

No. 2771

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

Agreement (with exchange of notes) regarding the settlement of the obligation of the Federal Republic of Germany to the United States of America for surplus property furnished Germany. Signed at London, on 27 February 1953

Official texts: English and German.

Registered by the United States of America on 1 March 1955.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Accord (avec échange de notes) relatif au règlement de l'obligation de la République fédérale d'Allemagne envers les États-Unis d'Amérique au titre des biens en surplus fournis à l'Allemagne. Signé à Londres, le 27 février 1953

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 1^{er} mars 1955.

No. 2771. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY REGARDING THE SETTLEMENT OF THE OBLIGATION OF THE FEDERAL REPUBLIC OF GERMANY TO THE UNITED STATES OF AMERICA FOR SURPLUS PROPERTY FURNISHED GERMANY. SIGNED AT LONDON, ON 27 FEBRUARY 1953

WHEREAS the United States of America (hereinafter called the "United States") furnished economic assistance to Germany between the date of the initial entry of the forces of the United States into Germany during World War II and June 30, 1951; and

WHEREAS one type of such economic assistance has been the furnishing of surplus property to the Laender, the Bizonal Economic Council and other entities acting in the German public interest under the following agreements: (1) the Agreement between the Government of the United States of America and the Bizonal Economic Council dated January 23, 1948;² (2) the Agreement between the United States Army, European Command, and the Bizonal Economic Council of the same date;² and (3) the Agreement commonly known as the Surplus Incentive Materials program, the amount of indebtedness resulting from such program being evidenced by a letter dated June 10, 1949 from the Bipartite Control Office to the Bank Deutscher Laender;² and

WHEREAS the Federal Republic of Germany (hereinafter called the "Federal Republic") has in a letter from the Chancellor of the Federal Republic to the Allied High Commission dated March 6, 1951,³ acknowledged in principle its debt to the United States for economic assistance furnished to Germany since May 8, 1945 to the extent to which it had not already taken over responsibility under Article 133 of the Basic Law for the Federal Republic² and has stated that it was ready to accord the obligations arising from post-war economic assistance priority over all other foreign claims against Germany or German nationals; and

¹ Came into force on 16 September 1953 in accordance with article X.

² Not printed by the Department of State of the United States of America.

³ United Nations, *Treaty Series*, Vol. 106, p. 141.

WHEREAS the United States and the Federal Republic are prepared to agree upon the current amount of the indebtedness arising from the furnishing of surplus property and the terms of payment thereon;

NOW, THEREFORE, the United States and the Federal Republic have entered into the following Agreement :

Article I

The Federal Republic is indebted to the United States in the total amount of two hundred and three million United States dollars (\$203,000,000) for surplus property furnished to the German economy as specified in the preamble of this Agreement. This sum takes into account (a) payments already made by the Federal Republic to the United States prior to January 1, 1953, and (b) reimbursement owing to the Federal Republic by the United States for the reacquisition of certain of the surplus property by the United States and also allowances for expenses and claims in connection therewith except as certain claims are excluded from the waiver in article VII of this Agreement. From the sum of \$203,000,000 shall be deducted the total amount agreed upon in respect of third party claims for damages in accordance with article VII of this Agreement.

Article II

The principal amount of \$203,000,000 as mentioned in the preceding article shall be paid in United States dollars by the Federal Republic to the United States in fifty semiannual installments, beginning on July 1, 1958, and semiannually thereafter. Each installment due on the principal shall be equal to so much of the unpaid portion (as of the first day of that installment period) of the total principal amount as has not previously become payable, divided by the number of installments that have not previously become payable.

Article III

Interest at the rate of $2\frac{3}{8}\%$ per annum payable semiannually shall accrue commencing January 1, 1953, on the outstanding unpaid principal and shall be due and payable in United States dollars by the Federal Republic to the United States on January 1 and July 1 of each year. The first payment of interest shall be made on July 1, 1953.

