

No. 12729

BRAZIL
and
FEDERAL REPUBLIC OF GERMANY

Protocol on financial co-operation (with two exchanges of notes relating to articles III and V, respectively, of the said Protocol). Signed at Brasília on 23 April 1971

Authentic texts: Portuguese and German.

Registered by Brazil on 31 August 1973.

BRÉSIL
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Protocole relatif à la coopération financière (avec deux échanges de notes concernant, respectivement, les articles III et V dudit Protocole). Signé à Brasília le 23 avril 1971

Textes authentiques : portugais et allemand.

Enregistré par le Brésil le 31 août 1973.

[TRANSLATION — TRADUCTION]

PROTOCOL¹ ON FINANCIAL CO-OPERATION

The Government of the Federative Republic of Brazil and

The Government of the Federal Republic of Germany,

Considering the friendly relations existing between the Federative Republic of Brazil and the Federal Republic of Germany,

Desiring to strengthen and intensify these friendly relations by fruitful co-operation in the field of development assistance,

Being aware that the maintenance of these relations is the basis for the present Protocol, and

Intending to promote the development of the Brazilian economy,

Have agreed as follows:

Article I. (1) The Government of the Federal Republic of Germany shall enable the Banco Nacional do Desenvolvimento Econômico (National Bank for Economic Development), Brasília, to obtain a loan of up to a total of 13 million Deutsche Mark from the Kreditanstalt für Wiederaufbau (Reconstruction Loan Corporation), Frankfurt/Main, for the promotion of private small and medium-sized industry.

(2) The Government of the Federal Republic of Germany shall in addition enable the Companhia Vale do Rio Doce, Rio de Janeiro, to obtain a loan of up to a total of 34 million Deutsche Mark from the Kreditanstalt für Wiederaufbau, Frankfurt/Main, for the construction of another concentrator and an iron-ore washing plant, if and when the need for such a project has been established.

(3) The project specified in paragraph (2) above may, by agreement between the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany, be replaced by other projects.

Article II. (1) The utilization of the loans referred to in article I and the conditions on which they will be granted shall be governed by the contracts to be concluded between the borrowers and the Kreditanstalt für Wiederaufbau; the said contracts shall be subject to the legal provisions applicable in the Federal Republic of Germany.

(2) The Government of the Federative Republic of Brazil shall guarantee to the Kreditanstalt für Wiederaufbau all payments and transfers resulting from performance of the obligations of the borrowers under the loan contracts to be concluded.

Article III. The Government of the Federative Republic of Brazil agrees that the borrowers shall be liable for any expenses arising in connexion with the conclusion or execution of the contracts and for taxes, dues and charges of any kind on the principal and interest of the loans referred to in this Protocol.

Article IV. With respect to the transportation of passengers and goods by sea and air as a result of the granting of the loans, the Governments of the Federative Republic

¹ Came into force on 23 April 1971 by signature, in accordance with article IX.

of Brazil and the Federal Republic of Germany shall refrain from taking any measures which might impede the participation of German and Brazilian transport enterprises.

Article V. The loans referred to in article I of this Protocol may be used only to finance deliveries from and performances by countries and territories agreed upon by the Government of the Federative Republic of Brazil and the Government of the Federal Republic of Germany. The same shall apply to the origin of deliveries and the means of transport used to effect deliveries.

Article VI. Contracts for deliveries and performances relating to projects paid for out of the loan referred to in article I, paragraph 2, shall be awarded by international public tender, unless otherwise decided in individual cases.

Article VII. The Government of the Federal Republic of Germany is anxious that, for deliveries resulting from the granting of the loans referred to in article I, preference should, in the event of equal or equivalent conditions, be given to products of the industry of *Land Berlin*.

Article VIII. With the exception of those provisions of article IV which refer to air transport, this Protocol shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Federative Republic of Brazil within three months from the entry into force of this Protocol.

Article IX. This Protocol shall enter into force on the date of its signature.

DONE at Brasília on 23 April 1971, in four originals, two in Portuguese and two in German, all texts being equally authentic.

For the Government
of the Federative Republic
of Brazil:

For and on behalf of the Minister
for Foreign Affairs:

JORGE DE CARVALHO E SILVA

For the Government
of the Federal Republic
of Germany:

KARL HERMANN KNOCKE

EXCHANGES OF NOTES

I a

THE AMBASSADOR OF THE FEDERAL REPUBLIC OF GERMANY

Brasília, 23 April 1971

Wi III B4 — 87.30/253/71

Sir,

On the occasion of the signing today of the Protocol on financial co-operation between the Government of the Federal Republic of Germany and the Government of the Federative Republic of Brazil, I have the honour to inform you of the following:

Under article III of the Protocol, the Government of the Federative Republic of Brazil agrees that the borrowers shall be liable for Brazilian taxes, dues and charges of any kind on the principal

and interest of the loan referred to in article I of the Protocol. This agreement is based on the expectation that the Government of the Federative Republic of Brazil will, to the fullest extent possible under Brazilian taxation law, exempt the borrowers from all Brazilian taxes, dues and charges for which they are liable under article III of the Protocol.

