

CHAPTER 327

THE PETROLEUM INDUSTRY (ENCOURAGEMENT) ACT

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 PETROLEUM INDUSTRY (ENCOURAGEMENT)

(2nd January, 1963.)

 21/1962.
 4/1963.
 13/1963.
 31/1980.
 16/1984.
 18/1989.

1. This Act may be cited as the Petroleum Industry (Encouragement) Act. Short title.

2. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them— Interpretation.

"the Agreement" means—

- (i) the agreement entered into on the 28th of March, 1961, by and between the Administrator of Antigua and the Chief Minister of Antigua, acting for and on behalf of the Government of Antigua, and the West Indies Oil Company Limited entitled "CONCESSION AGREEMENT";
- (ii) the agreement entered into on the 9th day of October, 1962, by and between the Minister of Trade, Production and Labour of Antigua, acting for and on behalf of the Government of Antigua, and the West Indies Oil Company Limited entitled "AGREEMENT WITH RESPECT TO BUNKERING SUPPLEMENTARY AND SUBORDINATE TO THE CONCESSION AGREEMENT DATED MARCH 28, 1961";
- (iii) the agreement amending the above specified "CONCESSION AGREEMENT" and "AGREEMENT WITH RESPECT TO BUNKERING" entered into on the 15th day of January, 1980, by and between the Deputy Premier and Minister of Economic Development and Tourism of Antigua, acting for and on behalf of the Government of Antigua, and

National Petroleum Limited entitled "PURCHASE AGREEMENT";

- (iv) the agreement dated the 13th November, 1980, between the Government of Antigua and National Petroleum Limited entitled "ADDENDUM to the Purchase Agreement";
- (v) clause 1 of the Agreement (which relates to marketing) dated 11th December, 1981 between the Government of Antigua and Barbuda, the Antigua National Oil Company, National Petroleum Limited and Inter Maritime Bank entitled "PROTOCOL OF AGREEMENT";

"Antigua and Barbuda" includes the territorial sea thereof;

"bunkering" means the right to import, export, store, sell, blend and deliver marine goods and products from, on or through the Company's bunkering installation, but shall not include the delivery of gasoline, benzene, jet fuel, lubricants, greases or goods of a non-petroleum origin to or aboard any aircraft, ship or vessel for use in the operation, propulsion or maintenance thereof;

"bunkering installations" means any plant or facility at which bunkering is conducted;

"Court" means the High Court or a Judge thereof, and a Judge of the Court may do in Chambers any act which the Court is by this Act authorised to do;

"crude oil" means crude petroleum, asphalt and all liquid hydrocarbons in their natural state or obtained from natural gas by condensation or extraction;

"enterprise" means the West Indies Oil Company, Limited, a company incorporated under the laws of Antigua and Barbuda, and includes any company which may legally hold all or a portion of the rights to which the West Indies Oil Company,

Limited, is entitled pursuant to the Agreement and this Act;

"marine goods and products" means all fuel, lubricating oils, greases and other goods which are supplied by petroleum companies for the operation, propulsion or maintenance of ships, vessels and marine engines and equipment;

«material" means any goods, substance, supply, equipment, instrument, tool, machinery, or spare part, whether in raw, semi-finished or processed condition;

"natural gas" means wet gas, dry gas and all other gaseous hydrocarbons produced from oil or gas wells and the residue gas remaining after extraction of liquid hydrocarbons from wet gas;

«operations" means petroleum operations and in addition thereto any other activities or operations by the enterprise in Antigua and Barbuda authorised by the Agreement;

“petroleum" means crude oil and natural gas;

"petroleum operations" means every processing, transportation or sales operation;

"processing facility" means any plant or installation at which a processing operation is conducted;

“processing operation" means the treatment of petroleum by any means or methods, including the distillation, condensation, chemical treatment, refining, separation, blending and compounding thereof, so as to result in a refined product;

"refined product" means any finished or semi-finished hydrocarbon directly or indirectly derived from petroleum by means of distillation, condensation, chemical treatment, refining or other means or process or any substance so derived in which a finished

or semi-finished hydrocarbon is used as an essential part of the processing charge;

"sales operation" includes the distribution, sale, export or disposal of petroleum, refined products or marine goods and products;

"transportation operation" includes the conveyance of petroleum from producing fields or terminals to any processing facility, to distribution facilities, to other transportation facilities or to seaboard and the conveyance of petroleum or refined products from any processing facility to any such point; the storing of petroleum or refined products and the delivery of petroleum or refined products by any means including loading on board ship.

(2) Reference in this Act to any law or to any provision of any law shall, unless the context otherwise requires, include any amendments to such law or provision and to any law or provision thereof replacing the same. References in this Act to any particular Act shall include references to any subsidiary legislation made under that Act.

Ratification of Agreement.

3. The Agreement is hereby ratified and confirmed. The failure in this Act to implement any provision of the Agreement shall not constitute any derogation of such provision or any part thereof, and accordingly, the terms of the Agreement shall remain in every respect fully effective.

Cabinet may make Regulations to implement provisions of the Agreement not mentioned in this Act, and which may have retrospective effect, and give retrospective effect to provisions of the Act.

