

Ministry of Foreign Affairs

The Hague

→ ECON

Western Hemisphere Department

No. 6-7/242744

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to its Note No. 236220 of September 28, 1987, and to conversations which have taken place between representatives of the two Governments and of the Overseas Private Investment Corporation (OPIC), on the subject of a simplified procedure regarding the issuance of political risk insurance by OPIC to US business enterprises undertaking activities in the Netherlands Antilles and Aruba.

The Ministry takes pleasure in informing the Embassy that the competent authorities in the Kingdom of The Netherlands are now agreed that the simplified procedure described in the points of understanding laid down in the abovementioned Note with regard to Aruba, shall henceforth apply also to the issuance of political risk insurance by OPIC for US business enterprises undertaking activities in the Netherlands Antilles, in the same manner and under the same conditions as for Aruba (including the possible re-evaluation of this procedure after a period of one year), to wit:

- OPIC will request approval for each individual activity by submitting the usual information on the project in question simultaneously to the Ministry of Foreign Affairs in The Hague and to the Government of the Netherlands Antilles in Willemstad;
- If, within four weeks of the receipt of such request, the Ministry of Foreign Affairs has not informed the US Embassy in The Hague that an objection exists to the project, approval will be considered granted;
- All other matters regarding the project may be dealt with directly between OPIC and the Government of the Netherlands Antilles;

The Embassy of the
United States of America
The Hague

- The efficacy of this simplified procedure will be evaluated by the competent authorities in the Kingdom within a year of the date of this Note. Should they conclude that the simplified procedure does not serve to further the economic development of the Netherlands Antilles, the Kingdom may propose additional modifications to the approval procedure.

It is to be understood that the Government of the Netherlands cannot accept that its approval from time to time, whether explicit or implicit, of an activity to be covered by OPIC, should entail liability for possible damages under the Agreement for Economic Cooperation between the two States of July 2, 1948, as modified and amended, in excess of the liability incumbent on the Netherlands by virtue of other rules of international law which apply between the two States.

It is also to be understood that in the event of a disagreement regarding claims stemming from the issuance of coverage, which disagreement presents a question of international law that cannot be resolved through negotiations between the two governments, the Netherlands Government and the United States Government will arbitrate their differences before any arbitral tribunal mutually agreed upon or, in the event of a failure to agree, before the International Court of Justice.

If, in the future, any improvements should be made in the simplified procedure already applicable to Aruba, the Ministry reserves its right to request that such improvements be made also in the procedure for the Netherlands Antilles, and vice-versa.

The Hague, November 8, 1988



EA-14322

The Netherlands Embassy presents its compliments to the Department of State and has the honor to inform the Department of the following.

On April 15, 1960, the Investment Guaranties Division of the International Cooperation Administration announced that as of January 1, 1960, due to a statutory amendment, investment guaranties would only be issued for underdeveloped countries and areas, thus precluding issuances of new guaranties for developed areas where investment guaranty inter-government agreements had been executed. Furthermore it was stated that although the aforementioned statutory amendment excluded economically developed countries for purposes of the Investment Guaranties Program, guaranties were still available for the underdeveloped "overseas dependencies" of a number of countries, including the Netherlands.

The Netherlands Government is in agreement with the above-quoted announcement as applied to both Surinam and the Netherlands Antilles, with the understanding, however, that in view of the provisions of the Charter of the Kingdom of the Netherlands, the term "overseas dependencies" will be read to mean "non-European countries of the Kingdom."

Statements to the effect that there exist no objections to the granting of investment-guaranties will be issued by the Government of the Kingdom but only after consultation with and with the agreement of the Government of the country in question.

Within the Kingdom, the latter Government will decide upon the desirability of a certain investment in its country; internationally however, only the Government of the Kingdom will be in a position to act and to accept responsibility within the framework of the guaranty-agreement. Consequently, prospective United States investors should approach the Ministry of Foreign Affairs in the Hague and not the Governments of either Surinam or the Netherlands Antilles.

It would be highly appreciated if the Department would bring the above to the attention of the Investment Guaranties Division and other appropriate United States agencies.

Washington, D.C.
November 2, 1960.

ECONOMIC COOPERATION

Guaranties Under Public Law 472, 80th Congress,
as Amended

Agreement between the
UNITED STATES OF AMERICA
and the NETHERLANDS

- Effected by Exchange of Notes
Signed at Washington September 24
and October 7, 1952
- Entered into force October 8, 1952



Convertibility (Part II) and
Expropriation

The Secretary of State to the Netherlands Ambassador

DEPARTMENT OF STATE
WASHINGTON

Sep 24 1952

SIR:

I have the honor to refer to the conversations which have recently taken place between representatives of our two Governments relating to Article III of the Economic Cooperation Agreement between the United States of America and the Kingdom of the Netherlands, signed at The Hague, on July 2, 1948,^[1] as heretofore amended or supplemented.^[2] As a consequence of those conversations, the Government of the United States of America proposes the following agreement to the Government of the Kingdom of the Netherlands:

The Governments of the Kingdom of the Netherlands and of the United States of America will, upon the request of either of them, consult respecting projects in the Kingdom of the Netherlands proposed by nationals of the United States of America with regard to which guaranties under Section 111(b)(3) of the Economic Cooperation Act of 1948, as heretofore amended,^[3] have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of the Kingdom of the Netherlands in accordance with the provisions of the aforesaid Section, the Government of the Kingdom of the Netherlands agrees:

- a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Kingdom of the Netherlands will recognize the transfer to the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of the Kingdom of the Netherlands shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensa-

¹ Treaties and Other International Acts Series 1791; 62 Stat., pt. 2, p. 2486.

