

No. 24107

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
BRAZIL**

**Agreement on certain commercial debts (with schedules).
Signed at Brasilia on 13 December 1984**

Authentic texts: English and Portuguese.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
19 May 1986.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
BRÉSIL**

**Accord relatif à certaines dettes commerciales (avec annexes).
Signé à Brasília le 13 décembre 1984**

Textes authentiques : anglais et portugais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 19 mai 1986.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL ON CERTAIN COMMERCIAL DEBTS

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as “the Government of the United Kingdom”) and the Government of the Federative Republic of Brazil (hereinafter referred to as “the Government of Brazil”);

As a result of the Conference regarding the consolidation of Brazilian debts held in Paris on 22 and 23 November 1983 at which the Government of the United Kingdom, the Government of Brazil, certain other creditor Governments, the International Monetary Fund, the International Bank for Reconstruction and Development, the Secretariat of the United Nations Conference on Trade and Development, the Commission of the European Communities, the Organisation for Economic Co-operation and Development and the Inter-American Development Bank were represented;

Have agreed as follows:

Article 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

- (a) “Credit contract” shall mean a credit contract as defined in Article 2 of this Agreement;
- (b) “Creditor” shall mean a creditor as defined in Article 2 of this Agreement;
- (c) “Currency of the debt” shall mean sterling or such other currency not being Brazilian cruzeiros as is specified in the contract;
- (d) “Debt” shall mean any debt to which, by virtue of the provisions of Articles 2 and 10 of this Agreement and of Schedule 2 thereto, the provisions of this Agreement apply;
- (e) “Debtor” shall mean a debtor as defined in Article 2 of this Agreement;
- (f) “Deposit” shall mean a deposit as specified in Article 2(1) (e) of this Agreement;
- (g) “Maturity” in relation to a debt shall mean the date for the repayment thereof under the relevant credit contract or under a promissory note or bill of exchange drawn up pursuant to the terms of such credit contract;
- (h) “Recognised banks” shall mean banks, including banks participating in a lending syndicate or in a syndicate led by banks, which have received a guarantee issued by the Department (as hereinafter defined) in respect of loan or financial agreements;
- (i) “The Central Bank” shall mean the Banco Central do Brasil acting as agent for the Government of Brazil in the implementation of this Agreement;
- (j) “The Department” shall mean the Export Credits Guarantee Department of the Government of the United Kingdom or any other Department thereof which the

¹ Came into force on 13 December 1984 by signature, in accordance with article 12.

Government of the United Kingdom may nominate for the purposes of this Agreement;

(k) "Transfer scheme" shall mean the transfer scheme referred to in Article 4 of this Agreement.

Article 2. THE DEBT

(1) The provisions of this Agreement shall, subject to the provisions of paragraph (2) of this Article, apply to any debt, whether of principal or of contractual interest accruing up to maturity, owed as primary or principal debtor or as guarantor by the Government of Brazil or by a person or body of persons or corporation resident or carrying on business in Brazil or by any successor thereto (hereinafter referred to as "debtor") to a person or body of persons or corporation resident or carrying on business in the United Kingdom or to any successor thereto (hereinafter referred to as "creditor") provided that:

- (a) the debt arises under or in relation to a contract or any agreement supplemental thereto which was made between the debtor and the creditor for the supply from outside Brazil of goods or services or both or of finance therefor, and which allowed credit to the debtor for a period exceeding one year, and which was entered into before 31 March 1983 (hereinafter referred to as a "credit contract");
- (b) maturity of the debt has occurred, or will occur on or before 31 December 1984, and that debt remains unpaid or was paid after 23 November 1983;
- (c) the debt is the subject of loan or financial agreement where the creditor is a recognised bank or is in respect of a credit contract guaranteed as to payment of that debt under a guarantee issued by the Department;
- (d) the debt is not expressed by the terms of the credit contract to be payable in cruzeiros; and
- (e) the amount of the debt is deposited with the Central Bank in accordance with Resolution of the Central Bank number 890 dated 28 December 1983 for the purpose of being consolidated as provided under this Agreement. Deposit shall have been deemed to have been made in respect of each debt on the due date for payment thereof where such debt is owed as primary or principal debtor or as guarantor by the Government of Brazil.