Article IV

In the event the United States wishes to have currency of the Federal Republic made available for the payment of any or all expenditures in Germany of the United States, the United States may request the Federal Republic at

any time or times to pay, and the Federal Republic agrees to furnish at such time or times, by payment to the United States or to such persons or organizations as the United States may designate, currency of the Federal Republic in an amount not in excess of the total amount of outstanding unpaid principal, plus interest due and payable; provided, however, that consultations will be held between the two parties if the United States should request payment of more than the equivalent of \$40,000,000 in any one twelvemonth period next following July 1 of any year. In the event payment of currency of the Federal Republic is made under the terms of this article, the United States dollar equivalent of the amount paid shall be credited as of the day of payment, first to past due interest, if any, second to the semiannual installment of interest or of principal and interest which is next due and then to the total amount of outstanding unpaid principal. However, the United States dollar equivalent of payments made pursuant to the agreement between the Government of the United States and the Federal Republic for financing certain educational exchange programs of July 18, 1952¹ shall be credited first to past due interest, if any, and then to the total amount of outstanding unpaid principal.

Article V

The rate of exchange to be used with respect to payments under article IV of this Agreement, including payments provided for in the agreement between the Government of the United States and the Federal Republic for financing certain educational exchange programs of July 18, 1952,¹ shall be that rate most favorable to the United States, which on the day of such payment, is available to any person, organization, government or government instrumentality, provided such rate is not unlawful and, if both countries have agreed par values with the International Monetary Fund, is not prohibited by the articles of Agreement of the Fund.²

Article VI

The Federal Republic at any time may anticipate the payment in United States dollars of all or any part of the outstanding principal indebtedness, provided no payment of interest or principal is then past due and unpaid.

Article VII

The Federal Republic on behalf of itself and all persons subject to its jurisdiction hereby releases and discharges the United States and its nationals

¹ United Nations, *Treaty Series*, Vol. 165, p. 167.

² United Nations, *Treaty Series*, Vol. 2, p. 39; Vol. 19, p. 280, and Vol. 141, p. 355.

from any and all claims and liabilities arising out of or in any way relating to the sale and transfer of surplus property by the United States to Germany including but not limited to claims or liabilities based upon :

- (a) Accounting errors or discrepancies,
- (b) Warranties expressed or implied,
- (c) Inventory deficiencies, or
- (d) Reacquisition of such property.

This waiver does not apply to claims for damages lodged by third parties against the Federal Republic or its agencies arising from the reacquisition of certain of the surplus property by the United States. The amounts payable by the United States in connection with such claims shall be subject to negotiation and settlement between the two Governments and the total amount agreed upon shall be deducted from the indebtedness specified in article I of this Agreement. Nor does this waiver apply to direct claims filed with United States government agencies by individuals who acquired title to certain surplus property in Germany but which property was later reacquired by the United States without payment to such individuals.

Article VIII

In consideration of the undertakings of the Federal Republic herein provided, the United States hereby wives all pecuniary claims of the United States against the Federal Republic arising from the sale and transfer of surplus property to Germany other than payments therefor as herein set forth, it being the intent of the United States and the Federal Republic that the pecuniary obligation of the Federal Republic with respect to the three numbered agreements mentioned in the Preamble of this Agreement shall be merged into the undertakings expressed herein and that the present Agreement shall be the sole evidence of the Federal Republic's pecuniary obligation with respect to surplus property furnished Germany, provided that the above-mentioned agreements shall otherwise continue in full force and effect between the United States and the Federal Republic, except that provisions for security and priority in such agreements are hereby superseded by article IX of this Agreement.

Article IX

The Federal Republic agrees that it will accord to the indebtedness covered by this Agreement a treatment with respect to security and to priority of payment and of transfer not less favorable than that accorded to any indebtedness of the

Federal Republic covered by the Agreement on German External Debts and its annexes¹ and the agreements mentioned in the last clause of the preamble thereto. The Federal Republic further agrees that it will accord to the indebtedness covered by this Agreement a treatment with respect to priority of transfer not less favorable than that accorded to any other indebtedness covered by the Agreement on German External Debts and its annexes.

The Federal Republic further agrees that it will not take any action with respect to security and to priority of payment and of transfer accorded to any future loans or credits contracted by it or by persons, organizations or enterprises subject to its jurisdiction which would result in the impairment of the Federal Republic's ability to carry out its obligations regarding the indebtedness covered by this Agreement.

Article X

This Agreement shall enter into force on the date of the entry into force of the Agreement on German External Debts between the Federal Republic on the one hand, and France, the United Kingdom of Great Britain and Northern Ireland, the United States and other nations on the other hand. The contracting parties will exchange instruments confirming that this Agreement has been approved in accordance with their respective constitutional requirements.

