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CONVENTION BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of Canada and the Government of the Federative Republic of Brazil,

desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

have agreed as follows:

ARTICLE I

Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE II

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes to which the Convention shall apply are:

(a) in the case of Brazil:

- the federal income tax, excluding the tax on excess remittances and on activities of minor importance; (hereinafter referred to as “Brazilian tax’’);

(b) in the case of Canada:

- the income taxes imposed by the Government of Canada, (hereinafter referred to as “Canadian tax”).

3. This Convention shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of changes which have been made in their respective taxation laws.

ARTICLE III

General definitions

1. In this Convention, unless the context otherwise requires:

(a) the term “Brazil” means the territory of the Federative Republic of Brazil, that is, the continental and insular earth and its corresponding air space, as well as the territorial sea and its corresponding seabed and subsoil, within which, in accordance with international law and the Brazilian laws, the rights of Brazil may be exercised;

(b) the term “Canada” used in a geographical sense means the territory of Canada, including any area beyond the territorial seas of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) the terms “a Contracting State” and “the other Contracting State” mean Brazil or Canada as the context requires;

(d) the term “person” comprises an individual, a company and any other body of persons;

(e) the term “nationals” means:

(i) all individuals possessing the nationality of a Contracting State;

(ii) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

(f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term “international traffic” includes traffic between places in one country in the course of a journey which extends over more than one country;

(i) the term “tax” means Brazilian tax or Canadian tax, as the context requires;

(j) the term “competent authority” means:

(i) in Brazil: the Minister of Finance, the Secretary of Federal Revenue or their authorized representatives;

(ii) in Canada: the Minister of National Revenue or his authorized representative.

2. As regard the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE IV

Fiscal domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal economic relations are closest (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question.

ARTICLE V

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) a building site or construction or assembly project which exists for more than six months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in

that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

However, an insurance company of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State provided that, through a representative other than persons to whom paragraph 5 below applies, it receives premium or insures risks in that other State.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE VI

Income from Immovable Property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. (a) Subject to the provisions of subparagraphs (b) and (c) the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated;

(b) the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property, rights to explore for or to exploit mineral deposits, sources and other natural resources and rights to amounts computed by reference to the amount or value of production from such resources;

(c) ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE VII

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE VIII

Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1 and Article VII, profits derived from the operation of ships or aircraft used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

ARTICLE IX

Associated Enterprises

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise or the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE X

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is a company which is the beneficial owner of the dividends and which holds an equity percentage of a least 10 per cent in the company paying the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article VII shall apply.

4. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-

claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. Notwithstanding any provision of this Convention:

(a) where a company which is a resident of Canada has a permanent establishment in Brazil, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law, but such a tax cannot exceed 15 per cent of the gross amount of the profits of that permanent establishment determine after the payment of the corporate tax related to such profits;

(b) a company which is a resident of Brazil and which has a permanent establishment in Canada shall, in accordance with the provisions of Canadian law, remain subject to the additional tax on companies other than Canadian corporations, but the rate of such tax shall not exceed 15 per cent.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to any tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. The tax rate limitations referred to in paragraphs 2 and 5 (b) of this Article shall not apply to dividends or profits paid before the end of the third calendar year following the year of signature of this Convention.

ARTICLE XI

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is a company which is the beneficial owner of the interest, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest arising in Brazil and paid to a resident of Canada in respect of a loan guaranteed or insured by the Export Development Corporation of Canada for a minimum period of 7 years;

(b) 15 percent in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government, or political subdivision shall be exempt from tax in the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article X such as income from debt-claims which corresponds to a participation in the debtor's profits.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article VII shall apply.

6. The limitation established in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceed the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE XII

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is a company which is the beneficial owner of the royalties, the tax so charged shall not exceed:

(a) 25 per cent of the gross amount of royalties arising from the use of, or the right to use trade marks;

(b) 15 per cent in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article VII shall apply.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. The tax rate limitation referred to in paragraph 2 (b) shall not apply to royalties paid before the end of the fourth calendar year following the calendar year in which this Convention enters into force where such royalties are paid to a resident of a Contracting State which holds, directly or indirectly, at least 50 per cent of the voting capital of the company paying the royalties.

ARTICLE XIII

Gains from the Alienation of Property

1. Gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Gains from the alienation of any property or right other than those mentioned in paragraph 1 may be taxed in both Contracting States.

ARTICLE XIV

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar nature shall be taxable only in that State, unless the payment of such activities and services is borne by a permanent establishment situated in the other Contracting State or a company resident therein. In such a case the income may be taxed in that other State.

2. The term “professional services” includes especially independent scientific, technical, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE XV

Dependent Personal Services

1. Subject to the provisions of Articles XVI, XVIII, XIX and XX, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE XVI

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of a similar council of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE XVII

Artistes and Athletes

1. Notwithstanding the provisions of Articles XIV and XV, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII, XIV and XV, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a non-profit organization the status of which is certified by the competent authority of the Contracting State in which it is resident.