(2) The provisions of this Agreement shall apply only to such debts as are by the terms of the Central Bank Resolutions numbers 890 and 898 dated 28 December 1983 and 14 March 1984 respectively as supplemented by the Central Bank Circular number 850 dated 14 March 1984 permitted to be deposited with the Central Bank. All other obligations which are guaranteed as to payment under a guarantee issued by the Department but excluding such debts as are referred to in paragraph (3) of this Article shall be transferable without delay to the creditor in the United Kingdom.

(3) Where the debt arises in respect of loans or financial agreements where the creditor is a recognised bank the Department and the Central Bank shall agree whether the provisions of this Agreement shall apply thereto or whether the debt shall be excluded therefrom. In respect of such debts which are excluded the Department shall procure a United States dollar loan to be arranged between a United Kingdom bank or a consortium of United Kingdom banks and the Government of Brazil to provide for payments to be made in respect of such debts.

Article 3. DEPOSITS IN RESPECT OF DEBTS

Amounts deposited with the Central Bank shall remain deposited with the Central Bank until such time as they may be transferred to the Department to settle the debts due to the creditors in the United Kingdom under the provisions of Article 4 of this Agreement.

Article 4. PAYMENTS

The Government of Brazil undertakes to pay its debts punctually and shall ensure that funds are transferred to the Department to settle the debts due to the creditors in the United Kingdom in the currency of the debt in accordance with the transfer scheme set out in Schedule 1 to this Agreement.

Article 5. INTEREST

(1) The Government of Brazil shall be liable for and shall pay to the Department interest in accordance with the provisions of this Article on the balance of any debt deposited with the Central Bank which remains to be transferred pursuant to Article 4 of this Agreement.

(2) Interest shall accrue during, and shall be payable in respect of, the period from the date of each respective deposit with the Central Bank or the date of the original maturity (whichever is the later) until the final settlement of the debt, and shall be paid and transferred in the currency of the debt half-yearly on 1 January and 1 July of each year commencing on 1 January 1985 in respect of debts with an original maturity between 1 August 1983 and 31 December 1984 both dates inclusive, and on 31 March 1985 in respect of debts which fell due on or before 31 July 1983.

(3) Having regard to the cost of funds to the Department, interest shall be calculated on the basis of a 365 day year on the outstanding amount of the debt at the rate of one half of one per cent (including one eighth of one per cent to cover administration costs) above the London Inter-Bank Offer Rate for the period in question. The London Inter-Bank Offer Rate applicable to each interest period shall in respect of sterling debts be that rate *per annum* determined as the arithmetic mean (rounded up where necessary to the nearest multiple of $\frac{1}{16}$ (one sixteenth) of one per cent) of the rates quoted to the Department at its request by the Midland Bank plc and by the National Westminster Bank plc at which six month sterling deposits are offered to those banks by prime banks in the London Inter-Bank market as at 11 am (London time) two business days before the commencement of the relevant interest period; and shall, in respect of United States dollar debts, be that rate *per annum* quoted in the London Financial Times for the London Inter-Bank Offer Rate for six months United States dollars as at two business days before the commencement of the relevant interest period.

Article 6. EXCHANGE OF INFORMATION

The Department and the Central Bank shall exchange all information required for the implementation of this Agreement.

Article 7. OTHER DEBT SETTLEMENTS

(1) If the Government of Brazil agrees with any creditor country other than the United Kingdom terms for the settlement of indebtedness similar to the indebtedness the subject of this Agreement which are more favourable than are the terms of this Agreement, then the terms of the payment of debts the subject of this Agreement shall, subject to the provisions of paragraphs (2) and (3) of this Article, be no less

favourable than the terms so agreed with that other creditor country notwithstanding any provision of this Agreement to the contrary.

(2) The provisions of paragraph (1) of this Article shall not apply in a case where the aggregate of the indebtedness to the other creditor country is less than the equivalent of SDR 1,000,000.