4. (1) The Cabinet may make Regulations—

(a) giving effect to the provisions of this Act; and

(b) implementing the Agreement (in a manner not inconsistent therewith) with respect to any matter for which no provision is made in this Act.

(2) Without prejudice to the generality of the provisions of section 3 of this Act, or the powers conferred by subsection (1) of this section, Regulations may be made under the preceding subsection specifying—

(a) the steps which may be taken, and the persons by whom they may be taken, to prevent a breach of

any of the provisions of the Agreement, this Act or any Regulations made thereunder, to assure to the enterprise the rights and privileges accorded by the Agreement, this Act or any Regulations made thereunder;

(b) the punishment upon summary conviction of any person found guilty of any breach of the provisions of the Agreement, this Act or any Regulations made thereunder:

Provided that in respect of any such breach, no provision shall be made for the imposition of a fine exceeding fifteen thousand dollars or of imprisonment exceeding six months or for the imposition of both a fine and imprisonment;

(c) the punishment upon summary conviction of any person found guilty of violating or impeding the exercise of any right or privilege assured to the enterprise by the Agreement, this Act or any Regulations made thereunder:

Provided that in respect of any such breach, no provision shall be made for the imposition of a fine exceeding fifteen thousand dollars or of imprisonment exceeding nine months or for the imposition of both a fine and imprisonment;

(d) that the provisions of any law (other than this Act), so far as is necessary for the purposes of subsection (1) of this section shall not have effect, or shall have effect with such restrictions or modifications as may be necessary.

(3) Regulations made under the preceding provisions of this section may be made to have retrospective effect. The Cabinet may also make Regulations to give retrospective effect to any of the provisions of this Act in so far as Cabinet may deem it necessary and expedient so to do, for the purpose of implementing the Agreement.

(4) Regulations made under subsection (3) of this section and having or giving retrospective effect may be made to apply either generally or to any particular case or class

of case, and may make different provisions in respect of different cases or classes of cases, and may provide for incidental and consequential matters and may contain conditions, exceptions and qualifications.

(5) All Regulations made under this section shall be laid before Parliament as soon as may be after they are made, and if a resolution is passed by Parliament that the said Regulations be annulled, they shall henceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of new Regulations:

Provided that no new Regulations identical in effect with the Regulations so annulled shall be made within three months from the date on which such Regulations were annulled by resolution of Parliament.

Court to grant injunctions against any person engaging in operations contrary to the provisions of this Act, Regulations made thereunder or the Agreement.

5. The Court upon the application of the Attorney-General or the enterprise may issue an injunction restraining any person from engaging in any operation in respect of which the enterprise has been accorded an exclusive right or privilege under the provisions of the Agreement, this Act or any Regulations made thereunder:

Provided that any relief granted by way of injunction against the infringement of any such right or privilege shall cease to have effect on the expiration of the period in respect of which such right or privilege was granted, or on the 28th day of March, 2001, whichever sooner occurs.

Exemption from Import and Export taxes, fees, imposts, tonnage taxes, and all property taxes real or personal.

6. Notwithstanding anything to the contrary contained in any law for the time being in force—

- (i) the enterprise shall during the period commencing on March 28, 1961 and terminating on April 3, 2008, be entitled to import and export petroleum, refined products and raw materials; including chemicals and catalysts, entering into, resulting from or forming a part of any processing operation, and any marine goods and products, free of any and all import and export taxes, fees, imposts, tonnage taxes or customs duties;

- (ii) the enterprise or any contractor to the enterprise, other than an assignee under the provisions of section 16 of this Act, shall during the period commencing on March 28, 1961 and terminating on March 28, 1991, be entitled to import and export any material required with respect to the construction, operation, alteration, reconstruction, extension, or repair or any processing facility or any bunkering installation of the enterprise or for equipping any such processing facility or bunkering installation or for the efficient conduct of any operations of the enterprise in Antigua and Barbuda, free of any and all import and export taxes, fees, imposts, tonnage taxes or customs duties and any and all property taxes, real and personal:

Provided that, should the enterprise, or any contractor to the enterprise, or any assignee referred to in section 16 of this Act—

(a) sell or dispose of (otherwise than among themselves) any material which has been imported free of customs duties, taxes, fees and other imposts, or

(b) use such material for any purpose other than in connection with an operation authorised by the Agreement

then the enterprise shall be liable to pay the Government any customs duties, taxes, fees, or other imposts which would have been payable on such material if it had been imported in the condition in which it is or was at the time of such improper sale, use or other disposition thereof.

7. During the period commencing March 28, 1961 and terminating on March 28, 2001, all tankers discharging or loading cargo at any bunkering installation of the enterprise shall enjoy total exemption from harbour dues, wharfage, quay dues, tonnage dues and all other charges (except charges for physical port services actually rendered and lighthouse dues).

Tanker discharging at bunkering installation exempt from harbour dues, wharfage, quay dues, tonnage dues, etc.