ARTICLE XVIII

Pensions and Annuities

1. Pensions, annuities and alimony arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, the amount of a pension, annuity or alimony which exceeds four thousand Canadian dollars ($4,000) in a calendar year may also be taxed in the Contracting State in which the pension, annuity or alimony arises. The competent authorities of the Contracting States may, if necessary, agree to modify the above-mentioned amount as a result of monetary or economic developments.

3. As used in this Article:

(a) the term "pension" means payments made after retirement in consideration of past employment or by way of compensation for injuries received, in connection with past employment;

(b) the term "annuity" means a stated sum payable periodically at stated times during life, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth (other than services rendered).

4. Notwithstanding the provisions of paragraphs 1 and 2:

(a) social security pensions arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State. However, such pensions shall be taxable only in the other Contracting State if the recipient is a national of and a resident of that other State;

(b) war veterans pensions arising in Canada and paid to a resident of Brazil shall be exempt from Brazilian tax.

ARTICLE XIX

Governmental Payments

1. Remuneration, not including pensions, paid by a Contracting State, a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, to a political subdivision or local authority shall be taxable only in that State.

However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and if the recipient

(a) is a national of that State, or

(b) did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

ARTICLE XX

Students

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE XXI

Other Income

Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

ARTICLE XXII

Methods for the Elimination of Double Taxation

1. Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Canada, Brazil shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Canada. The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Canada.

2. Unless the provisions of paragraph 4 or 5 apply, where a resident of Canada derives income which, in accordance with the provisions of this Convention, may be taxed in Brazil, Canada shall allow as a deduction from the tax on the income of that person, an amount equal to the income tax paid in Brazil, including business-income tax and non-business-income tax. The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in Brazil.

3. For the deduction indicated in paragraph 2, Brazilian tax shall always be considered as having been paid at the rate of 25 per cent of the gross amount of the profits to which paragraph 5 (b) of Article X applies and at the rate of 20 per cent of the gross amount of the income paid in

Brazil in the case of interest to which paragraph 2 of Article XI applies and royalties to which paragraph 2 (b) of Article XII applies.

4. Dividends received by a company which is a resident of Canada from a company which is a resident of Brazil shall be exempt from tax in Canada if the company receiving the dividends holds an equity percentage of at least 10 per cent in the company paying the dividends and if the profits out which the dividends are paid are derived from carrying on an active business in Brazil or in a country with which Canada has concluded a double taxation convention; for the purposes of this provision, any income from sources in a country other than Canada which pertains to or is incident to an active business carried on in a country other than Canada, shall be deemed to be profits derived from carrying on an active business.

5. Where a company which is a resident of Canada derives dividends, other than those mentioned in paragraph 4, from a company which is a resident of Brazil in which it holds an equity percentage of at least 10 per cent and those dividends may be taxed in Brazil, in accordance with this Convention, Canada shall allow as a deduction from the tax on the income of the first-mentioned company an amount equal to the income tax paid in Brazil and shall allow relief in respect of the Brazilian corporation tax paid on the profits out of which the dividends are paid; the deduction shall not, however, exceed that part of the Canadian income tax as computed before the deduction is given, which is appropriate to the dividends.

For the deduction mentioned in this paragraph, Brazilian tax on dividends shall always be considered as having been paid at the rate of 25 per cent of the gross amount of the dividends.

6. The value of the shares issued by a corporation of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subject to income tax in the last-mentioned State.

7. The provisions of paragraphs 2 and 3 shall apply for the determination of the profits of a permanent establishment situated in Canada of a bank which is a resident of Brazil.

ARTICLE XXIII

Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

4. In this Article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE XXIV

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities of the Contracting States may also settle by agreement the methods of application of this Convention.

ARTICLE XXV

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE XXVI

Diplomatic and Consular Officials

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as resident in respect of taxes on income.

ARTICLE XXVII

Entry into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for the first time:

(a) in respect of taxes withheld at source to amounts paid or remitted on or after January 1st of the calendar year immediately following that in which the Convention enters into force;

(b) in respect of other taxes covered by this Convention to taxable years beginning on or after January 1st of the calendar year immediately following that in which the Convention enters into force.

ARTICLE XXVIII

Termination

Either Contracting State may terminate this Convention after a period of three years from the date on which this Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such a case this Convention shall apply for the last time:

(a) in respect of taxes withheld at source, to amounts paid or remitted before the expiration of the calendar year in which the notice of termination is given;

(b) in respect of other taxes covered by this Convention, to amounts received during the taxable year beginning in the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Brasilia, this 4th day of June, 1984 in the English, Portuguese and French languages, each version being equally authentic.

Anthony Eyton

FOR THE GOVERNMENT OF CANADA

Ramiro Saraiva Guerreiro

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

PROTOCOL

At the moment of the signature of the Convention for the avoidance of double taxation with respect to taxes on income between Canada and the Federative Republic of Brazil, the undersigned, being duly authorized thereto, have agreed upon the following provisions which constitute an integral part of the present Convention.

