ANTIGUA
AND
BARBUDA

Treaty Series No. 38 (1987)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Antigua and Barbuda

for the Promotion and Protection of Investments

St. Johns, 12 June 1987

[The Agreement entered into force on 12 June 1987]

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 1987

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AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED
OF GREAT BRITAIN AND NORTHERN IRE]
AND
THE GOVERNMENT OF ANTIGUA AND BAR
FOR THE PROMOTION AND PROTECTION OF IN'

The Government of the United Kingdom of Great Britain and
the Government of Antigua and Barbuda;

Desiring to create favourable conditions for greater investm
companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protectio
agreement of such investments will be conducive to the stimulation
initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, th
includes:

(i) movable and immovable property and any other prop
mortgages, liens or pledges;

(ii) shares, stock and debentures of companies or interests in
companies;

(iii) claims to money or to any performance under contract havi

(iv) intellectual property rights and goodwill;

(v) business concessions conferred by law or under contract, inc
search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not aff
investments and the term "investment" includes all investments,
or after the date of entry into force of this Agreement;

(b) "returns" means the amounts yielded by an investment and in p
exclusively, includes profit, interest, capital gains, dividends, ro

(c) "nationals" means:

(i) in respect of the United K...

(e) "territory" means:

(i) in respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(ii) in respect of Antigua and Barbuda: the islands of Antigua, Barbuda and Redonda and all other areas that were comprised in Antigua on 31st October 1981 together with such other areas as may be declared by Act of Parliament to form part of the territory of Antigua and Barbuda, as provided by the Antigua and Barbuda Constitution Order 1981.

ARTICLE 2

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws currently in force, shall admit such capital.

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 3

National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Notwithstanding paragraphs (1) and (2) above, in exceptional circumstances either Contracting Party is entitled in specific cases and on special grounds to give different treatment to the nationals or companies of a third State where there is good reason to justify this.

ARTICLE 4

Compensation for Losses

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State.

(2) Without prejudice to paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from

(a) requisitioning of their property by its forces or authorities, or

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or reasonable compensation. Resulting payments shall be freely transferable within a reasonable time having regard to the availability of foreign exchange. In any case, transfer will be made on terms not less favourable than those provided in Article 6.

ARTICLE 5

Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with the provisions of a law applicable to taking of possession and acquisition upon the payment of reasonable compensation within a reasonable time, meaning prompt, adequate and effective compensation, and in accordance with due process of law. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a commercially reasonable rate, such as the International Bank for Reconstruction and Development lending rate or other market oriented rates, from the date of expropriation until the date of payment; shall be made without delay in that the expropriating Contracting Party shall diligently and expeditiously carry out any necessary procedures to pay the compensation, be effectively realizable and be freely transferable at the prevailing market rate of exchange on the date of expropriation. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a court or independent tribunal having jurisdiction to determine the matter, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

ARTICLE 6

Repatriation of Investment and Returns

(1) Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns. However, either Contracting Party may in exceptional balance of payments difficulties exercise equitably and in good faith powers conferred by its laws to defer transfer for a limited period, other than transfers of profits, interest, dividends, royalties and fees, which shall not be impeded. All other returns, including the proceeds of sale or the liquidation of an investment shall be allowed within a reasonable time, having regard to the availability of foreign exchange, but in any event at a rate not less than 20 per cent a year.

(2) Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

ARTICLE 7

Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from

(a) any existing common market agreement or any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 8

Settlement of Disputes between an Investor and a Host State

(1) Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall after a period of three months from written notification of a claim be submitted to international arbitration if either party to the dispute so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965[1] and the Additional Facility for the Administration of Conciliation, Arbitration and Fact Finding Proceedings); or

(b) the Court of Arbitration of the International Chamber of Commerce; or

(c) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim there is no agreement to an alternative procedure, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

ARTICLE 9

Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

[1] Treaty Series No. 25 (1967), Cmnd. 3255.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

ARTICLE 10

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

ARTICLE 11

Territorial Extension

At the time of signature of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 12

Entry into Force

This Agreement shall enter into force on the day of signature.

Article 13

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at St. Johns this twelfth day of June 1987.

For the Government of the United Kingdom of Great Britain and Northern Ireland:	For the Government of Antigua and Barbuda:
K. F. BURNS	L. B. BIRD

Printed by Her Majesty's Stationery Office
1424 Dd 801197 C7 8/87 3173391
ISBN 0 10 101972 6