8. The enterprise for a period commencing on March 28, 1961 and terminating on April 3, 1998, shall be

Exemption from Income Tax.

free of any and all taxes on its income or profits. There shall be calculated in accordance with sound accounting practices any operating loss which may exist at the expiration of the period ending April 3, 1998, which loss may be applied against income or profits in succeeding years until exhausted:

Provided that no such loss shall be carried forward beyond five years from the end of the fiscal period during which the loss originated. The enterprise may charge to an operating account costs incidental to the training of its personnel and to the carrying out of any benefit or pension plan on behalf of its employees.

Exemption from foreign currency levy.
Cap. 175.

9. The enterprise is hereby exempt from the provisions of section 3 of the Foreign Currency Levy Act.

Exemption from Exchange Control.
Cap. 157.

10. The enterprise is hereby exempt from the provisions of the Exchange Control Act.

Terms granted to any third party conducting petroleum operations which are more favourable than present agreement to apply to this agreement.

11. (1) If the Government enters into a legally enforceable agreement with a third party the terms of which, insofar as they pertain to petroleum operations, are different from the terms of the Agreement or are more favourable to such third party than are the terms of the Agreement to the enterprise, the enterprise may, at its option, elect to have such terms applied to it, and upon such election such terms (and all tax exemptions therein contained) shall thereafter be applicable to the enterprise:

Provided that the Government shall not thereby become liable to pay to the enterprise any public funds or to provide any other direct financial aid to the enterprise other than such tax exemptions. The enterprise shall not be liable to any tax upon its earnings which may be retained by the enterprise, after provision has been made for the payment of any taxes on its income or profits, or upon dividends paid or payable to the shareholders of the enterprise out of the capital of the enterprise or such retained earnings.

(2) Except to the extent specified in this Act, the enterprise shall be subject to—

Enterprise to be subject to certain non-discriminatory taxes, fees and imposts.

(a) non-discriminatory taxes, fees or imposts of general application which may be levied by the Government including, without limiting the generality of the foregoing, taxes required to be withheld with respect to salaries paid to personnel or payments to contractors or agents for work carried out in Antigua and Barbuda, and

(b) non-discriminatory charges and fees for services rendered to the enterprise by the Government either at the request of the enterprise, or rendered to the enterprise as a member of the general public, and

(c) non-discriminatory taxes and fees of general application, such as, documentary stamp taxes, vehicle registry fees, civil and commercial registry fees, and patent and copyright fees:

Provided that non-discriminatory taxes or fees may be imposed only upon the sale, transfer or use of refined products where—

- (i) such taxes or fees are due from third parties in Antigua and Barbuda, but the collection thereof is required of the enterprise, and
- (ii) the imposition of such tax or fee is imposed upon transactions occurring with respect to such refined products after such products have been conveyed from the storage facilities on the discharge side of any processing facility of the enterprise.

12. During the period commencing on the date of completion of a deep-water harbour at Antigua and terminating on the first day of the fiscal year during which the enterprise shall become liable to pay income tax to the Government, the enterprise shall pay to the Government monthly sums to be computed at the rate of twelve cents East Caribbean Currency for each barrel of fuel delivered from the enterprise to vessels for bunkering under the Agreement, except fuel so delivered to vessels owned and operated by or on behalf of the enterprise in connection with its

Tax imposed on fuel delivered to certain vessels for limited time.

Antiguan operations. For the purposes of this section "barrel of fuel" means 42 U.S. gallons of petroleum or refined products converted to a volume measured at 60° Fahrenheit and under standard atmospheric pressure at seal level.

Shareholder to be exempt from income tax on dividends paid by enterprise.

13. Any income of the enterprise derived from operations of the enterprise and distributed as dividends to its shareholders shall be exempt from income tax payable by such shareholders whether such dividends are paid or payable to shareholders of the enterprise out of the capital of the enterprise, its earnings or its retained earnings after provision has been made for the payment of taxes by the enterprise on its income or profits.

Period of monopoly on processing operations and bunkering operations.

14. No person, other than the enterprise shall engage in—

(a) processing operations within Antigua and Barbuda during the period commencing on the 28th day of March, 1961, and terminating on the 28th day of March, 2001, or

(b) bunkering within Antigua and Barbuda during the period commencing on the ninetieth day after the date on which the enterprise has advised the Government in writing that it is prepared to undertake bunkering in Antigua and Barbuda and terminating on the 28th day of March, 2001.

Extension of time for performance of obligation in event of war or force majeure.

15. Where the exigencies of a general war or any force majeure or other occurrence beyond the control of the enterprise renders impossible or hinders or delays the performance of any obligation specified in the Agreement, the Agreement, and all the time periods set forth herein shall automatically be extended for the duration of such general war, force majeure or occurrence:

Provided that such duration is not less than three calendar months.

Mode of assignment of enterprise.

16. The enterprise may subject to the prior approval of the Governor-General assign to any person all, or any part of, the rights, privileges, immunities and exemptions granted by this Act. The approval of the Governor-General shall not be unreasonably withheld or unduly delayed. Where

any such assignment is made, the word "enterprise" where used in this Act shall be deemed to apply to such assignee; and such assignee shall not be deemed a third party for the purposes of this Act.
