

# Treaty of Friendship, Commerce and Navigation between the Italian Republic and the Federal Republic of Germany

THE PRESIDENT OF THE ITALIAN REPUBLIC

and

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY

ANIMATED BY THE COMMON DESIRE to make the friendship between their States increasingly operative and to promote economic exchanges by giving them the freest possible form, have decided to conclude a Treaty of Friendship, Commerce and Navigation based, in general, on the principle of reciprocal national treatment.

decided to conclude a Treaty of Friendship, Commerce and Navigation based, in general, on the principle of reciprocal national treatment and on that of most-favoured-nation treatment applied unconditionally.

To this end, they have designated as their Plenipotentiaries

The President of the Italian Republic:

the Hon. Prof. Giuseppe Pella,

Vice-President of the Council of Ministers,

Minister for Foreign Affairs,

the President of the Federal Republic of Germany:

Dr. Heinrich von Brentano,

Federal Minister for Foreign Affairs,

who, having exchanged their full powers, found in good and due form, have agreed upon the following articles:

## Article 1.

1. Each Contracting Party shall accord to the nationals and companies of the other Party, their assets, their enterprises and all their other interests fair and equitable treatment at all times.
2. Within the limits of the provisions of this Treaty, freedom of trade and navigation shall be accorded between the territories of the two Contracting Parties.

## Article 2.

1. The nationals of each Contracting Party may enter, stay, settle, travel and transit through the territory of the other Contracting Party, subject to the relevant rules of law, except where considerations of public policy, public security, public health or morality preclude this. Such nationals may also at any time leave the territory of the other Party, unless there are criminal offences.
2. Nationals of each Contracting Party who are lawfully residing in the territory of the other Contracting Party may be expelled only if this is necessary for reasons of State security, public safety, public order or morality. After a lawful stay of at least five years, expulsion shall be permissible only on grounds of State security or if the other reasons mentioned above are particularly serious.
3. A decision to refuse entry into or residence in the territory of one of the Contracting Parties shall be subject to the

remedies provided for by the laws of that Party. Nationals of each Contracting Party who are lawfully residing in the territory of the other Contracting Party may not be expelled until they have been given an opportunity to put forward any grounds which they may have for refusing them leave to enter or reside in the territory of the other Contracting Party, to appeal and to be represented to that end by a competent authority.

4. The two Contracting Parties shall grant every possible facility for the travel of tourists and other visitors in respect of their entry, stay and departure and for the distribution of tourist information material.

### **Article 3.**

1. The citizens of each Contracting Party shall be guaranteed full freedom of thought, conscience, religion, assembly, association and public worship in the territory of the other Party in accordance with the provisions of the Constitution of that Party.

Subject to their general laws, the nationals of each Contracting Party may freely engage, including in the form of a society, in any religious, scientific, charitable, educational, cultural, recreational, sporting or social activity and shall be entitled, as shall such societies, to enter into legal transactions, for the purpose of the aforesaid activities as well as in funerary matters, with any natural person or society having its residence, seat or abode in the territory of the other Contracting Party. This applies in particular to the right to enter into contracts, to assume obligations, to hold movable and immovable property, rights and interests of all kinds, to acquire such property by living persons or by reason of death and to dispose of or otherwise dispose of it.

Nothing in this paragraph shall be construed as granting or impliedly granting any right to engage in political activity in the territory of the other Contracting Party.

2. The two Contracting Parties recognise the principles of freedom of the press and free exchange of information.

Subject to their general laws, the citizens of each Contracting Party may collect information in the territory of the other Contracting Party for public dissemination; may freely transmit such material for publication abroad by means of the press, radio, television, film and other media; may freely use public information transmission services for the exchange of information with other persons within and outside that territory.

3. The provisions of this Article shall not affect the legal provisions of either Contracting Party concerning the maintenance of public security, public order or the protection of morals and public health.

