

No. 29645

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

Exchange of notes constituting an agreement concerning certain commercial debts (the United Kingdom/Ecuador Debt Agreement No. 5 (1992)) (with annex). London, 30 July 1992

Authentic texts: English and Spanish.

Registered by the United Kingdom of Great Britain and Northern Ireland on 22 March 1993.

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

Échange de notes constituant un accord concernant certaines dettes commerciales [Accord n° 5 (1992) relatif aux dettes entre le Royaume-Uni et l'Équateur] (avec annexe). Londres, 30 juillet 1992

Textes authentiques : anglais et espagnol.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 22 mars 1993.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF ECUADOR CONCERNING CERTAIN COMMERCIAL DEBTS (THE UNITED KINGDOM/ECUADOR DEBT AGREEMENT No. 5 (1992))

I

The Secretary of State for Foreign and Commonwealth Affairs to the Ambassador of the Republic of Ecuador at London

FOREIGN AND COMMONWEALTH OFFICE

London, 30 July 1992

Your Excellency

I have the honour to refer to the Agreed Minute on the Consolidation of the Debt of the Republic of Ecuador which was signed at the Conference held in Paris on 20 January 1992, and to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland are prepared to provide debt relief to the Government of the Republic of Ecuador on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Republic of Ecuador, 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/Ecuador Debt Agreement No. 5 (1992)" 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.

A. J. BEAMISH
For the Secretary of State

¹ Came into force on 30 July 1992, 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) “the Agreed Minute” means the Agreed Minute on the Consolidation of the Debt of Ecuador which was signed at the Conference held in Paris on 20 January 1992;
 - (b) “Appropriate Market Rate” means the Reference Rate plus a margin of 0.5 per cent;
 - (c) “the Bank” means the Central Bank of Ecuador or any other institution which the Government of Ecuador may nominate for the purposes of this Annex;
 - (d) “Business Day” means a day on which dealings are carried on in the London Interbank Market and (if payment is required to be made on such day) on which banks are open for domestic and foreign exchange business in London in the case of sterling and in both London and New York City in the case of US dollars;
 - (e) “the Consolidation Period” means the period from 1 January 1992 to 31 December 1992 inclusive;
 - (f) “Contract” means a contract, or any agreement supplemental thereto, entered into before 1 January 1983, the parties to which include a Debtor and a Creditor and which either was for the sale of goods and/or services from outside Ecuador to a buyer in Ecuador, or was for the financing of such a sale, and which in either case granted or allowed credit to the debtor for a period exceeding one year;
 - (g) “Creditor” means a person or body of persons or corporation resident or carrying on business in the United Kingdom, including the Channel Islands and the Isle of Man, or any successor in title thereto;
 - (h) “Currency of the Debt” means the currency specified in the relevant Contract or in the First Agreement, the Second Agreement, the Third Agreement or the Fourth Agreement as being the currency in which that Debt is to be paid;
 - (i) “Debt” means any debt to which, by virtue of the provisions of Section 2(1), the provisions of this Annex apply;
 - (j) “Debtor” means the Government of Ecuador or any public sector body (being any enterprise in which, at 20 January 1992, the Government of Ecuador, either directly or indirectly held a majority share holding) whether as primary debtor or as guarantor carrying on business in Ecuador, or any successor in title thereto;
 - (k) “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;
 - (l) “Ecuador” means the Republic of Ecuador;
 - (m) “the First Agreement” means the Agreement between the Government of the United Kingdom and the Government of Ecuador on Certain Commercial Debts signed on 18 June 1984 ;¹

¹ United Nations, *Treaty Series*, vol. 1416, p. 211.

- (n) “the Fourth Agreement” means the Agreement between the Government of the United Kingdom and the Government of Ecuador on Certain Commercial Debts signed on 30 May 1990;¹
- (o) “Maturity” in relation to a Debt:
- (i) specified in Section 2(1)(a) means 31 December 1991,
 - (ii) specified in Sections 2(1)(b) and 2(i)(c) means the date for payment specified in either the Second Agreement, the Third Agreement or the Fourth Agreement, and
 - (iii) specified in Section 2(1)(d) 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;
- (p) “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 three banks to be agreed upon by the Department and the Bank as the mean rate at which those banks are offering six-month eurodollar deposits, in the case of a Debt denominated in US dollars, or six-month sterling deposits, in the case of a Debt denominated in any other currency, in the London Interbank Market at 11 a.m. (London time) two Business Days before the commencement of the relevant interest period;
- (q) “the Second Agreement” means the Agreement between the Government of the United Kingdom and the Government of Ecuador on Certain Commercial Debts signed on 29 January 1986;²
- (r) “the Third Agreement” means the Agreement between the Government of the United Kingdom and the Government of Ecuador on Certain Commercial Debts signed on 8 August 1988;³
- (s) “the United Kingdom” means the United Kingdom of Great Britain and Northern Ireland.
- (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 360 days, in the case of Debts denominated in US dollars, or 365 days in the case of Debts denominated in any other currency.
- (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 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 and Article IV, paragraph 3 of the Agreed Minute, apply to:

¹ United Nations, *Treaty Series*, vol. 1640, No. I-28199.

