BILATERAL · NOVEMBER 19, 1985

35/11053

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Excellency,

I have the honor to acknowledge receipt of your Note dated 19 November, 1985 which reads as follows:

"Excellency,

I have the honor to refer to discussions which have-recently taken place between representatives of our two Governments relating to Canadian investments in the Republic of the Philippines which would further the development of economic relations between Canada and the Republic of the Philippines, and to insurance of such investments by the Government of Canada, through its agent the Export Development Corporation. I also have the honor to confirm the following understandings reached as a result of those discussions:

1. In the event of a payment under a contract of investment insurance for any loss by reason of:

a) War, riot, insurrection, revolution or rebellion in the Republic of the Philippines;

b) Expropriation, confiscation, deprivation of use, or arbitrary seizure of any property by a Government or any Agency thereof, in the Republic o£ the Philippines;

c) Any action by a Government or Agency thereof, in the Republic of the Philippines, other than action of the kind described in sub-paragraph (b) that deprives the investor of any rights in, or in connection with, an investment; or

d) Any action by a Government, or an Agency thereof, in the Republic of the Philippines, that prohibits or restricts the transfer of any money or the removal of any property from that, country, the Export Development Corporation, hereinafter called, the "Insuring Agency", is hereby authorized by the Government of the Republic of the Philippines to exercise the rights having devolved on it by law or having been assigned to it by the predecessor in title.

2. But to the extent that, the laws of the Republic of the Philippines partially or wholly invalidate the acquisition of any interest in any property within its national territory by the Insuring Agency, the Government of the Republic of the Philippines shall permit the investor and the Insuring Agency to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Republic of the Philippines.

3. The Insuring Agency shall assert no greater rights than those of the transferring investor under the laws of the Republic of the Philippines with respect to any interest transferred or succeeded to as contemplated in paragraph 1.

4. Should the said Insuring Agency acquire, under investment insurance contracts, amounts and credits of the lawful currency, of the Government of the Republic of the Philippines, the said Government of the Republic of the Philippines, shall accord to those funds treatment no different than that which it would accord if such funds were to remain with the investor, and such-funds shall be freely available to the Government of Canada to meet its expenditures in the national territory of the Republic of the Philippines.

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5. This Agreement shall apply only with respect to insured investments in projects or activities which are permitted by and registered as such with the Government of the Republic of the Philippines where the Government of the Republic of the Philippines required such registration at the time that the insured investment was made.

6. a) " Differences "between the two Governments concerning the interpretation and application of provisions of this Agreement", or any claim in connection with the insurance of any investments insured in accordance with this Agreement against either of the two Governments which, in the opinion of the other, present a question of public international law, shall he settled, insofar as possible, through negotiations between the two Governments. If such differences cannot be resolved within a period of three months following the request of such negotiations, they shall be submitted, at the request of either Government, to an ad hoc tribunal for settlement in accordance with the rules agreed upon by the parties and applicable principles and rules of public international law.

> b) The arbitral tribunal shall consist of three members and shall be established as follows: each Government shall appoint one arbitrator; a third member, who shall act as Chairman, shall be appointed by the other two members. The Chairman shall not be a national of either country. The arbitrators shall be appointed within two months and the Chairman within three months of the date of receipt of either Government's request for arbitration.
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> c) If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the Secretary General of the United Nations to make any necessary appointments. If the Secretary General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the President of the International Court of Justice shall be invited to make necessary appointments.
>
> d) If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the next senior judge of this Court who is not a national of either country.
>
> e) The arbitral tribunal shall decide by a majority vote. Its decision shall be final and binding on both Governments. Each of the Governments shall pay the expenses of its member and its representation in the proceedings before the arbitral tribunal; expenses of the Chairman and other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt other regulations concerning costs. In all other matters, the arbitral tribunal shall regulate its own procedures. Only the respective Governments may request arbitral procedure and participate in it.

7. a) If either Government considers it desirable to modify the provisions of this Agreement, this procedure may be carried out through a request for consultation and/or by correspondence and shall begin not later than sixty (60) days from the date of the request.

> b) The modification of the Agreement agreed between the two Governments shall enter into force upon their confirmation on a date which shall be mutually agreed upon by an Exchange of Notes.

I have the honor to propose that, if the foregoing is acceptable to your Government this Note, which is authentic in English and French, and your reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. This Agreement shall continue in force until terminated by either Government on six months' notice in writing to the other. In the event of termination, the provisions of the Agreement shall continue to apply, in respect of insurance contracts issued by the Government of Canada while the Agreement was in force, for the duration of these contracts, provided that in no case shall the Agreement continue to apply to such contracts for a period longer than 15 years after the termination of this Agreement.