### **Article 4.**

1. The nationals of each Contracting Party shall enjoy protection and security in the territory of the other Contracting Party. The legal system of the other Contracting Party shall not place them in a less favourable situation with respect to the protection of their person than that existing in similar cases for nationals of the other Contracting Party. In application of this principle, the two Contracting Parties undertake not to enact any rules containing restrictions, encumbrances or particular burdens on nationals of the other Contracting Party. In no case shall their treatment be less favourable than that corresponding to the principles of international law in force in the matter.

2. In the event of measures taken by the authorities of one of the Contracting Parties restricting the personal liberty of a national of the other Party, the national in question shall within 48 hours be placed at the disposal of the court, which shall question him promptly and contest the charges against him. The arrested citizen has the right to request that the competent court take a decision without delay regarding the legality and continuation of the arrest. He also has the right to request that his case be decided within an appropriate period of time in which he must be allowed sufficient time to prepare his defence, and to have the assistance of a lawyer whom he trusts, or of his own motion if he does not make such an appointment but the law nevertheless requires the presence of a lawyer. All procedural activities must be carried out with the assistance of an interpreter, if necessary. In any case, an interpreter shall always be present if the defendant so requests, including when questioning the police.

3. As soon as a national of one of the Contracting Parties has been arrested by authorities of the other Contracting Party, the next consular representative of the country of which the arrested person is a national shall be informed of the arrest without delay. The consular representative shall have the right to visit the arrested person whenever he considers it necessary, and to keep in touch with him by correspondence. Such visits and correspondence shall take place within the framework of the regulations in force for the establishment where the said citizen is detained. The two Contracting Parties agree, however, that such regulations shall provide the consular representative with adequate opportunities for access to and consultation with the arrested person.

## **Article 5.**

1. The nationals of each Contracting Party shall not be obliged to perform military service to the other Party, nor shall they be compelled to join armed or militarised formations organised by that Party within or outside its territory.
2. Nationals of each Party shall be exempt in the territory of the other Party from any obligation relating to public personal services, except for general civil services provided for the protection of the civilian population, including protection against natural disasters. The exemption shall also extend to compulsory contributions which are required in lieu of personal service benefits.
3. The nationals of each Contracting Party shall be accorded in the territory of the other Contracting Party the same treatment as that accorded to nationals in respect of their obligations to provide public benefits such as requisitions, temporary occupations and similar obligations. They shall be entitled to all the guarantees and remedies to which nationals are entitled, as well as to such indemnities as may be provided by law.
4. The nationals of each Contracting Party shall be entitled in the territory of the other Contracting Party to all benefits from public funds made available for this purpose which are granted to nationals in cases of natural disasters and the like.
5. The provisions of paragraphs 2, 3 and 4 shall apply correspondingly to companies.

## **Article 6.**

1. The assets of nationals and companies of each Contracting Party shall enjoy protection and security in the territory of the other Party.
2. Such property shall enjoy protection not less than that afforded to the property of nationals by the laws of the other Contracting Party. This shall also apply to acts of public authority, searches, inspections and any other action; such acts shall, moreover, be carried out in the manner least burdensome to the persons concerned.
3. The two Contracting Parties undertake not to enact any rules or take any particular measures against nationals and companies of the other Party which render their treatment worse as regards their participation in other economic undertakings, whether by way of contribution of money or by any other contribution permitted by law.
4. The property of nationals and companies of each Party may be expropriated in the territory of the other Party only in the public interest and against adequate compensation. The compensation shall correspond to the value of the expropriated property, be effectively realisable and be paid without unnecessary delay. At the latest at the time of expropriation, appropriate provision shall be made for the determination and payment of the compensation. The legality of the expropriation and the amount of compensation must be able to be examined in a normal legal process. Nationals and companies of each Contracting Party may claim the same rights in connection with the expropriation of property in the territory of the other Contracting Party in which they participate directly or indirectly.
5. In respect of matters covered by paragraphs 2 and 4, nationals of each Contracting Party shall enjoy in the territory of the other Contracting Party most-favoured-nation treatment.

