

INVESTMENT GUARANTIES

**Agreement Between the
UNITED STATES OF AMERICA
and PORTUGAL**

**Resuming and Interpreting
the Agreement of May 22 and 25, 1953**

**Effected by Exchange of Notes
Signed at Lisbon October 31
and November 10, 1977**



PORTUGAL

Investment Guaranties

Agreement resuming and interpreting the agreement of May 22 and 25, 1953.

Effected by exchange of notes

Signed at Lisbon October 31 and November 10, 1977;

Entered into force November 10, 1977.

The American Ambassador to the Portuguese Minister of Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 275

LISBON, *October 31, 1977*

EXCELLENCY:

I have the honor to refer to the agreement effected by the exchange of notes on May 22 and 25, 1953,¹ between our two governments on the subject of United States Government investment insurance and guaranties.

The United States Government is pleased to advise that if your government agrees, the United States investment incentive programs which are authorized by the aforementioned agreement and which are now administered by the Overseas Private Investment Corporation can be resumed in connection with activities authorized by the competent Portuguese authorities.

My government is pleased to advise, further, that it does not interpret the provisions of the aforementioned agreement relating to subrogation of the United States of America to imply an admission that the Government of Portugal is responsible in the amount paid under such insurance or guaranties. Rather, it is the understanding of my government that the amount of liability of the Government of Portugal, if any, with respect to any claim to which the Government of the United States of America might be subrogated pursuant to subparagraph A of said agreement would be based on the laws of Portugal, on applicable international law or agreements and on the terms of any arrangements or agreements entered into by the Government of Portugal involving the investment to which the claim relates.

¹ TIAS 2826; 4 UST 1596.

If this proposal and understanding is acceptable to the Government of Portugal, it is suggested that you reply by note.

Accept, Excellency, the assurances of my highest consideration.

FRANK C. CARLUCCI

His Excellency

DR. MARIO SOARES,
*Minister of Foreign Affairs,
Republic of Portugal,
Lisbon.*

*The Portuguese Minister of Foreign Affairs to the American
Ambassador*

MINSITÉRIO DOS NEGÓCIOS ESTRANGEIROS
GABINETE DO MINISTRO

5396

LISBOA, 10 de Novembro de 1977

EXCELENCIA

Tenho a honra de acusar a recepção da Nota nº 275, de 31 de Outubro último, do seguinte teor:

"I have the honor to refer to the agreement effected by the exchange of notes on May 22 and 25, 1953, between our two governments on the subject of United States Government investment insurance and guaranties.

"The United States Government is pleased to advise that if your government agrees, the United States investment incentive programs which are authorized by the aforementioned agreement and which are now administered by the Overseas Private Investment Corporation can be resumed in connection with activities authorized by the competent Portuguese authorities.

"My government is pleased to advise, further, that it does not interpret the provisions of the aforementioned agreement relating to subrogation of the United States of America to imply an admission that the Government of Portugal is responsible in the amount paid under such insurance or guaranties. Rather, it is the understanding of my government that the amount of liability of the Government of Portugal, if any, with respect to any claim to which the Government of the United States of America might be subrogated pursuant to subparagraph A of said agreement would be based on the laws of Portugal, on applicable international law or agreements and on the terms of any arrangements or agreements entered into by the Government of Portugal involving the investment to which the claim relates.

TIAS 8977

"If this proposal and understanding is acceptable to the Government of Portugal, it is suggested that you reply by note."

Em resposta, tenho a honra de informar de que o Governo português dá a sua concordância à proposta de V.Exa. constituindo a Nota de V.Exa. em referência e a presente Nota um acordo entre os nossos dois Governos.

Queira aceitar, Excelência, os protestos da minha mais elevada consideração.

MÁRIO SOARES

Sua Excelência
FRANK C. CARLUCCI
Embaixador dos Estados Unidos da América
Lisboa

Translation

MINISTRY OF FOREIGN AFFAIRS
OFFICE OF THE MINISTER

No. 5396

LISBON, *November 10, 1977*

EXCELLENCY:

I have the honor to acknowledge receipt of Note No. 275 of October 31, 1977, the text of which reads as follows:

[For the English language text, see pp. 2-3.]

In reply, I have the honor to advise that, inasmuch as the Portuguese Government concurs in Your Excellency's proposal, Your Excellency's note as cited above and this note constitute an agreement between our two Governments.

Accept, Excellency, the assurances of my highest consideration.

MÁRIO SOARES

His Excellency
FRANK C. CARLUCCI,
Ambassador of the United States of America,
Lisbon.

ECONOMIC COOPERATION

Agreement between the
UNITED STATES OF AMERICA
and PORTUGAL

Amending Agreement of September 28,
1948, as Amended

- Effected by Exchange of Notes
Signed at Washington May 22
and 25, 1953
- Entered into force May 26, 1953



The Acting Secretary of State to the Portuguese Ambassador

DEPARTMENT OF STATE

WASHINGTON

May 22, 1953.