² TIAS 2126; 1 UST 665; and TIAS 2235.

³ 62 Stat. 144; 22 U. S. C. § 1509(b)(3).

- tion for loss covered by such guaranties received from any source other than the Government of the United States of America;
- b. That any claim against the Government of the Kingdom of the Netherlands to which the Government of the United States of America may be subrogated as the result of any payment under such a guaranty shall be deemed to be an espoused claim subject to the procedures provided in Article X of the aforesaid Economic Cooperation Agreement, whether or not the condition stated in paragraph 3 of said Article X has been satisfied; provided, however, that such payment is made only after the recipient of the payment has taken reasonable measures to pursue any judicial or administrative remedies which may be available in connection with its claim for a period of at least one year from the initiation of the action on account of which the payment is made.
- c. That any guilders acquired by the Government of the United States of America pursuant to the terms of any such guaranty shall be accorded treatment with respect to convertibility which is not less favorable than the treatment which would have been accorded to the holder of the guaranty and that the Government of the United States of America shall be permitted freely to use guilders thus acquired for its administrative expenditures.

If this proposal is acceptable to the Government of the Kingdom of the Netherlands, it is suggested that you reply by note. This note, together with such reply, will constitute an agreement between our two Governments on this subject, the agreement to enter into force on the date of receipt of your reply note.^[1]

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

For the Secretary of State:

JAMES C. H. BONBRIGHT

His Excellency

DR. J. HERMAN VAN ROIJEN,

Ambassador of the Netherlands.

¹ Oct. 8, 1952.

*The Netherlands Ambassador to the Secretary of State*NETHERLANDS EMBASSY
WASHINGTON 9, D. C.

FA/1677

OCTOBER 7, 1952

SIR:

I have the honor to acknowledge the receipt of your note of September 24th, 1952, reading as follows:

"I have the honor to refer to the conversations which have recently taken place between representatives of our two Governments relating to Article III of the Economic Cooperation Agreement between the United States of America and the Kingdom of the Netherlands, signed at The Hague, on July 2, 1948, as heretofore amended or supplemented. As a consequence of those conversations, the Government of the United States of America proposes the following agreement to the Government of the Kingdom of the Netherlands:

"The Governments of the Kingdom of the Netherlands and of the United States of America will, upon the request of either of them, consult respecting projects in the Kingdom of the Netherlands proposed by nationals of the United States of America with regard to which guaranties under Section 111 (b) (3) of the Economic Cooperation Act of 1948, as heretofore amended, have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of the Kingdom of the Netherlands in accordance with the provisions of the aforesaid Section, the Government of the Kingdom of the Netherlands agrees:

- "a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Kingdom of the Netherlands will recognize the transfer to the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of the Kingdom of the Netherlands shall also recognize any transfer to the Government of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from any source other than the Government of the United States of America;
- "b. That any claim against the Government of the Kingdom of the Netherlands to which the Government of the United States of America may be subrogated as the result of any payment

under such a guaranty shall be deemed to be an espoused claim subject to the procedures provided in Article X of the aforesaid Economic Cooperation Agreement, whether or not the condition stated in paragraph 3 of said Article X has been satisfied; provided, however, that such payment is made only after the recipient of the payment has taken reasonable measures to pursue any judicial or administrative remedies which may be available in connection with its claim for a period of at least one year from the initiation of the action on account of which the payment is made.

“c. That any guilders acquired by the Government of the United States of America pursuant to the terms of any such guaranty shall be accorded treatment with respect to convertibility which is not less favorable than the treatment which would have been accorded to the holder of the guaranty and that the Government of the United States of America shall be permitted freely to use guilders thus acquired for its administrative expenditures.

“If this proposal is acceptable to the Government of the Kingdom of the Netherlands, it is suggested that you reply by note. This note, together with such reply, will constitute an agreement between our two Governments on this subject, the agreement to enter into force on the date of receipt of your reply note.”

I have the honor to state that the Government of the Kingdom of the Netherlands accepts the proposed agreement as outlined in your above-mentioned note and considers that your note and this reply constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of receipt of this reply note.

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

J. H. VAN ROIJEN.

The Honorable DEAN ACHESON,
Secretary of State,
Washington, D. C.