## **Article 7.**

The nationals and companies of each Contracting Party shall enjoy in the territory of the other Contracting Party the same treatment as nationals with regard to access to all courts, tribunals and administrative organs and to all public offices for the protection of their rights and interests.

## **Article 8.**

1. Nationals of each Contracting Party shall, in the territory of the other Contracting Party, enjoy national treatment as regards access to economic or professional activities of any kind and as regards the pursuit of such activities. The same applies to companies and firms.
2. Nationals and companies of each Contracting Party shall have the right to establish companies in the territory of the other Contracting Party, to participate in their establishment or to acquire interests in companies of the other Contracting Party, in accordance with the laws applicable to nationals and companies of the other Contracting Party. Such nationals shall have the right to exercise activities in the management and administration of such companies, in particular as members of the Board of Directors or the Board of Managers.

3. In the territory of one Contracting Party, enterprises shall not be treated less favourably than other enterprises because they are owned or controlled by nationals or companies of the other Contracting Party.
4. The provisions of paragraphs 1 to 3 shall not apply to professions or activities to the exercise of which foreign nationals or foreign companies or firms are not admitted or are admitted only with limitations. However, nationals of one of the Contracting Parties shall be admitted in the territory of the other Contracting Party to the exercise of professions or activities referred to in paragraph 8 of the Protocol according to the provisions applicable to nationals.
5. The provisions of paragraphs 1 to 3 shall not preclude
  - (a) subjecting companies, the legal form of which differs from the forms of companies allowed by the domestic laws, to the treatment provided for by those laws as regards obligations concerning the registration of company documents in the commercial register, the liability of directors and the disclosure of financial statements;
  - (b) to require that, as regards share capital and accounts, companies comply with requirements corresponding to those required of national companies of the same legal form; if the companies fulfil these conditions, the authorisation to carry on business which may be required of foreign companies shall be granted.
6. Legal restrictions which may be introduced in the future for foreign nationals and foreign companies shall not apply to an activity already lawfully pursued at the time when these restrictions come into force.
7. Nationals and companies of each Contracting Party as well as enterprises owned or controlled by them shall enjoy in the territory of the other Contracting Party most-favoured-nation treatment in all matters dealt with in this Article.

## **Article 9.**

1. Notwithstanding the provisions of paragraph 1 and the second sentence of paragraph 4 of Article 8, the admission of nationals of each Contracting Party to engage in work as service providers in the territory of the other Contracting Party shall be governed, subject to the following provisions, by the laws and regulations of each Contracting Party relating to foreign service providers.
2. Nationals of each Contracting Party who are lawfully resident in the territory of the other Contracting Party and who are lawfully employed there as workers for at least five years continuously or periodically at intervals not exceeding nine months, or who can prove lawful residence for at least ten years without interruption, shall be issued, on request, with a document whereby they shall not be subject for an unlimited period to any territorial restrictions and, subject to the provisions of Article 8 (4), to any occupational restrictions as regards the exercise of salaried employment. The two Contracting Parties shall endeavour to reduce the above time limits further.
3. On request, the document may also be issued before the expiry of the time limits laid down in paragraph 2 if the application of the laws and regulations of the country of stay relating to foreign service providers and the application of the provisions laid down in paragraph 2 result in particular hardship for the service provider.
4. Managers of an enterprise who are lawfully resident in the territory of the other Contracting Party shall, on application, be granted permission to engage in the activities of a manager without any territorial, temporal or occupational restriction, subject to the provisions of Article 8, paragraph 4:
  - (a) those who are authorised to represent the enterprise legally;
  - (b) persons to whom a special or general power of attorney has been issued
  - (c) employees delegated to act for the entire field of activity of a dependent branch.
5. Nationals of each Contracting Party who are lawfully resident in the territory of the other Contracting Party and who commence or pursue an activity as an employee of companies operating within the scope of Article 3, paragraph 1, shall, upon application, be granted, without prejudice to the greater right under paragraph 2 of this Article 9, permission to engage in such activity.
6. For the spouse and children of a service provider holding the document referred to in paragraph 2, the minimum period of residence required for the issue of a similar document shall be reduced from ten years to five years, unless the document can be issued before the expiry of that period under the provisions of paragraph 3. The two Contracting Parties assure that they shall examine with particular benevolence applications from such family members requesting the application of the provisions of paragraph 3.
7. Residence within the meaning of the foregoing provisions shall not be deemed to be interrupted where the persons

