

No. 6648

**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.

**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 AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND GUATEMALA RELATING TO INVESTMENT GUARANTIES. GUATEMALA, 9 AUGUST 1960

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.

¹ 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.