



Treaty Series No. 31 (1996)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Federative Republic of Brazil
concerning the United Kingdom/Brazil Debt
Agreement No. 4 (1993)

Brasilia, 14 January 1993

[The Agreement entered into force on 14 January 1993]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 1996*

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**EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL
CONCERNING THE UNITED KINGDOM/BRAZIL
DEBT AGREEMENT No. 4 (1993)**

No. 1

H.E. Paulo Roberto Haddad (Interim) Minister of Finance at Brasilia

*British Embassy
Brasilia*

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 26 February 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 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. 4 (1993)' 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.

PETER W HEAP
Her Britannic Majesty's Ambassador
14 January 1993

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 Brazil which was signed at the Conference held in Paris on 26 February 1992;
 - (b) “Appropriate Market Rate” means the Reference Rate plus a margin of 0.3 per cent;
 - (c) “the Bank” means Banco Central do Brazil or any other institution which the Government of Brazil may nominate for the purposes of this Annex;
 - (d) “Brazil” means the Federative Republic of Brazil;
 - (e) “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 a day) on which banks are open for domestic and foreign exchange business in London;
 - (f) “the Consolidation Period” means the period from 1 January 1992 to 31 August 1993 inclusive, provided that with respect to the period from 1 February 1993 to 31 August 1993, the application of the provisions of this Annex may be suspended at the sole discretion of the Department, if:
 - (i) the Executive Board of the International Monetary Fund has not completed by 31 December 1992 the review of the program under the standby arrangement, as referred to in Article IV paragraph 4 of the Agreed Minute; and
 - (ii) the payments referred to in Article II paragraph 2BI of the Agreed Minute are not made by the dates set out in that paragraph.
 - (g) “Contract” means a contract, or any agreement supplemental thereto, entered into before 31 March 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 Brazil to a buyer in Brazil, 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;
 - (h) “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;
 - (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
 - (i) Brazil (whether as primary debtor or as guarantor), or
 - (ii) any person or body of persons or corporation resident or carrying on business in Brazil 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) “the First Agreement” means the Agreement between the Government of the United Kingdom and the Government of Brazil on Certain Commercial Debts signed on 13 December 1984¹;
 - (m) “Maturity” in relation to a Debt:
 - (i) specified in Sections 2(1)(a) or 2(1)(b), means 31 December 1991,
 - (ii) specified in Section 2(1)(c) means the date for payment specified in the Second Agreement or the Third Agreement as the case may be,
 - (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,

¹Treaty Series No. 11 (1985), Cmnd. 9455.

- (iv) specified in Section 2(1)(e) means the date on which the Brazilian currency counterpart of the obligation was deposited by a Debtor with the Bank;
 - (n) "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 three month sterling deposit rates quoted by the Reuters Monitor Money Rate Services (LIBP screen) two Business Days before the commencement of the relevant interest period. In the event that the Reuters Monitor Money Rate Services (LIBP screen) is unavailable on the required date, the rate to be applied will be the mean of the rates provided by three banks to be agreed upon by the Department and the Bank, at which those banks are offering three month sterling deposits on the required date;
 - (o) "the Second Agreement" means the Agreement between the Government of the United Kingdom and the Government of Brazil on Certain Commercial Debts signed on 2 October 1987¹;
 - (p) "the Third Agreement" means the Agreement between the Government of the United Kingdom and the Government of Brazil on Certain Commercial Debts signed on 28 December 1989²;
 - (q) "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 365 days.
- (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 apply—
- in respect of Contracts with the Debtor specified in Section 1(1)(j)(i):
- (a) to any amount, whether of principal or of interest, payable under the Second Agreement which fell due between 1 January 1990 to 31 December 1991 inclusive and which remains unpaid; and
 - (b) to any amount, whether of principal or of interest, payable under the Third Agreement which fell due between 1 January 1990 to 31 December 1991 inclusive and which remains unpaid; and
 - (c) to any amount, whether of principal or of interest, payable under the Second Agreement or the Third Agreement which fell due or will fall due during the Consolidation Period and which remains unpaid; and
 - (d) to 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:—
 - (1) fell due between 1 April 1990 to 31 December 1991 inclusive, or
 - (2) fell due or will fall due during the Consolidation Period and remains unpaid, and which
 - (i) arose under or in relation to a Contract;
 - (ii) was guaranteed by the Department as to payment according to the terms of the Contract;

¹Treaty Series No. 22 (1988), Cm 348.

