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POTASH: TEXT OF CANADIAN NOTE
TO THE U. S. EMBASSY
MARCH 23, 1976

DEPARTMENT OF EXTERNAL AFFAIRS
MINISTÈRE DES AFFAIRES EXTÉRIEURES

The Department has also taken note of the concern expressed in the Embassy's Aide Mémoire that there is considerable potential that the confidence of investors in Saskatchewan or elsewhere in Canada may be undermined as a consequence of the Saskatchewan action with respect to the potash industry. As the Embassy is aware, the Canadian Government continues to welcome to Canada foreign investment which provides significant benefit to Canada. Similarly, it is the understanding of the Canadian authorities that the Government of Saskatchewan will continue to welcome foreign investment which provides significant benefits to that province. It would be unfortunate and incorrect if either foreign governments or investors outside of Canada reached contrary conclusions because of the current situation in the potash industry in Saskatchewan, particularly before the outcome of any negotiations conducted by the province with one or more of the potash companies is known.

In its Aide Mémoire the Embassy also questioned what public purpose would be served by Saskatchewan's actions and expressed concern that the province intends to realize additional benefits through control of the supply and price conditions for potash. The purposes of the Saskatchewan legislation have been enunciated by the provincial government and are a matter of public record. Moreover, as the Embassy will be aware, one of the stated aims is to ensure orderly expansion of production of potash in Saskatchewan to meet growing world demand. A second but related purpose announced by the Government of Saskatchewan is to ensure that there is no repetition of the uncoordinated expansion of potash production facilities in the 1960's which had serious implications for the industry. The Canadian authorities recognize the importance of Saskatchewan as a source of supply to the U.S. fertilizer industry, and equally the importance of the U.S. market as an outlet for Canadian production. In this regard, the Government of Saskatchewan has assured the federal authorities that it does not intend to curtail the production of potash with the object of inducing scarcity and artificially forcing up prices.

With regard to international standards of state responsibility, the Department, is aware of U.S. policy concerning expropriation. However, the Department does not believe that this policy necessarily reflects general international practice.

The Department would agree with the United States Embassy that, generally, nationalization measures should not discriminate against nationals of any particular state. It is the Department's view that the issue of discrimination does not arise. In any event, as the State Department is aware, there are Canadian as well as a number of foreign interests involved in the Saskatchewan potash industry, any or all of which might be approached by the Saskatchewan Government.

With respect to compensation, it will be noted that the Saskatchewan legislation provides for payment of compensation, for arbitration of disputes about compensation, and for appeal of decisions of any Arbitration Board to the courts of Canada. It is the Department's view that these provisions meet the procedural requirements of international law.

The Department is confident that the United States Administration would share Canadian concern about the effect on Canada/United States relations of misunderstanding in the United States of the nature of the Saskatchewan action on potash. An example of such misunderstanding would be the Sense of Senate resolution which was recently passed by the United States Senate which had the effect of comparing Saskatchewan's actions on potash with those of OPEC with respect to oil.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

OTTAWA, March-22, 1976