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

In reply, I have the honor to inform you that the Philippine Government confirms the understandings as set up in your Note, and will regard that Note and this reply as constituting an agreement between the Government of the Republic of the Philippines and the Government of Canada, the agreement to enter into force on the date of this reply.

Accept, Excellency, the assurances of my highest consideration.

(Sgd.)
SALVADOR H. LAUREL
Vice-President
Minister for Foreign Affairs

His Excellency
Russel H. Davidson
Ambassador of Canada
Manila

MANILA, November 19, 1986

No. 236/86

Excellency,

On the occasion of the signature of the Agreement on Foreign Investment Insurance between Canada and the Republic of the Philippines, I wish to assure you that the Government of Canada will provide for reciprocal treatment with regard to all provisions of the aforesaid Agreement as regards insured investments made by nationals and corporations of the Republic of the Philippines in Canada in accordance with the Canadian laws and regulations, on the understanding that provincial concurrence and, if appropriate, legislation will be required in respect of matters, which, under Canadian law, fall within the legislative jurisdiction of the provinces. If the above is acceptable to the Government of the Republic of the Philippines, I have the honour to propose that this Letter, which is authentic in English and French, and your reply to that effect, will constitute an understanding between our two Governments.

Please accept, Excellency, the renewed assurances of my highest consideration.

(Sgd.)
R.H. Davidson
Ambassador

His Excellency Salvador H. Laurel
Vice-President
Republic of the Philippines

MANILA, November 19, 1986

No. 235/86

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Governments relating to Canadian investments in the Republic of the Philippines which would further the development of economic relations between Canada and the Republic of the Philippines and to insurance of such investments by the Government of Canada, through its agent the Export Development Corporation. I also have the honour to confirm the following understandings reached as a result of those discussions:

1. In the event of a payment under a contract of investment insurance for any loss by reason of:

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b) expropriation, confiscation, deprivation of use, or arbitrary seizure of any property by a Government, or any Agency thereof, in the Republic of the Philippines;

c) any action by a Government or Agency thereof, in the Republic of the Philippines other than action of the kind described in subparagraph (b) that deprives the investor of any rights in, or in connection with, an investment; or

d) any action by a Government, or any Agency thereof, in the Republic of the Philippines that prohibits or restricts the transfer of any money or the removal of any property from that country;

the Export Development Corporation, hereinafter called the "Insuring Agency", is hereby authorized by the Government of the Republic of the Philippines to exercise the rights having devolved on it by law or having been assigned to it by the predecessor in title.

2. But to the extent that the laws of the Republic of the Philippines partially or wholly invalidate the acquisition of any interest in any property within its national territory by the Insuring Agency, the Government of the Republic of the Philippines shall permit the investor and the Insuring Agency to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Republic of the Philippines.

3. The Insuring Agency shall assert no greater rights than those of the transferring investor under the laws of the Republic of the Philippines with respect to any interest transferred or succeeded to as contemplated in paragraph 1.

4. Should the said Insuring Agency acquire, under investment insurance contracts, amounts and credits of the lawful currency of the Government of the Republic of the Philippines, the said Government of the Republic of the Philippines shall accord to those funds treatment no different than that which it would accord if such funds were to remain with the investor, and such funds shall be freely available to the Government of Canada to meet its expenditures in the national territory of the Republic of the Philippines.

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6. (a) Differences between the two Governments concerning the interpretation and application of provisions of this Agreement, or any claim in connection with the insurance of any investments insured in accordance with this Agreement against either of the two Governments which, in the opinion of the other, present a question of public international law, shall be settled, insofar as possible, through negotiations between the two Governments. If such differences cannot be resolved within a period of three months following the request for such negotiations, they shall be submitted, at the request of either Government, to an ad hoc tribunal for settlement in accordance with the rules agreed upon by the parties and applicable principles and rules of public international law.

(b) The arbitral tribunal shall consist of three members and shall be established as follows: each Government shall appoint one arbitrator; a third member, who shall act as Chairman, shall be appointed by the other two members. The Chairman shall not be a national of either country. The arbitrators shall be appointed within two months and the Chairman within three months of the date of receipt of either Government's request for arbitration.

(c) If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the Secretary General of the United Nations to make any necessary appointments. If the Secretary General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the President of the International Court of Justice shall be invited to make the necessary appointments.

(d) If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the next senior judge of this Court who is not a national of either country.

(e) The arbitral tribunal shall decide by a majority vote. Its decision shall be final and binding on both Governments. Each of the Governments shall pay the expenses of its member and its representation in the proceedings before the arbitral tribunal; expenses of the Chairman and other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt other regulations concerning costs. In all other matters, the arbitral tribunal shall regulate its own procedures. Only the respective Governments may request arbitral procedure and participate in it.

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