconsistent with the provisions of this Agreement.

Article XXI. (1) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

(2) If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article XXII. This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

[For the testimonium and signatures, see p. 270 of this volume.]

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in two copies at Ottawa this 11th day of March 1981, in the English and French languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT en deux exemplaires à Ottawa, le 11^e jour de mars 1981, en français et en anglais, chaque version faisant également foi.

For the Government of Canada:
Pour le Gouvernement du Canada :

[Signed — Signé]

MARK MACGUIGAN
MONIQUE BÉGIN

For the Government of the United States of America:
Pour le Gouvernement des Etats-Unis d'Amérique :

[Signed — Signé]

ALEXANDER HAIG

SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO SOCIAL SECURITY

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

Having considered the Agreement on Social Security between Canada and the United States of America, signed March 11, 1981 (hereinafter referred to as the "Agreement") and the Administrative Arrangement for the Implementation of the Agreement, signed on May 22, 1981 (hereinafter referred to as the "Administrative Arrangement"), and

Having recognized the need to improve the manner of determining the rights to benefits under the Agreement,

Have agreed as follows:

Article I. Paragraph (3) of Article VII of the Agreement shall be deleted and replaced by the following new paragraph:

"(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of the person's periods of coverage credited under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount."

Article II. Paragraphs 6.2 and 6.3 of the Administrative Arrangement shall be deleted and Paragraph 6.1 shall be redesignated as Paragraph 6.

Article III. This Supplementary Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

[For the testimonium and signatures, see p. 273 of this volume.]

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Supplementary Agreement.

DONE in duplicate at Ottawa, this 10th day of May 1983, in the English and French languages, each version being equally authentic.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Accord supplémentaire.

FAIT en double exemplaire à Ottawa, ce 10^e jour de mai 1983, dans les langues française et anglaise, chaque version faisant également foi.

For the Government of Canada:
Pour le Gouvernement du Canada :

[Signed — Signé]

MONIQUE BÉGIN

For the Government of the United States of America:
Pour le Gouvernement des Etats-Unis d'Amérique :

[Signed — Signé]

PAUL H. ROBINSON