²Treaty Series No. 40 (1990), Cm 1095.

- (iii) was not expressed by the terms of the Contract to be payable in Brazilian currency;
- (iv) does not arise from an amount payable under the First Agreement, the Second Agreement or the Third Agreement;
- (v) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract; and

in respect of Contracts with a Debtor specified in Section 1(1)(j)(ii):

- (e) to any amount, whether of principal or of contractual interest accruing up to the original maturity date, which is owed by a Debtor to a Creditor, which remains unpaid and in respect of which:
 - (1) payment was made in local currency to the Bank on or before 31 December 1990, or
 - (2) payment fell due on or before 31 March 1991 from Petroleo Brasileiro SA (PETROBRAS) or Companhia Vale do Rio Doce (CVRD), and which
 - (i) arose under or in relation to a Contract;
 - (ii) was guaranteed by the Department as to payment according to the terms of the Contract;
 - (iii) was not expressed by the terms of the Contract to be payable in Brazilian currency;
 - (iv) does not arise from an amount payable under the First Agreement, the Second Agreement or the Third Agreement;
 - (v) does not arise from an amount payable upon or as a condition of the cancellation or termination of the Contract.

(2) The Department and the Banks 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.

(3) For the purpose of this Annex, all Debts shall be deemed to be denominated in Sterling. Where the currency of the Debt specified in the relevant Contract or in the Second Agreement or the Third Agreement is United States dollars, each such Debt shall be converted into sterling at the middle spot rate of exchange of United States dollars for sterling. Such middle spot rate shall be determined by reference to the closing rates in London at date of Maturity as recorded in the Financial Times or, where the date of Maturity falls on a date on which there is no foreign exchange.

SECTION 3

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

(1) The provisions of the First Agreement shall continue to apply except that it is agreed that any amount of principal or interest due thereunder and not paid as at 31 December 1991 shall be paid as follows:—

20 per cent by 30 June 1993; and

80 per cent in six equal and consecutive half-yearly instalments commencing on 30 June 1994.

(2) The provisions of the Second Agreement and the Third Agreement insofar as they relate to the payment of any Debt shall cease to apply upon the entry into force of this Agreement.

SECTION 4

Payment of Debt

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

- (a) the aggregate of
- (i) 10 per cent of each Debt specified in Sections 2(1)(a), 2(1)(d)(1) and 2(1)(e), less any amounts already paid and
 - (ii) 5 per cent of each Debt specified in Section 2(1)(b), less any amounts already paid,
on 31 January 1993;
- (b) the aggregate of:
- (i) 90 per cent of each Debt specified in Sections 2(1)(a), 2(1)(d)(1) and 2(1)(e) and
 - (ii) 95 per cent of each Debt specified in Section 2(1)(b), and
 - (iii) 100 per cent of each Debt specified in Sections 2(1)(c), 2(1)(d)(2),

on the following dates and in the following percentages:

<i>Repayment Date</i>	<i>Percentage to be repaid</i>
30 June 1995	0.01
31 December 1995	0.01
30 June 1996	1.96
31 December 1996	2.14
30 June 1997	2.32
31 December 1997	2.52
30 June 1998	2.72
31 December 1998	2.94
30 June 1999	3.16
31 December 1999	3.39
30 June 2000	3.64
31 December 2000	3.89
30 June 2001	4.16
31 December 2001	4.44
30 June 2002	4.73
31 December 2002	5.03
30 June 2003	5.35
31 December 2003	5.68
30 June 2004	6.03
31 December 2004	6.39
30 June 2005	6.77
31 December 2005	7.16
30 June 2006	7.57
31 December 2006	7.99

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) Brazil 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 quarterly on 31 March, 30 June, 30 September and 31 December (the "Due Dates") each year commencing on 31 December 1992.

(3) With the exception of interest payable in accordance with paragraph (4) of this Section, interest shall be paid at the Appropriate Market Rate applicable to each quarterly interest period commencing with the quarterly interest period within which the Maturity of the Debt concerned occurs.