EXCELLENCY :

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 Portugal, signed at Lisbon, on September 28, 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 Portugal:

The Governments of Portugal and of the United States of America will, upon the request of either of them, consult respecting projects in Portugal 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 Portugal in accordance with the provisions of the aforesaid Section, the Government of Portugal 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 Portugal 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 Portugal 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

¹ Treaties and Other International Acts Series 1819; 62 Stat., pt. 3, p. 2859.

² TIAS 2033; 1 UST 169; TIAS 2279; 2 UST 1298; and TIAS 2801.

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

from any source other than the Government of the United States of America;

- b. That escudo amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that accorded, at the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such escudo amounts will be freely available to the Government of the United States of America for administrative expenditures in Portugal.
- c. That any claim against the Government of Portugal 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 the subject of direct negotiations between the two Governments. If, within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

If this proposal is acceptable to the Government of Portugal, 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 Acting Secretary of State:

LIVINGSTON T. MERCHANT

His Excellency

Senhor LUIS ESTEVES FERNANDES,
Ambassador of Portugal.

¹ May 26, 1953.

The Portuguese Ambassador to the Acting Secretary of State

PORTUGUESE EMBASSY
WASHINGTON

May 25, 1953

Proc. 12
No. . . 12

EXCELLENCY:

I have the honor to acknowledge the receipt of your note of May 22, 1953, 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 Portugal, signed at Lisbon, on September 28, 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 Portugal:

The Governments of Portugal and of the United States of America will, upon the request of either of them, consult respecting projects in Portugal 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 Portugal in accordance with the provisions of the aforesaid Section, the Government of Portugal 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 Portugal 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 Portugal 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 escudo amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that accorded, at

the time of such acquisition, to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such escudo amounts will be freely available to the Government of the United States of America for administrative expenditures in Portugal.

- c. That any claim against the Government of Portugal 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 the subject of direct negotiations between the two Governments. If, within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government.

If this proposal is acceptable to the Government of Portugal, 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 Portugal 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, Excellency, the renewed assurances of my highest consideration.

L. ESTEVES FERNANDES

The Honorable
WALTER BEDELL SMITH
The Acting Secretary of State
etc. etc. etc.

ECONOMIC COOPERATION WITH PORTUGAL

Under Public Law 472—80th Congress

Agreement Between the
UNITED STATES OF AMERICA
and PORTUGAL

- Signed at Lisbon September 28, 1948
- Entered into Force September 28, 1948



**ECONOMIC COOPERATION AGREEMENT BETWEEN THE
UNITED STATES OF AMERICA AND PORTUGAL**

Preamble

The Governments of the United States of America and Portugal:

Recognizing that the restoration or maintenance in European countries of principles of individual liberty, free institutions, and genuine independence rests largely upon the establishment of sound economic conditions, stable international economic relationships, and the achievement by the countries of Europe of a healthy economy independent of extraordinary outside assistance;

Recognizing that a strong and prosperous European economy is essential for the attainment of the purposes of the United Nations;

Considering that the achievement of such conditions calls for a European recovery plan of self-help and mutual cooperation, open to all nations which cooperate in such a plan, based upon a strong production effort, the expansion of foreign trade, the creation or maintenance of internal financial stability and the development of economic cooperation, including all possible steps to establish and maintain valid rates of exchange and to reduce trade barriers;

Considering that in furtherance of these principles the Government of Portugal has joined with other like-minded nations in a Convention for European Economic Cooperation signed at Paris on April 16, 1948^[1] under which the signatories of that Convention agreed to undertake as their immediate task the elaboration and execution of a joint recovery program, and that the Government of Portugal is a member of the Organization for European Economic Cooperation created pursuant to the provisions of that Convention;

Considering also that, in furtherance of these principles the Government of the United States of America has enacted the Economic Cooperation Act of 1948, ^[2] providing for the furnishing of assistance by the United States of America to nations participating in a joint program for European recovery, in order to enable such nations through their own individual and concerted efforts to become independent of extraordinary outside economic assistance;

Taking note that the Government of Portugal has already expressed

¹ Department of State publication 3145.

² Public Law 472, 80th Cong., *post*, pp. 24 ff.

its adherence to the purposes and policies of the Economic Cooperation Act of 1948;

Desiring to set forth the understandings which govern the furnishing of assistance by the Government of the United States of America under the Economic Cooperation Act of 1948, the receipt of such assistance by Portugal, and the measures which the two Governments will take individually and together in furthering the recovery of Portugal as an integral part of the joint program for European recovery;

Have agreed as follows:

Article I

(Assistance and Cooperation)

1. The Government of the United States of America undertakes to cooperate with the Government of Portugal in furthering the purposes set forth in the Preamble by facilitating the acquisition by Portugal of such commodities as it may require from the United States of America in carrying out the joint program for European recovery, and as may be agreed from time to time by the two Governments. This undertaking on the part of the Government of the United States of America is subject to all the terms, conditions and termination provisions of the Economic Cooperation Act of 1948, acts amendatory and supplementary thereto and appropriation acts thereunder.

