

No. 27042

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

Exchange of notes constituting an agreement concerning certain commercial debts (with annex). Brasília, 2 October 1987

Authentic texts: English and Portuguese.

Registered by the United Kingdom of Great Britain and Northern Ireland on 19 January 1990.

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

Échange de notes constituant un accord relatif à certaines dettes commerciales (avec annexe). Brasília, 2 octobre 1987

Textes authentiques : anglais et portugais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 19 janvier 1990.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL CONCERNING CERTAIN COMMERCIAL DEBTS (THE UNITED KINGDOM/BRAZIL DEBT AGREEMENT No. 2 (1987))

I

*Her Majesty's Ambassador at Brasília to the General Attorney
of the National Treasury of Brazil*

Brasília, 2 October 1987

Your Excellency,

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Federative Republic of Brazil which was signed at the Conference held in Paris on 21 January 1987, and to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland is prepared to provide debt relief to the Government of the Federative Republic of Brazil on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Federative Republic of Brazil, I have the honour to propose that this Note, together with its Annex and your reply to that effect shall constitute an Agreement between the two Governments in this matter which shall be known as "the United Kingdom/Brazil Debt Agreement No. 2 (1987)" and which shall enter into force on the date of your reply.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

JOHN URE

¹ Came into force on 2 October 1987, the date of the note in reply, in accordance with the provisions of the said notes.

ANNEX

Section 1. DEFINITIONS AND INTERPRETATION

(1) In this Annex, unless the contrary intention appears:

(a) "Agreed Minute" means the Agreed Minute on the Consolidation of the Debt of the Federative Republic of Brazil which was signed at the Conference held in Paris on 21 January 1987.

(b) "The Central Bank" means Banco Central do Brasil acting as agent for the Government of Brazil in the implementation of this Annex.

(c) "The First Consolidation Period" means the period from 1 January 1985 to 31 December 1986 inclusive.

(d) "The Second Consolidation Period" means the period from 1 January 1987 to 30 June 1987 inclusive.

(e) "Contract" means a contract entered into before 31 March 1983, the parties to which include a Debtor and a Creditor and which is either for the sale of goods and/or services from outside Brazil to a buyer in Brazil, or is in respect of the financing of such a sale, and which in either case granted or allowed credit to the Debtor for a period exceeding one year.

(f) "Creditor" means a person or body of persons or corporation resident on carrying on business in the United Kingdom, or any successor in title thereto.

(g) "Currency of the Debt" means the currency specified in the relevant Contracting as being the currency in which that Debt is to be paid.

(h) "Debt" means any debt to which, by virtue of the provisions of Section 2(1), the provisions of this Annex apply.

(i) "Debtor" means the Government of Brazil (whether as primary debtor or as guarantor) or any person or body of persons or corporation resident or carrying on business in Brazil or any successor in title thereto.

(j) "The Department" means the Secretary of State of the Government of the United Kingdom acting through the Export Credits Guarantee Department or any other Department of the Government of the United Kingdom which that Government may subsequently nominate for the purpose hereof.

(k) "The Government of Brazil" means the Government of the Federative Republic of Brazil.

(l) "The Government of the United Kingdom" means the Government of the United Kingdom of Great Britain and Northern Ireland.

(m) "Maturity" in relation to a Debt means the due date for the payment or repayment thereof under the relevant Contract, or on a promissory note or bill of exchange drawn up pursuant thereto, or, in the case of a Debt not owed by the Government of Brazil as primary or principal debtor or as guarantor, the date on which the amount of the obligation was deposited with the Central Bank, whichever be the later.

(n) "Previous Agreement" means the Agreement 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 signed on 13 December 1984.¹

(o) "Reference Rate" means the arithmetic mean (rounded upwards where necessary to the nearest multiple of 1/16th (one sixteenth) of one per cent) of the rates quoted to the Department by two Reference Banks (being Midland Bank plc and National Westminster Bank plc) at which six-month sterling deposits in the case of Debts denominated in sterling, are offered to the Reference Banks by prime banks in the London interbank market at 11 AM

¹ United Nations, *Treaty Series*, vol. 1427, p. 3.