1. With reference to Article III, paragraph 1 (d)

   It is understood that in Canada the term “person” also includes a partnership, an estate and a trust.

2. With reference to Article III, paragraph 1 (f)

   It is understood that in French the term “société” also means a “corporation” within the meaning of Canadian law.

3. With reference to Article VI, paragraph 1

   It is understood that in the case of Canada the provisions of Article VI, paragraph 1, shall also apply to profits from the alienation of immovable property not taxed therein as capital gains.

4. With reference to Article VII

It is understood that where an enterprise of a Contracting State has carried on business in the other Contracting State through a permanent establishment situated therein, the profits of the enterprise which are attributable to that permanent establishment and which are received by the enterprise after it has ceased to carry on business as aforesaid, may be taxed in that other State in accordance with the principles laid down in Article VII.

5. With reference to Article VII, paragraph 3

It is understood that the provisions of this paragraph shall apply whether the expenses mentioned therein are incurred in the State in which the permanent establishment is situated or elsewhere.

6. With reference to Article X, paragraph 4

It is understood that in the case of Brazil the term "dividends" also includes any distribution in respect of certificates of an investment-trust which is a resident of Brazil.

7. With reference to Article XI

It is understood that the commissions arising in Brazil and paid to a Canadian company in connection with services rendered in respect of loans and financings are considered to be interest and subject to the provisions of paragraph 2 of Article XI.

8. With reference to Article XII, paragraph 3

It is understood that the expression "for information concerning industrial, commercial or scientific experience" mentioned in paragraph 3 of Article XII includes income derived from the rendering of technical assistance and technical services.

9. With reference to Article XIV

It is understood that the provisions of Article XIV shall apply even if the activities are exercised by a partnership or a "Sociedade Civil" (Civil Company).

10. With reference to Article XVI

It is understood that, in the case of Brazil, the expression "similar council" includes the "conselho fiscal" (Statutory Audit Committee).

11. It is understood that the relief to be granted by Canada in accordance with the provision of paragraph 5 of Article XXII in respect of the Brazilian corporation tax paid on the profits out of which dividends are paid, shall be determined in accordance with the provision of the *Canadian Income Tax Act* in force from time to time, provided that in no case dividends to which paragraph 5 of Article XXII applies shall receive a tax treatment in Canada less favourable than

that accorded under section 113 of the *Canadian Income Tax Act*, as in effect on the date of signature of this Convention.

12. With reference to Article XXIII, paragraph 2

It is understood that the provisions of paragraph 5 of Article X are not in conflict with the provisions of paragraph 2 of Article XXIII.

13. With reference to Article XXIII, paragraph 3

It is understood that:

(a) the provisions of the Brazilian law which do not allow that royalties as defined in paragraph 3 of Article XII, paid by a company resident of Brazil to a resident of Canada which holds at least 50 per cent of the voting capital of that company, be deductible in determining the taxable income of the company resident of Brazil, are not in conflict with the provisions of paragraph 3 of Article XXIII of the present Convention;

(b) in the event that Brazil, after the signature of the present Convention, would allow that royalties, paid by an enterprise which is a resident of Brazil to an enterprise which is a resident of a third State not located in Latin-America, and which holds at least 50 per cent of the capital of the enterprise which is a resident of Brazil, be deductible in determining the taxable income of this enterprise, an equal deduction will be automatically applicable, under similar conditions, to an enterprise which is a resident of Brazil paying royalties to an enterprise which is a resident of Canada;

(c) a more-favoured tax treatment granted by Brazil after the date of the signature of the present Convention, by virtue of an international Convention, to enterprises, the capital of which is wholly or partly owned or controlled, directly or indirectly, by residents of countries located in Latin-America shall not constitute, for the purposes of the provisions of paragraph 3 of Article XXIII, a discrimination against a Brazilian enterprise owned or controlled under the same conditions abovementioned by a resident of Canada.

14. It is understood that the provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by any other agreement entered into by a Contracting State.

15. It is understood that for the determination of the income tax payable by a resident of a Contracting State in respect of income derived from the other Contracting State, the first-

mentioned State shall not consider in any event that such an income is higher than the gross amount of the income paid in the other Contracting State.

16. Notwithstanding the provisions of paragraph 6 of Article X and of paragraph 15 of this Protocol, where a resident of Canada controls, directly or indirectly, alone or together with members of a related group or together with not more than four other residents of Canada, a company which is a resident of Brazil and in which he holds an equity percentage of at least 10 per cent, such resident may be subject to tax in Canada on his proportionate share of the aggregate of the company's net income for any taxation year from property and businesses other than active businesses and the company's net taxable capital gains for any taxation year from the alienation of property other than property used for active business purposes; for the purposes of this provision, any income from a source in a country other than Canada which pertains to or is incident to an active business carried on in a country other than Canada shall be deemed to be income from an active business.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Protocol.

DONE in duplicate at Brasilia, this 4th day of June, 1984 in the English, Portuguese and French languages, each version being equally authentic.

Anthony Eyton

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Ramiro Saraiva Guerreiro

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