2. The Government of Portugal, acting individually and through the Organization for European Economic Cooperation consistently with the Convention for European Economic Cooperation signed at Paris on April 16, 1948, will exert sustained efforts in common with other participating countries speedily to achieve through a joint recovery program economic conditions in Europe essential to lasting peace and prosperity and to enable the countries of Europe participating in such a joint recovery program to become independent of extraordinary outside economic assistance within the period of this Agreement. The Government of Portugal reaffirms its intention to take action to carry out the provisions of the General Obligation of the Convention for European Economic Cooperation, to continue to participate actively in the work of the Organization for European Economic Cooperation, and to continue to adhere to the purposes and policies of the Economic Cooperation Act of 1948.

3. With respect to assistance furnished by the Government of the United States of America to Portugal and procured from areas outside the United States of America, its territories and possessions, the Government of Portugal will cooperate with the Government of the United States of America in ensuring that procurement will be effected at reasonable prices and on reasonable terms and so as to

arrange that the dollars thereby made available to the country from which the assistance is procured are used in a manner consistent with any arrangements made by the Government of the United States of America with such country.

Article II

(General Undertakings)

1. In order to achieve the maximum recovery through the employment of assistance received from the Government of the United States of America, the Government of Portugal will use its best endeavors:

- a) to adopt or maintain the measures necessary to ensure efficient and practical use of all the resources available to it, including
 - (i) such measures as may be necessary to ensure that the commodities and services obtained with assistance furnished under this Agreement are used for purposes consistent with this Agreement and, as far as practicable, with the general purposes outlined in the schedules furnished by the Government of Portugal in support of the requirements of assistance to be furnished by the Government of the United States of America; and
 - (ii) the observation and review of the use of such resources through an effective follow-up system approved by the Organization for European Economic Cooperation;
- b) to promote the development of industrial and agricultural production on a sound economic basis; to achieve such production targets as may be established through the Organization for European Economic Cooperation;
- c) to cooperate with other participating countries in facilitating and stimulating an increasing interchange of goods and services among the participating countries and with other countries and in reducing public and private barriers to trade among themselves and with other countries.

2. Taking into account Article 8 of the Convention for European Economic Cooperation looking toward the full and effective use of manpower available in the participating countries, the Government of Portugal will accord sympathetic consideration to proposals made in conjunction with the International Refugee Organization directed to the largest practicable utilization of manpower available in any of the participating countries in furtherance of the accomplishment of the purposes of this Agreement.

3. The Government of Portugal will take the measures which it deems appropriate, and will cooperate with other participating countries, to prevent, on the part of private or public commercial enterprises, business practices or business arrangements affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices or arrangements have the effect of interfering with the achievement of the joint program of European recovery.

Article III

(Guaranties)

1. The Governments of the United States of America and Portugal will, upon the request of either Government, consult respecting projects in Portugal 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 Portugal 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 escudos, or credits in escudos, 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 IV

(Access to Materials)

1. The Government of Portugal will facilitate the transfer to the United States of America, for stockpiling or other purposes, of materials originating in Portugal which are required by the United States of America as a result of deficiencies or potential deficiencies in its own resources, upon such reasonable terms of sale, exchange, barter or otherwise, and in such quantities, and for such period of time, as may be agreed to between the Governments of the United States of America and Portugal, after due regard for the reasonable requirements of Portugal for domestic use and commercial export of such materials. The Government of Portugal will take such specific measures as may be necessary to carry out the provisions of this paragraph, including the promotion of the increased production of such materials within Portugal, and the removal of any hindrances to the transfer of such materials to the United States of America. The Government of Portugal will, when so requested by the Government of the United States of America, enter into negotiations for detailed arrangements necessary to carry out the provisions of this paragraph.

2. The Governments of the United States of America further agree that such claims may be referred, in lieu of any arbitral tribunal mutually agreed upon.

3. It is further understood that neither Government may claim pursuant to this Article until its national remedies available to him in the administrative and judicial of the country in which the claim arose.

4. The provisions of this Article shall be in all respects without prejudice to other rights of access, if any, of either Government to the International Court of Justice or other arbitral tribunal. The espousal and presentation of claims based upon either Government of rights and duties arising under the provisions or principles of international law.