(3) The provisions of paragraph (1) of this Article shall not apply to matters relating to the payments of interest determined by Article 5 hereof.

Article 8. PRESERVATION OF RIGHTS AND OBLIGATIONS

This Agreement and its implementation shall not affect the rights and obligations of creditors and debtors under their credit contracts.

Article 9. ARBITRATION

(1) Subject to the proviso in paragraph (2) below, any dispute which may arise between the Government of the United Kingdom and the Government of Brazil as to the interpretation or application of any of the provisions of this Agreement shall, at the request of either Government, be referred to and settled by an arbitrator to be agreed upon between the two Governments or failing agreement to be nominated on the application of either Government by the President for the time being of the International Court of Justice. If the latter is a national of either the United Kingdom or Brazil this duty shall be carried out by the Vice President of the Court or, if he is a national of either country, by the most senior judge of the Court not being a national of either country. The award of the arbitrator shall be final and binding on the Governments.

(2) No dispute shall be submitted to such arbitration until both Governments have attempted to resolve such dispute by negotiation or such other means as the Governments may agree.

Article 10. RULES

In the implementation of this Agreement the rules set out in Schedule 2 to this Agreement shall apply.

Article 11. THE SCHEDULES

The Schedules to this Agreement shall form an integral part thereof.

Article 12. ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force on signature and shall remain in force until the last of the payments to be made under Articles 4 and 5 of this Agreement has been made.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Brasilia this 13th day of December 1984 in the English and Portuguese languages, both texts being equally authoritative.

For the Government
of the United Kingdom of Great Britain
and Northern Ireland:

JOHN URE

For the Government
of the Federative Republic
of Brazil:

HELIO GIL GRACINDO

SCHEDULE 1

TRANSFER SCHEME

(1) In respect of each debt arising under a credit contract which fell due between 1 August 1983 and 31 December 1984 both dates inclusive an amount equal to 5 per cent thereof was or is due to be transferred from the debtor in Brazil to the creditor in the United Kingdom on the due date for payment thereof or, where the date has passed, no later than 31 March 1984. The balance, having been the subject of deposit of cruzeiros with the Central Bank as referred to in Articles 2 and 3 of the Agreement shall be dealt with as follows:

(a) An amount equal to 85 per cent of the debt shall be transferred from Brazil to the United Kingdom in 8 equal and consecutive half-yearly instalments on 1 January and 1 July of each year commencing on 1 January 1989; and

(b) An amount equal to 10 per cent of the debt shall be transferred from Brazil to the United Kingdom according to the following schedule:

- 4 per cent on 30 June 1985;
- 3 per cent on 30 June 1986;
- 3 per cent on 30 June 1987.

(2) In respect of each debt arising under a credit contract which fell due on or before 31 July 1983 deposited with the Central Bank as referred to in Articles 2 and 3 of this Agreement, two thirds of the debt having already been paid by the Government of Brazil to the Government of the United Kingdom, the remaining balance shall be transferred from Brazil to the United Kingdom on 31 March 1985.

SCHEDULE 2

RULES

(1) The Department and the Central Bank shall agree a list of debts to which, by virtue of the provisions of Article 2 of this Agreement, this Agreement applies.

(2) Such a list shall be completed as soon as possible. This list may be reviewed from time to time at the request of the Department or the Central Bank. The agreement of both the Department and the Central Bank shall be necessary before the list may be altered or amended or added to.

(3) Neither inability to complete the list referred to in paragraphs (1) and (2) of this Schedule nor delay in its completion shall prevent or delay the implementation of the other provisions of this Agreement.

(4) Upon the establishment of a deposit with the Central Bank as referred to in Articles 2 and 3 of this Agreement, the Central Bank shall notify the Department of such deposit by telex which shall state:

- (a) the amount of such deposit in the currency of the debt;
- (b) the date of such deposit; and
- (c) particulars of the credit contract and due date of payment to which such deposit relates.

(5) The Central Bank shall transfer the necessary amounts in the currency of the debt to a bank in the United Kingdom together with payment instructions in favour of the Department to settle the debts to the creditors.