mentioned in paragraphs 2 and 6 have left the country of residence solely on account of holidays, illness or other reasons of a temporary nature.

8. Nationals of each Contracting Party who are lawfully summoned to the territory of the other Contracting Party as teachers, aids or assistants at universities or colleges of higher education shall be granted permission to engage in such activities.

### **Article 10.**

1. Nationals and companies of a Contracting Party carrying on business in its territory, as well as their travelling salesmen, shall be entitled to make purchases in the territory of the other Contracting Party for their trade, industry or other activities and to solicit orders for goods from nationals and companies in the course of their business. They may bring with them samples and models but not goods.

2. The exercise of the rights governed by paragraph 1 may be made conditional on the operators holding the legitimisation card issued by the home authorities in accordance with the standard card introduced by the International Convention on the simplification of customs formalities signed at Geneva on 3 November 1923. This identity card will not require a consular or other visa.

3. However, this shall be without prejudice to any greater advantage derived from the most-favoured-nation treatment which the two Contracting Parties hereby agree to accord each other in respect of the matters referred to in paragraphs 1 and 2.

### **Article 11.**

1. The nationals and companies of each Contracting Party may, in the territory of the other Contracting Party, freely avail themselves of the services of self-employed persons and employ workers on an equal basis with nationals.

2. For internal purposes within their own enterprises and the enterprises in which they participate, and particularly for carrying out controls, audits and technical examinations, they may employ economic and technical experts of their own country, even if such experts do not possess the qualifications required in the territory of the other Contracting Party for taking up and exercising such activities. In each case, however, the assignment must be of limited duration and the task must be clearly defined.

### **Article 12.**

1. Nationals and companies of each Contracting Party shall be accorded in the territory of the other Contracting Party the treatment of nationals for the conclusion of legal transactions of all kinds with any natural person or company having its residence, seat or domicile in the territory of the other Contracting Party.

2. This applies in particular to the right to enter into contracts, to assume obligations, to hold movable and immovable property, rights and interests of all kinds, to acquire them by deed between living persons or by reason of death and to dispose of or otherwise dispose of them.

### **Article 13.**

The Contracting Parties undertake to co-operate in increasing the exchange and use of scientific and technical knowledge with a view, above all, to increasing productivity and raising the standard of living in their territories.

### **Article 14.**

1. The nationals and companies of each Contracting Party shall not be subjected in the territory of the other Party to taxes, duties, contributions or any other fiscal burden on their persons, property, rights and interests levied by or on behalf of the State, regional and local authorities, which are different from or higher than those levied on nationals and companies of the other Party in identical situations, or on nationals and companies of any third country.

### **Article 15.**

1. Payment relationships shall be settled in accordance with the rights and obligations of both Contracting Parties arising from their membership in International Economic Organisations and from multilateral agreements on the settlement of

payment relationships concluded within such Organisations.

2. The other Articles of this Treaty shall not prevent either Contracting Party from applying the limitations provided for under its legislation falling within the scope of the provisions referred to in paragraph 1. Each Contracting Party shall apply such limitations in the most liberal manner and shall endeavour to remove or relax such limitations to the extent that its economic, financial and currency situation permits.