(London time) two business days before 1 January and 1 July in each year; and shall in the case of Debts denominated in US dollars, be that rate per annum quoted in the *London Financial Times* for the London Interbank Offered Rate for six months United States dollars as at two business days before 1 January and 1 July in each year.

(p) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and for the purposes of Sections 1(1)(f) and 8 of this Annex includes the Channel Islands and the Isle of Man.

(2) All references to interest, excluding contractual interest, shall be to interest accruing from day to day and calculated on the basis of actual days elapsed and a year of 365 days in the case of Debts denominated in sterling or of 360 days in the case of Debts denominated in US dollars.

(3) Where the context of this Annex so allows, words importing the singular include the plural and vice versa.

(4) Unless otherwise indicated, reference to a specified Section shall be construed as a reference to that specified Section of this Annex.

(5) The headings to the Sections are for ease of reference only.

Section 2. THE DEBT

(1) The provisions of this Annex shall, subject to the provisions of paragraph (2) of this Section apply to:

- (a) Any amount of interest charged under Section 5, such interest having accrued on or before 31 December 1986 and remaining unpaid;
- (b) Any other amount, whether of principal or contractual interest accruing up to Maturity, owed by a Debtor to a Creditor and which:
 - (i) Arises under or in relation to a Contract or any agreement supplemental thereto;
 - (ii) Fell due for payment during either the First Consolidation Period or the Second Consolidation Period and remains unpaid;
 - (iii) Is guaranteed by the Department as to payment according to the terms of the Contract;
 - (iv) Is not expressed by the terms of the Contract to be payable in Brazilian cruzados; and
 - (v) Has been deposited with the Central Bank in accordance with Resolution number 1.325 dated 28 May 1987, of the National Monetary Counsel for the purpose of being consolidated as provided for under this Annex. Where such Debt is owed by the Government of Brazil as primary or principal debtor or as guarantor then deposits shall be deemed to have been made in respect of each Debt on the due date for payment thereof.

(2) The Department and the Central Bank shall, as soon as possible, agree and draw up a list of Debts ("the Debt List") to which, by virtue of the provisions of this Section, this Annex applies. The Debt List may be reviewed from time to time at the request of the Department or of the Central Bank, but may not be added to or amended without the agreement of both the Department and the Central Bank. Delay in the completion of the Debt List shall neither prevent nor delay the implementation of the other provisions of this Annex.

(3) The provisions of this Annex shall not apply to:

- (a) Any amount payable upon, or as a condition of, the formation of the Contract, or as a condition of the cancellation or termination of the Contract;
- (b) Any amount payable under the Previous Agreement; and

- (c) Debt which fell due during the Second Consolidation Period as contractual interest, which will be paid and freely remitted by the original Debtor to the relevant Creditor, in the Currency of the Debt, in the United Kingdom on the original due date for payment under the terms of the Contract.

Section 3. PAYMENTS 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 accordance with the provisions of Section 6(1).

Section 4. TRANSFER SCHEME

(1) The Government of Brazil shall pay to the Department in accordance with the provisions of Section 6(1), the following:

- (a) In respect of each Debt specified in Section 2(1)(a): 100 per cent by three equal and consecutive half-yearly instalments on 30 June and 31 December each year commencing on 30 June 1988;
- (b) In respect of each Debt specified in Section 2(1)(b) which fell due during the First Consolidation Period: 100 per cent by six equal and consecutive half-yearly instalments on 1 January and 1 July each year commencing on 1 January 1990; and
- (c) In respect of each Debt specified in Section 2(1)(b) which fell due during the Second Consolidation Period: 100 per cent of principal by six equal and consecutive half-yearly instalments on 1 January and 1 July each year commencing on 1 July 1990.

If the conditions stated in Section IV paragraph 4 of the Agreed Minute are not fulfilled, then payment of 100 per cent of principal shall be made in accordance with Section II paragraph 2B b) of the Agreed Minute as may be amended.

Section 5. INTEREST

(1) Interest on the balance of each Debt shall be deemed to have accrued and shall accrue during, and shall be payable in respect of, the period from Maturity or, in the case of a Debt specified in Section 2(1)(a) from 1 January 1987, until the settlement of that Debt by payment to the Department in accordance with Section 4(1).