(4) In respect of each Debt specified in Section 2(1)(d)(1), interest accrued to 31 December 1991 shall be calculated at the Appropriate Market Rate increased by one per cent. Thereafter interest shall be calculated at the Appropriate Market Rate.

(5) If any amount of interest payable in accordance with the provisions of paragraph (2) of this Section is not paid on the Due Date, 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 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 paid at the Appropriate Market Rate increased by one per cent, applicable to each quarterly interest period commencing from the Due Date.

SECTION 6

Payments to the Department

(1) When payment becomes due under the terms of Section 4 or 5, the Bank shall arrange for the necessary amounts, without deduction of taxes, fees, other public charges or any other costs accruing inside or outside Brazil, to be paid in sterling 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 next following 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) Brazil undertakes to perform its obligations under Article III paragraphs 1 and 2 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 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 Brazil as to the interpretation or application of any of the provisions of this Annex shall, at the request of either party, be referred

to and settled by an arbitral tribunal composed of three arbitrators. One of the arbitrators shall be appointed by Brazil, the second by the Government of the United Kingdom and the third jointly appointed by the other two arbitrators. In the event of any failure to agree on a third arbitrator, such arbitrator shall be appointed 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 or 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 decision of the arbitrator shall be final and binding on the Government of the United Kingdom and Brazil.

(2) No dispute shall be submitted to such arbitration until the Government of the United Kingdom and Brazil have attempted to resolve such dispute by negotiations or such other means as they may agree.

SECTION 11

Suspension

The application of the provisions of this Annex may be suspended at the sole discretion of the Department, if the conditions specified in Article IV paragraph 4 of the Agreed Minute are not met.

No. 2

To: *H.M. Ambassador at Brasilia*

*Ministro da Fazenda Interino
Brasilia*

NOTA RESPOSTA

Tenho a honra de acusar recebimento da Nota de Vossa Excelência de 14 de janeiro de 1993 cuja tradução lê-se como a seguir:

“Tenho a honra de referir-me à Ata de Negociações sobre a Consolidação da Dívida da República Federativa do Brasil que foi assinada na Conferência realizada em Paris, em 26 de fevereiro de 1992, e de informar Vossa Excelência que o Governo do Reino Unido da Grã-Bretanha e da Irlanda do Norte está disposto a conceder um alívio à dívida o Governo da República Federativa do Brasil, nos termos e condições estabelecidos no Anexo a seguir.

Se estes termos e condições forem aceitáveis para o Governo da República Federativa do Brasil, tenho a honra de propor que esta Nota, juntamente com seu Anexo e sua resposta à mesma, constituam um Acordo entre nossos dois Governos sobre a matéria, o qual será conhecido como “O Acordo de Dívida Reino Unido/Brasil no. 4 (1993)” e que entrará em vigor na data de sua resposta.

Tenho a honra de transmitir a Vossa Excelência protestos de minha mais alta consideração”.

Tenho a honra de confirmar que os termos e condições estabelecidos no Anexo à nota de Vossa Excelência são aceitáveis para o Governo da República Federativa do Brasil, e que sua Nota, juntamente com seu Anexo e esta Resposta, constituirão um Acordo entre nossos dois Governos sobre a matéria o qual será conhecido como “O Acordo de dívida Reino Unido/Brasil no. 4 (1993)” e que entrará em vigor nesta data.

Tenho a honra de transmitir a Vossa Excelência protestos de minha mais alta consideração.

Brasília, em 14 de janeiro de 1993
REPÚBLICA FEDERATIVA DO BRASIL
PAULO ROBERTO HADDAD
Ministro da Fazenda Interino

Translation of No. 2
To: *H.M. Ambassador at Brasilia*

*Ministry of Finance
Brasilia*

REPLY NOTE

I have the honour to acknowledge receipt of Your Excellency's Note of 14 January 1993, which in translation reads as follows:

[As in No. 1]

[Annex as in No. 1]

I have the honour to confirm that the terms and conditions set out in the Annex to Your Excellency's 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 4 (1993)" and which shall enter into force on this date.

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

Brasilia, on 14 January 1993
FEDERATIVE REPUBLIC OF BRAZIL
PAULO ROBERTO HADDAD
Interim Finance Minister



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