3. Each Contracting Party shall afford to nationals and companies of the other Party adequate opportunities for the transfer of investment capital and income. The same principle shall apply to compensation referred to in Article 5(3) and Article 6(4), which shall be paid after the entry into force of this Treaty.

## **Article 16.**

1. Trade shall be governed by the rights and obligations of both Contracting Parties under relevant multilateral agreements to which the Parties are parties, to the extent that such trade is not governed by this Treaty or other bilateral agreements between the Parties.

2. The provisions contained in this Treaty which relate to matters governed also by the above-mentioned Multilateral Agreements shall be valid under the same conditions as those laid down for the application of the said Multilateral Agreements.

## **Article 17.**

Each Contracting Party shall accord immediately and unconditionally to products originating in or destined for the other Party all advantages, favours, privileges and immunities which it accords or will accord in the future to like products originating in or destined for any other country. This applies to the amount, security and collection of duties and charges of any kind payable on or in connection with importation or exportation, as well as charges due on the transfer of funds made in payment for imports or exports, all customs regulations and formalities relating to the importation, exportation, transit, warehousing, temporary importation or exportation, re-exportation or re-importation of goods, irrespective of the mode or means of transport used.

## **Article 18.**

1. No certificate of origin shall, as a general rule, be required for imports of products of either Contracting Party into the territory of the other Party.

2. Where the production of such certificates is considered to be strictly necessary, the two Contracting Parties shall not subject the issue of such certificates to any unnecessary formalities which would constitute an obstacle to trade. Except in cases of suspected abuse, such certificates shall be exempt from consular visa requirements.

3. When products of third countries are imported through the territory of one of the Contracting Parties into the territory of the other Contracting Party, the customs authorities of the latter Party shall also accept the certificates of origin issued by the customs authorities of the other Party, provided that the said certificates indicate that the products remained under customs supervision during transit.

4. For the purpose of determining the origin of imported products, the provisions of the importing country shall apply.

## **Article 19.**

1. Laws, regulations and decisions of general application which relate to the classification of goods for customs purposes, to duty, taxes or other charges, to restrictions or prohibitions on imports or exports or to the transfer of payments therefor, or which relate to the sale, distribution, transport, insurance, storage, inspection, exhibition, processing, mixing or any other use of the products, shall be published by each Contracting Party as soon as possible to enable the other Party and merchants to acquaint themselves therewith. New, more onerous measures of a general nature shall not, however, be applied before their official publication. The laws, regulations and decisions referred to in this paragraph shall be applied uniformly, impartially and fairly.

2. Each Party shall afford to importers of products of the other Party an opportunity for prompt and impartial review and judicial review of administrative measures relating to customs matters with a view to their possible revision and correction. This shall apply particularly to decisions of the Customs Authorities concerning the classification of goods and the determination of the taxable value.

3. Severe penalties shall not be imposed for minor breaches of customs law or procedure, particularly where these relate to omissions or bona fide errors made in documentation presented to customs.

4. Each Contracting Party undertakes to take all the necessary steps to effectively protect geographical designations of origin and designations of certain products indicating directly or indirectly their origin from one of the Contracting Parties against unfair competition in trade transactions. The two Contracting Parties shall also conclude an agreement on this matter.

## **Article 20.**

Subject to re-exportation or re-importation within a specified time limit and to proof of identity, and subject to the necessary guarantees and control measures, the following shall be admitted by each Contracting Party to temporary importation and exportation free of all entry or exit duties

(a) articles imported from the territory of one of the Contracting Parties into the territory of the other Contracting Party to be repaired and re-exported there after repair;

(b) outer or inner receptacles normally used in trade which, in accordance with recognised commercial usage, and provided that they are not invoiced for permanent transfer, are imported empty to be filled and re-exported or imported full to be emptied and re-exported empty or filled;

(c) tools, implements and mechanical appliances imported by a firm of one of the Contracting Parties into the territory of the other Party for the purpose of assembly, testing, repair or other similar work by its own personnel, whether such articles are dispatched or brought in by its own personnel;

(d) machines, apparatus and parts thereof, consigned from the territory of one of the Contracting Parties for testing in the territory of the other Party under the conditions laid down by the latter;

(e) products of all kinds destined for international exhibitions and fairs recognised by the Government of the country in which they are held.