Article X

(Definitions)

As used in this Agreement:

a) Portugal means the Republic of Portugal, (including the Azores Islands and the Madeira Islands) together with the territories under its administration, including the Cape Verde Islands, Portuguese Guinea (the fortress of Sao Joao Baptista de Namora and Principe, Angola, Mozambique, Portuguese India, Goa, Damao, Diu), Macao and Portuguese Timor.

b) The term "participating country" means

- (i) any country which signed the Report of the European Economic Cooperation at Paris in 1947, and territories for which it has international responsibility and to which the Economic Cooperation Agreement concluded between that country and the United States of America has been applied;
- (ii) any other country (including any of the zones of Germany, and areas under international administration or control, and the Free Territory of Trieste zones) wholly or partly in Europe, together with areas under its administration

for so long as such country is a party to the Convention for Economic Cooperation and adheres to a joint program of economic recovery designed to accomplish the purposes of the

Article XI

(Entry into Force, Amendment, Duration)

1. This Agreement shall become effective on this day's date. Subject to the provisions of paragraphs 2 and 3 of this Article, it shall remain in force until June 30, 1953, and, unless at least six months before June 30, 1953, either Government shall have given notice in writing to the other of intention to terminate the Agreement on that date, it shall remain in force thereafter until the expiration of six months from the date on which such notice shall have been given.

2. If, during the life of this Agreement, either Government should consider there has been a fundamental change in the basic assumptions underlying this Agreement, it shall so notify the other Government in writing and the two Governments will thereupon consult with a view to agreeing upon the amendment, modification or termination of this Agreement. If, after three months from such notification, the two Governments have not agreed upon the action to be taken in the circumstances, either Government may give notice in writing to the other of intention to terminate this Agreement. Then, subject to the provisions of paragraph 3 of this Article, this Agreement shall terminate six months after the date of such notice of intention to terminate; provided, however, that Article IV and paragraph 3 of Article VI shall remain in effect until two years after the date of such notice of intention to terminate, but not later than June 30, 1953.

3. Subsidiary agreements and arrangements negotiated pursuant to this Agreement may remain in force beyond the date of termination of this Agreement and the period of effectiveness of such subsidiary agreements and arrangements shall be governed by their own terms. Paragraph 2 of Article III shall remain in effect for so long as the guaranty payments referred to in that Article may be made by the Government of the United States of America.

4. This Agreement may be amended at any time by agreement between the two Governments.

5. The Annex to this Agreement forms an integral part thereof.

6. This Agreement shall be registered with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the respective representatives, duly authorized for the purpose, have signed the present Agreement.

DONE at Lisbon, in duplicate, in the English and Portuguese languages, both texts authentic, this 28th day of September, 1948.

[SEAL]

LINCOLN MACVEAGH

[SEAL]

JOSÉ CAEIRO DA MATTA

3. O Governo Português tomará as medidas que julgar apropriadas e cooperará com outros países participantes no sentido de evitar da parte de empresas comerciais públicas ou privadas, práticas ou entendimentos de natureza comercial, que afectando o comércio internacional, entravem a concorrência, restrinjam o acesso aos mercados ou auxiliem a fiscalização com carácter de monopólio, em todos os casos em que tais práticas ou entendimentos vão interferir na consecução do programa comum de recuperação europeia.

ARTIGO III

(Garantias)

1. O Governo dos Estados Unidos da América e o Governo Português consultar-se-ão, a pedido de qualquer das duas partes, sobre os projectos apresentados em Portugal por subditos dos Estados Unidos da América, e acerca dos quais o mesmo Governo dos Estados Unidos da América pode consequentemente nos termos da secção III (b) (3) da Lei de Cooperação Económica de 1948 conceder garantias de transferência de fundos.

2. O Governo Português concorda em que, se o Governo dos Estados Unidos da América efectuar pagamentos em dolares americanos a qualquer pessoa, ao abrigo das garantias acima indicadas, os escudos ou créditos em escudos, destinados ou transferidos para o Governo dos Estados Unidos da América em consequência do disposto naquela secção, serão reconhecidos como propriedade do Governo dos Estados Unidos da América.

ARTIGO IV

(Possibilidade de aquisição de certos produtos)

1. Com o fim da constituição de "stocks" ou qualquer outro, o Governo Português facilitará a transferência para os Estados Unidos da América de produtos originários de Portugal de que os Estados Unidos tenham necessidade motivada pela insuficiência efectiva ou eventual dos seus próprios recursos, em condições razoáveis de venda, de câmbio, de troca ou outras, durante um período e em quantidades a determinar, de comum acordo entre o Governo Português e o Governo dos Estados Unidos da América, tendo em conta as necessidades razoáveis de Portugal no que diz respeito ao consumo interno e ao comércio de exportação desses produtos. O Governo Português tomará as medidas apropriadas que se tornem necessárias à execução das disposições deste parágrafo, incluindo o fomento da produção em Portugal desses produtos e a supressão de todos os obstáculos que se oponham à sua transferência para os Estados Unidos da América.