² *Ibid.*, vol. 1555, No. I-27028.

³ *Ibid.*, vol. 1576, No. I-27527.

- (a) any amount, whether of principal or of interest, payable under the Second Agreement or the Third Agreement which fell due on or before 31 December 1991 and which remains unpaid; and
 - (b) any amount, whether of principal or of interest, payable under the Second or Third Agreement which has fallen due or will fall due during the Consolidation Period and which remains unpaid; and
 - (c) any amount of interest payable under the Fourth Agreement which has fallen due or will fall due during the Consolidation Period and which remains unpaid; and
 - (d) any other amount, whether of principal or of contractual interest accruing up to Maturity, which is owed by the Debtor to a Creditor and which:
 - (i) arises under or in relation to a Contract;
 - (ii) is guaranteed by the Department as to payment according to the terms of the Contract;
 - (iii) is not expressed by the terms of the Contract to be payable in Ecuadorian Sucres;
 - (iv) is not an amount payable under the First Agreement, the Second Agreement, the Third Agreement or the Fourth Agreement;
 - (v) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract; and
 - (vi) has fallen due for payment on or before 31 December 1991 and remains unpaid or has fallen due or will fall due for payment during the Consolidation Period and remains unpaid.
- (2) The Department and the Bank shall, as soon as possible, agree and draw up a list of Debts ("the Debt List") to which this Annex shall apply. The Debt List may be reviewed from time to time at the request of the Department or of the Bank, but may not be added to or amended without the agreement of both the Department and the Bank. Delay in the completion of the Debt List shall neither prevent nor delay the implementation of the other provisions of this Annex.

SECTION 3

Payments under the Second Agreement, the Third Agreement and the Fourth Agreement

- (1) The provisions of the Second Agreement, the Third Agreement and the Fourth Agreement insofar as they relate to the payment of any Debt shall cease to apply upon the entry into force of this Agreement.
- (2) Debts to which the provisions of the Fourth Agreement relate and which were not paid as at 31 December 1991 shall be aggregated and paid as follows:
 - (a) 33 per cent on 30 June 1992.
 - (b) 33 per cent on 30 September 1992.
 - (c) 34 per cent on 31 December 1992.

SECTION 4

Payment of Debt

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

100 per cent of each Debt in 14 equal and consecutive half-yearly payments, the first payment to be made on 31 December 2000 and the final payment to be made on 30 June 2007.

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, until the settlement of that Debt by payment to the Department.

(2) The Government of Ecuador shall be liable for and shall pay to the Department in accordance with the provisions of Section 6(1) and of this Section interest on each Debt to the extent that it has not been settled by payment to the Department in the United Kingdom. Such interest shall be paid to the Department half-yearly on 31 July and 31 January (the "Due Dates") each year commencing on 31 July 1992.

(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, the Government of Ecuador 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 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 due without further notice or demand. 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 Appropriate Market Rate applicable to each half-yearly interest period commencing with the half-yearly interest period within which the Maturity of the Debt concerned occurs.

SECTION 6

Payments to the Department

- (1) When payment becomes due under the terms of Section 4 or 5 the Bank shall:
- (a) where possible draw upon the special account referred to in Article IV paragraph 4 of the Agreed Minute to meet such payments, and
 - (b) in any event arrange for the necessary amounts, without deduction of taxes, fees, other public charges or any other costs accruing inside or outside Ecuador, to be paid in the Currency of the Debt to an account notified by the Department to the Bank.

(2) If the day on which such a payment falls due is not a Business Day payment shall be made on the nearest Business Day.

(3) The Bank shall give the Department full particulars of the Debts and/or interest and/or compensation to which the payments relate.

SECTION 7

Exchange of Information

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

SECTION 8

Other Debt Settlements

(1) The Government of Ecuador undertakes to perform its obligations under Article III 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 or 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 Ecuador are authorised to act respectively on behalf of and to bind such Creditor and debtor.

SECTION 10

Debt Conversion Option

(1) On a voluntary and bilateral basis, the Department may sell or exchange, in the framework of debt for nature, debt for aid or debt for equity swaps or other local currency debt swaps a maximum amount of 20 million US dollars of outstanding Debt mentioned in this Annex.

(2) The amounts covered by an effective debt swap shall be deducted from the amounts remaining due pursuant to this Agreement and shall cease to bear interest in accordance with Section 5 as of the date of effective payment under the swap operation, provided that they are included in the Debt reorganised by this Agreement.

(3) The Department recognises that this option can only be implemented with the consent of the Government of Ecuador.

[TRANSLATION¹ — TRADUCTION²]

EMBASSY OF ECUADOR

London, 30 July 1992

I have the honour to acknowledge receipt of Your Excellency's Note of 30 July 1992 which in translation reads as follows:

[*See note I*]

[*Annex as under 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 Republic of Ecuador, 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/Ecuador Debt Agreement No. 5 (1992)” and which shall enter into force today.

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

FRANCISCO CARRION-MENA

¹ Translation provided by the Government of the United Kingdom.

² Traduction fournie par le Gouvernement du Royaume-Uni.