## **Article 21.**

1. Where either Contracting Party makes the treatment of imported goods dependent on special conditions concerning composition, degree of purity, quality, sanitary condition, area of production or other similar conditions, the two Contracting Parties shall endeavour to conclude specific agreements in order to simplify the import control formalities by means of certificates issued by the authorities of the exporting country.

2. The agreements referred to in paragraph 1 shall regulate the procedure for issuing the certificates and the conditions to be fulfilled by the goods in order for the certificates to be recognised in the importing country.

3. The authorities of the importing country shall have the right to verify the accuracy of such certificates and to satisfy themselves as to the identity of the goods.

## **Article 22.**

1. Taxes, levies or other internal charges levied by or on behalf of the State or regional or local authorities in the territory of one of the Contracting Parties on the production, manufacture, transport, distribution, sale or consumption of any product shall not be due or imposed on products originating in the other Contracting Party to a greater or more onerous extent than on similar domestic products.

2. Products originating in one Contracting Party imported into the territory of the other Contracting Party shall not be subjected to treatment less favourable than that accorded to like domestic products, in respect of all laws, regulations and requirements relating to the sale, offering for sale, purchase, transportation, distribution and use of those products on the domestic market.

3. This shall be without prejudice to any greater benefit derived from most-favoured-nation treatment which the two Contracting Parties herein agree to accord each other in respect of all matters referred to in paragraphs 1 and 2.

## **Article 23.**

No enterprise of each Contracting Party which is publicly owned or controlled and which engages in commercial, industrial, transport or other economic activities within the territory of the other Contracting Party shall claim or enjoy in that territory,

either for itself or in respect of its assets, any exemption from taxation, legal process, enforcement or any other requirement to which a private enterprise is subject there.

## **Article 24.**

1. Ships flying the flag of a Contracting Party that carry the documents required to prove their nationality under their national law shall be treated as ships of that Contracting Party.
2. Tonnage certificates issued by the competent authorities shall be mutually recognised. The calculation and payment of the navigation taxes and dues shall be carried out on the basis of those certificates and without re-calculation in accordance with the provisions of the other Contracting Party and under the same conditions as those applicable to its own ships. This recognition is based on the fact that the existing tonnage measurement systems of the two Parties are substantially equivalent; if these systems are subsequently modified, the Party ordering the modification shall inform the other Party so that, by common agreement, it may establish the coefficients to be applied to the new tonnage certificates in order to re-establish equivalence.
3. The vessels of one Contracting Party may not be registered in the maritime registers of the other Contracting Party without a declaration of withdrawal of flag issued by the authorities of the State whose flag they fly.

## **Article 25.**

1. Each Contracting Party shall accord to the ships of the other Contracting Party the same treatment as it accords to its own ships and to the ships of any other State in ports under its sovereignty or authority with regard to free access to and use of the port and full enjoyment of the existing facilities for navigation and commercial operations which it places at the disposal of ships, their cargoes and their passengers. The equality of treatment thus established shall extend to facilities of every kind, such as the assignment of berths, loading and unloading facilities, as well as to dues and taxes of any kind levied in the name of or on behalf of the State, public authorities, concessionaires or bodies of any kind.
2. National treatment and most-favoured-nation treatment shall be accorded to the ships of each Contracting Party in respect of the right to carry cargo of any kind capable of being taken on board to or from the territory of the other Party.
3. The ships of each Contracting Party may, like the ships of the other Contracting Party, discharge part of their cargo and passengers from abroad in any port of the other Contracting Party open to foreign navigation and commerce and retain on board the remainder of their cargo and passengers for other ports open to foreign navigation and commerce in the same country or elsewhere, and may also take on board in the same voyage, in the various ports open to foreign navigation and commerce, cargo and passengers bound for foreign countries.