IN WITNESS WHEREOF, the undersigned representatives duly authorized thereto by their respective governments have signed this Agreement.

DONE at London on February 27, 1953 in duplicate in the English and German languages, both texts being equally authentic.

For the United States of America :
Warren Lee PIERSON

For the Federal Republic of Germany :
ABS

¹ United States of America : *Treaties and Other International Acts Series 2792.*

EXCHANGE OF NOTES

I

The United States Representative on the Tripartite Commission for German Debts to the Head of German Delegation on External Debts

FOREIGN SERVICE, UNITED STATES OF AMERICA
LONDON, ENGLAND

February 27, 1953

Dear Mr. Abs :

I have the honor to confirm that in the course of our negotiations in connection with the provisions of article IV of the Agreement between the United States of America and the Federal Republic of Germany regarding the Settlement of the Obligation of the Federal Republic of Germany to the United States of America for Surplus Property furnished Germany, the following understandings have been reached :

I

It is the intention of the United States to give the Federal Republic 30 days' notice when payment of currency of the Federal Republic is to be made under the provisions of article IV and to give 90 days' notice when the payment to be made exceeds the equivalent of \$5,000,000.

Moreover, the United States will make every effort to inform the Federal Republic before April 1 of each year as to its approximate requirements for currency of the Federal Republic during the following twelve months.

II

The United States is prepared, during the period ending June 30, 1954, to limit its request for the payment of currency of the Federal Republic to an amount equivalent to \$48 million. Agreement has been reached that payment of the equivalent of the \$48 million referred to above will be made as follows :

<i>Date</i>	<i>U. S. Dollars in Millions</i>
March 1953	5.0
April "	13.0
July "	5.0
October "	5.0
January 1954	5.0
April "	15.0

It is understood that until the Agreement between the United States of America and the Federal Republic of Germany regarding the settlement of the obligation of the Federal Republic of Germany to the United States of America for surplus property furnished Germany comes into effect, the payments referred to in this paragraph will be made pursuant to the provisions of the Surplus Property Agreements, signed January 23, 1948.

III

The United States dollar equivalent of currency of the Federal Republic paid under article IV or paid after January 1, 1953, pursuant to the provisions of the Surplus Property Agreements signed January 23, 1948, shall be applied as of the day of payment in the following manner and order of priority :

- (1) first, credited to past due interest, if any;
- (2) second, an amount shall be set aside equivalent to the next due semiannual installment of interest calculated upon the amount of principal outstanding at the beginning of the semiannual period;
- (3) third, credited to the next due semiannual installment of principal, provided an installment becomes due within six months following the payment; and
- (4) then any remaining balance shall be credited to outstanding unpaid principal.

At the time the next semiannual installment of interest would have become due the interest shall be recalculated, taking into account any credits to principal during the preceding six-month period, and any excess amount which may have been set aside under (2) above, shall as of that date be credited first to the installment of principal due on that date, and then to outstanding unpaid principal.

IV

The understandings set forth above constitute the arrangements agreed upon by our governments for carrying out the agreements referred to in the second paragraph of the preamble of the Agreement signed this day for the settlement of the obligation of the Federal Republic of Germany to the United States of America for the surplus property furnished Germany and the terms of article IV of the last-named Agreement. These arrangements will take effect upon the receipt of your reply confirming them. However, insofar as these arrangements carry out the terms of article IV of the Agreement, they will become effective upon the exchange of instruments referred to in article X of the Agreement.

I will appreciate it if you will confirm the concurrence of your Government in the foregoing understandings.

Warren Lee PIERSON
United States Representative to the Tripartite Commission

Mr. Hermann J. Abs
Head of German Delegation on External Debts
29 Chesham Place
London

[TRANSLATION¹ — TRADUCTION²]

GERMAN DELEGATION ON EXTERNAL DEBTS

London, 27 February 1953

To the Representative of the United States of America
on the Tripartite Commission for German Debts
Ambassador Warren Lee Pierson
London

Dear Mr. Pierson,

I have the honor to acknowledge receipt of your letter of this date which, translated into German, reads as follows :

[*See note I*]

I am authorized to declare hereby the concurrence of my Government in the understandings set forth in your letter.

Accept, Mr. Ambassador, the expression of my highest esteem.

ABS

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.