(2) The Government of Brazil shall be liable for and shall pay and transfer to the Department in accordance with the provisions of this Section and of Section 6(1) interest on each Debt to the extent that it has not been settled by payment to the Department in the United Kingdom pursuant to Section 4(1). For the period 1 January 1987 to 1 July 1987 such interest shall be paid and transferred to the Department on 1 October 1987. Thereafter such interest shall be paid and transferred to the Department half-yearly on 1 January and 1 July each year commencing on 1 January 1988.

(3) If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the due date for payment thereof; the Government of Brazil shall compensate the Department for any amount of interest outstanding. Such compensation shall be in addition to the interest payable under paragraph (2) of this Section. It shall accrue and be payable on the outstanding amount of overdue interest from day to day from the original due date in accordance with the provisions of paragraph (2) of this Section to the date of receipt of the payment by the Department and shall be payable in the Currency of the Debt to which the overdue interest refers without further notice or demand of any kind. Such compensation shall be calculated in accordance with the provisions of paragraph (4) of this Section.

(4) All interest and compensation payable in accordance with the provisions of this Section shall be paid at the rate of 0.5 per cent above the Reference Rate for the period in question.

Section 6. PAYMENTS TO THE DEPARTMENT

(1) As and when payments become due under the terms of Sections 4(1) and 5, the Central Bank shall arrange for the necessary amounts, without deduction for taxes, fees, other public charges or any other costs accruing inside Brazil, to be paid and transferred in the Currency of the Debt to the Department in the United Kingdom to an account, details of which shall be notified by the Department to the Central Bank. In this respect the Department shall be regarded as acting as agent for each Creditor concerned.

(2) The Central Bank shall give the Department full particulars of the Debts and/or interest to which the transfers relate. Specifically upon establishment of a deposit with the Central Bank in accordance with Section 3, the Central Bank 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 Contract and due date of payment to which such deposit relates.

(3) The Government of Brazil undertakes to comply with the conditions of Section III paragraphs 8 and 9 of the Agreed Minute.

Section 7. EXCHANGE OF INFORMATION

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

Section 8. OTHER DEBT SETTLEMENTS

(1) The Government of Brazil undertakes to comply with the conditions of Section III paragraphs 1, 2, 3 and 7 of the Agreed Minute and agrees to accord to the United Kingdom terms no less favourable than those agreed with any other creditor country, notwithstanding any provision of this Annex to the contrary.

(2) The provisions of paragraph (1) of this Section shall not apply to matters relating to the payment of interest determined by Section 5.

Section 9. PRESERVATION OF RIGHTS AND OBLIGATIONS

This Annex and its implementation shall not affect the rights and obligations of any Creditor or Debtor under a Contract, other than those rights and obligations in respect of which the Government of the United Kingdom and the Government of Brazil are authorised to act respectively on behalf of, and to bind, such Creditor and Debtor.

Section 10. ARBITRATION

(1) Subject to the provision 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 Annex 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 negotiations or such other means as the Governments may agree.

[TRANSLATION¹ — TRADUCTION²]

*The Attorney of the National Treasury of Brazil
to Her Majesty's Ambassador at Brasília*

Brasília, 2 October 1987

I have the honour to acknowledge receipt of Your Excellency's Note of 2 October 1987 resulting from the negotiations held in Brasília during the period from July 27 to July 29 1987, which in translation reads as follows:

[*See note I*]

I have the honour to confirm that the terms and conditions set out in the Annex to your Note are acceptable to the Government of the Federative Republic of Brazil and that your Note, together with its Annex and this reply shall constitute an Agreement between our two Governments in this matter which shall be known as "the United Kingdom/Brazil Debt Agreement No. 2 (1987)" and which shall enter into force today.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

Federative Republic of Brazil:

ADRIENNE G. N. S. NOGUEIRA BATISTA
Attorney of the National Treasury

[*Annex as under note 1*]

¹ Translation supplied by the Government of the United Kingdom.

² Traduction fournie par le Gouvernement du Royaume-Uni.