## **Article 26.**

Goods sailing under the flag of one Contracting Party to or from the territory of the other Party shall enjoy the same facilities as those accorded to goods shipped under the flag of the other Party. This applies in particular to customs duties, other taxes and charges, premiums, refunds and other similar facilities, as well as to the application of customs provisions, loading and unloading by rail or other means of transport.

## **Article 27.**

If a vessel of one Contracting Party runs aground on the coast of the other Contracting Party or is shipwrecked or is forced to seek refuge in a port of the other Contracting Party, the latter shall afford to the vessel, its crew, passengers, crew and passengers' personal property and cargo the same protection and assistance as it would afford in similar situations to a vessel flying its flag. Articles recovered from the ship shall be exempt from the payment of customs duties, provided that they are not used for domestic consumption. Such articles, even if not used for home use, may be subject to customs supervision measures throughout the period during which they remain in that State.

## **Article 28.**

1. The masters of the ships flying the flag of either Contracting Party, the crews of which are not full by reason of sickness or for other reasons, may engage, in any port of the other Contracting Party, such seamen as are necessary for the continuation of the voyage, it being understood that the engagement shall be made in accordance with the law of the flag of the ship.



2. Seamen who are nationals of either Contracting Party and carry a seaman's book issued in lieu of a passport shall be permitted to travel through the territory of the other Contracting Party to join their ship or to return home.

## **Article 29.**

The provisions of this Treaty relating to national treatment in matters of navigation shall not apply to

(a) to regulations established by special laws with regard to the encouragement of the shipbuilding industry and the operation of maritime navigation

(b) the privileges granted to nautical sports societies; or

(c) the operation of maritime services in ports, roadsteads and beaches, including pilotage, towage, salvage and sea assistance

(d) cabotage and inland navigation;

(e) fishing in territorial waters;

(f) emigration and the transport of emigrants.

## **Article 30.**

The two Contracting Parties shall not adopt discriminatory measures which might prejudice the maritime navigation of the other Contracting Party or compromise, contrary to the principles of free competition, the choice of flag.

## **Article 31.**

The provisions of this Treaty relating to navigation shall not apply to warships.

## **Article 32.**

1. The Contracting Parties shall grant each other freedom of transit through their territories for goods, including baggage, and for means of transport of all kinds, irrespective of the mode of transport, whether by road, rail, air, sea or inland waterway.

2. Either Contracting Party may require that transit traffic through its territory to or from the territory of the other Party be declared to the competent customs authority, but, except in the case of non-compliance with customs regulations, such traffic shall not be subject to unnecessary delay or restraint. Such traffic shall, moreover, be exempt from customs duties, other transit taxes and transit charges, with the exception of transport or other charges corresponding to the administrative costs of transit and the costs of services rendered.

3. Goods of every kind originating in a Contracting Party and imported into the territory of the other Contracting Party through the territory of third countries, as well as goods of every kind imported from a Contracting Party through the territory of the other Contracting Party, shall not be subjected on importation to any duties or charges which are different from or higher than those which would be imposed if the goods had been imported directly from the country of origin. This provision shall apply to goods in direct transit as well as to goods which in transit have been, under customs supervision, transhipped, repacked or stored.

## **Article 33.**

1. For the purposes of this Treaty, the term "company or firm" includes all legal persons, commercial companies or firms, and all other companies or associations, whether incorporated or not, which have their seat in the territory of one of the Contracting Parties and are legally constituted under the law of that Party, whether or not their activities are carried on for profit, and whether or not the liability of partners or members is limited.

2. The legal status of companies or firms of one Contracting Party shall be recognised in the territory of the other Party.