COPY OF EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND THE NETHERLANDS
RE ECA GUARANTIES

NETHERLANDS EMBASSY
Washington 9, D. C.

FA/1677

October 7, 1952

Sir:

I have the honor to acknowledge the receipt of your note of September 24th, 1952, reading as follows:

"I have the honor to refer to the conversations which have recently taken place between representatives of our two Governments relating to Article III of the Economic Cooperation Agreement between the United States of America and the Kingdom of the Netherlands, signed at The Hague, on July 2, 1948, as heretofore amended or supplemented. As a consequence of those conversations, the Government of the United States of America proposes the following agreement to the Government of the Kingdom of the Netherlands:

"The Governments of the Kingdom of the Netherlands and of the United States of America will, upon the request of either of them, consult respecting projects in the Kingdom of the Netherlands proposed by nationals of the United States of America with regard to which guaranties under Section 111(b)(3) of the Economic Cooperation Act of 1948, as heretofore amended, have been made or are under consideration. With respect to such guaranties extending to projects which are approved by the Government of the Kingdom of the Netherlands in accordance with the provisions of the aforesaid Section, the Government of the Kingdom of the Netherlands agrees:

- "a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of the Kingdom of the Netherlands will recognize the transfer to the United States of America of any right, title or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action of such person arising in connection therewith. The Government of the Kingdom of the Netherlands shall also recognize any transfer to the Government

The Honorable Dean Acheson,
Secretary of State,
Washington, D. C.

of the United States of America pursuant to such guaranty of any compensation for loss covered by such guaranties received from any source other than the Government of the United States of America;

- "b. That any claim against the Government of the Kingdom of the Netherlands to which the Government of the United States of America may be subrogated as the result of any payment under such a guaranty shall be deemed to be an espoused claim subject to the procedures provided in Article X of the aforesaid Economic Cooperation Agreement, whether or not the condition stated in paragraph 3 of said Article X has been satisfied; provided, however, that such payment is made only after the recipient of the payment has taken reasonable measures to pursue any judicial or administrative remedies which may be available in connection with its claim for a period of at least one year from the initiation of the action on account of which the payment is made.
- "c. That any guilders acquired by the Government of the United States of America pursuant to the terms of any such guaranty shall be accorded treatment with respect to convertibility which is not less favorable than the treatment which would have been accorded to the holder of the guaranty and that the Government of the United States of America shall be permitted freely to use guilders thus acquired for its administrative expenditures.

"If this proposal is acceptable to the Government of the Kingdom of the Netherlands, it is suggested that you reply by note. This note, together with such reply, will constitute an agreement between our two Governments on this subject, the agreement to enter into force on the date of receipt of your reply note."

I have the honor to state that the Government of the Kingdom of the Netherlands accepts the proposed agreement as outlined in your above-mentioned note and considers that your note and this reply constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of receipt of this reply note.

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

/s/ J. H. van Roujen

TEXT OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
RELATING TO UNITED STATES GOVERNMENT INVESTMENT GUARANTIES

Economic Cooperation Agreement; Signed at The Hague
July 2, 1948
Entered into Force July 2, 1948.

Excerpt re U.S. Government Investment Guaranties

Article III(Guaranties)

1. The Governments of the United States of America and the Netherlands will, upon the request of either Government, consult respecting projects in the Netherlands proposed by nationals of the United States of America and with regard to which the Government of the United States of America may appropriately make guaranties of currency transfer under section 111(b)(3) of the Economic Cooperation Act of 1948.

2. The Government of the Netherlands agrees that if the Government of the United States of America makes payment in United States dollars to any person under such a guaranty, any guilders, or credits in guilders, assigned or transferred to the Government of the United States of America pursuant to that section shall be recognized as property of the Government of the United States of America.

Article XI(Definitions)

As used in this Agreement: (a) The Netherlands means the Kingdom of the Netherlands consisting of its territory in Europe, the Netherlands Indies, Surinam and Curaçao.

Amendment, Effected by Exchange of Notes Signed at The Hague January 16 and February 2, 1950.

The reference in paragraph 2 of Article III of the Economic Cooperation Agreement, to recognize as the property of the Government of the United States of any guilders or credits in guilders assigned or transferred to it pursuant to section 111(b)(3) of the Economic Cooperation Act of 1948 as heretofore amended, includes recognition that the Government of the United States will be subrogated to any right, title, claim, or cause of action existing in connection with such guilders or credits in guilders. It is understood that the provision of Article X of the Economic Cooperation Agreement shall also apply to cases wherein the Government of the United States actually has been subrogated to any right, title, claim or cause of action of the type mentioned in this paragraph.

USA/Netherlands
Investment Guaranty Agreement

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Amendment. Effected by Exchange of Notes Signed at The Hague
March 7 and April 3, 1951.

The consultation referred to in Article III, paragraph 1,
shall refer to all guaranties authorized under Section III (b)(3)
of the Economic Cooperation Act of 1948, as heretofore amended.