

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF MALAYSIA CONSTITUTING AN AGREEMENT RELATING TO CANADIAN INVESTMENTS IN MALAYSIA INSURED BY THE GOVERNMENT OF CANADA THROUGH ITS AGENT, THE EXPORT DEVELOPMENT CORPORATION

I

*The High Commissioner of Canada to the Minister of Commerce and Industry of Malaysia*

Kuala Lumpur, July 30, 1971

EXCELLENCY,

I have the honour to refer to discussions which have recently taken place between representatives of our two governments relating to investments in Malaysia which would further the development of economic relations between Malaysia and Canada, and guarantees 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 by the Export Development Corporation under a contract of insurance for any loss by reason of

- (a) war, riot, insurrection, revolution or rebellion in Malaysia;
- (b) the arbitrary seizure, expropriation, confiscation or deprivation of use of any property by a government, or agency thereof, in Malaysia;
- (c) any action by a government, or agency thereof, in Malaysia, other than action of the kind described in paragraph (b) that deprives the investor of any right in, or in connection with, an investment; and
- (d) any action by a government or agency thereof, in Malaysia, that prohibits or restricts transfer of any money or removal of any property from that country;

the Corporation will be recognized by the Government of Malaysia and by the laws of Malaysia as successor to, or subrogated to all the rights of the investor for the purpose of recovering the amount of that loss.

2. In the event that the laws of Malaysia partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Government of Canada, the Government of Malaysia shall permit the investor and the Government of Canada to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of Malaysia.

3. The Government of Canada shall assert no greater rights than those of the transferring investor under the laws of Malaysia with respect to any interest transferred or succeeded to as contemplated in subparagraph 1. The Government of Canada does, however, reserve its right to assert a claim in its sovereign capacity in the event of a denial of justice or other question of state responsibility as defined in international law.