Under article 505 of Brazilian Decree No. 58.400 of 10 May 1966 governing income tax collection and inspection, the earnings of foreign Governments shall be exempt from income tax, subject to reciprocity in the treatment of earnings of the Brazilian Government in the countries concerned.

In this connexion, I have the honour to inform you that, under the German taxation law in force, loan interest accruing to the Federative Republic of Brazil in the Federal Republic of Germany would not, in principle, be subject to German taxation, provided that the loans in question do not constitute a registered public debt, are not secured on German immovable property and are not the subject of a bond issue. Under these conditions, the interest would be tax-exempt, even if it accrues not to the foreign State but to a credit institute acting in its behalf.

I would request you to confirm that the Kreditanstalt für Wiederaufbau, acting in behalf of the Government of the Federal Republic of Germany, will be covered by the above-mentioned provision of the Brazilian income tax law and will, as a matter of reciprocity, be exempt from Brazilian tax in respect of interest and commission charges on loans granted from the German side on the basis of the Protocol on financial co-operation.

I have the honour to propose that this note and your reply signifying the approval of the Brazilian Government shall constitute an agreement between our two Governments, which shall enter into force at the same time as the above-mentioned Protocol.

Accept, Sir, etc.

KARL HERMANN KNÖCKE

His Excellency Mr. Mario Gibson Barboza
Minister for Foreign Affairs
of the Federative Republic of Brazil
Brasília

II a

23 April 1971

DAI/DPF/DEOc/96/550.31(81a)

Sir,

I have the honour to acknowledge receipt of note No. 253/71, of today's date, which reads in Portuguese as follows:

[See note I a]

2. In reply, I would inform you that the Brazilian Government approves the terms of the above note, which, together with those of the present note, shall constitute an agreement between our two Governments entering into force today.

Accept, Sir, etc.

For and on behalf of the Minister:

JORGE DE CARVALHO E SILVA
Secretary-General for Foreign Policy

His Excellency Mr. Karl Hermann Knöcke
Ambassador Extraordinary and Plenipotentiary
of the Federal Republic of Germany

I b

THE AMBASSADOR OF THE FEDERAL REPUBLIC OF GERMANY

Brasília, 23 April 1971

Wi III B4 — 87.30/254/71

Sir,

I have the honour to refer to article V of the Protocol on financial co-operation between the Government of the Federal Republic of Germany and the Government of the Federative Republic of Brazil, signed on 23 April 1971 at Brasília, which reads as follows:

The loans referred to in article I of this Protocol may be used only to finance deliveries from and performances by countries and territories agreed upon by the Government of the Federal Republic of Germany and the Government of the Federative Republic of Brazil. The same shall apply to the origin of deliveries and the means of transport used to effect deliveries.

On behalf of the Government of the Federal Republic of Germany, I transmit to you herewith a list of the countries and territories in question. At the same time permit me to point out that article V does not affect the traffic between *Land Berlin* and the remaining area of Germany to which this Protocol applies.

I have the honour to propose that this note and your reply signifying the approval of your Government shall constitute an agreement between our two Governments which shall enter into force at the same time as the above-mentioned Protocol.

Accept, Sir, etc.

KARL HERMANN KNOCKE

His Excellency Mr. Mario Gibson Barboza
Minister for Foreign Affairs
of the Federative Republic of Brazil
Brasília

List of the countries and territories agreed upon by the Contracting Parties under article V of the Protocol on financial co-operation of 23 April between the Federal Republic of Germany and the Federative Republic of Brazil:

“States Members of OECD, Afghanistan, Bulgaria, Burma, Cambodia, Ceylon, Czechoslovakia, Dominican Republic, Finland, Haiti, Hong Kong, Hungary, India, Indonesia, Iran, Iraq, Israel, Jamaica, Jordan, Laos, Lebanon, Malaysia, Nepal, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Singapore, South Korea, South Viet-Nam, Syria, Taiwan, Thailand, Yemen and Yugoslavia, and the countries of South and Central America, Africa and Oceania.”

II b

23 April 1971

DAI/DPF/DEOc/97/550.31(81a)

Sir,

I have the honour to acknowledge receipt of note No. 254/71, of today's date, which reads in Portuguese as follows:

[See note I b]

In reply, I would inform you that the Brazilian Government approves the terms of the above note and of the annex thereto, which, together with the present note, shall constitute an agreement between our two Governments entering into force today.

Accept, Sir, etc.

For and on behalf of the Minister:

JORGE DE CARVALHO E SILVA
Secretary-General for Foreign Policy

His Excellency Mr. Karl Hermann Knocke
Ambassador Extraordinary and Plenipotentiary
of the Federal Republic of Germany

[Annex as under note I b]