## **Article 34.**

1. The provisions of this Treaty shall not affect the right of each Contracting Party to take or maintain measures

- (a) necessary in fulfilment of obligations assumed by the Contracting Party for the maintenance and restoration of international peace and security, or which are indispensable for the protection of its essential internal or external security interests, including the maintenance of neutrality
- (b) relating to the production of, and traffic in, arms, munitions and war material and to the transport thereof, and to trade in other goods intended directly or indirectly for the supply of the forces of war;
- (c) relating to fissile materials or to materials for their manufacture and to radioactive by-products resulting from the use or processing of such materials;
- (d) necessary for animal health purposes and for the protection of animals and plants against diseases, pests and vermin, and in particular in the interests of public health, in accordance with the principles and international agreements on the subject
- (e) relating to the operation of State monopolies now in force or which may hereafter be established;
- (f) for the application to foreign goods of prohibitions or restrictions laid down by domestic legislation for the production, sale, transport or consumption, within the territory, of similar domestic goods, provided that such prohibitions or restrictions are not applied in such a manner as to protect domestic production;
- (g) governing the importation and exportation of gold, silver, platinum and their alloys;
- (h) necessary to prevent deceptive and unfair practices in commercial matters; and
- (i) necessary for the protection of national treasures possessing artistic, historic or archaeological value; or
- (k) provide for advantages for national fishery and marine hunting products.

2. The two Contracting Parties shall apply the measures provided for in paragraph 1 in such a way that they do not constitute a means of arbitrary or unjustifiable discrimination in their mutual relations in comparison with those practised in respect of any other country in the same circumstances. Such measures shall not constitute a disguised restriction on trade between them.

3. In taking the measures provided for in paragraph 1, both Contracting Parties shall endeavour to ensure that, as far as possible, they result in the least possible deviation from the provisions of this Treaty.

## **Article 35.**

The provisions of this Treaty providing for most-favoured-nation treatment shall not extend

- (a) to advantages which each Contracting Party accords to neighbouring countries for the purpose of facilitating frontier relations;
- (a) advantages which either Contracting Party accords to neighbouring countries for the purpose of facilitating frontier relations; (b) advantages arising from a customs union or a free trade area or from interim agreements leading to the establishment of customs unions or free trade areas;
- (c) to advantages accorded by either Contracting Party to territories held in trust by that Party;
- (d) advantages granted by Italy to the Kingdom of Libya, the Republic of San Marino and the Vatican City State;
- (e) to the privileges and advantages granted by a Contracting Party by reason of its participation in a community established between several countries for the common organisation of one or more branches of production, trade or services, or for the security of those branches;
- (f) advantages which either Contracting Party grants to third States in the framework of conventions for the avoidance of double taxation;
- (g) advantages granted by one or both Contracting Parties to one or more third countries in the field of civil aviation.

## **Article 36.**

Each Contracting Party shall grant, within the framework of this Treaty, national treatment on the basis that national treatment is also granted by the other Party in the same matters.

## **Article 37.**

1. Except as provided in Article 16, the provisions of multilateral agreements to which Contracting Parties accede shall prevail over the provisions of this Treaty, unless the latter provide for more favourable treatment.
2. If the provisions of this Treaty and the provisions of the acts establishing and implementing the Communities to which both Contracting Parties are parties and which have been established between several States for the purpose of promoting their economic development jointly cover the same subject matter, the more favourable provisions of such acts shall prevail.
3. Should any of the Multilateral Agreements referred to in Articles 15 and 16 cease to have effect in respect of one or both Contracting Parties, the Contracting Parties shall enter into consultations to determine which provisions of those Agreements shall continue to apply bilaterally.

## **Article 38.**

In all cases where national treatment and most-favoured-nation treatment are accorded concurrently under this Treaty, the most favourable treatment shall apply.

## **Article 39.**

1. If any difference arises between the two Contracting Parties concerning the interpretation or application of this Treaty, they undertake to consult each other in an amicable spirit with a view to finding a solution.
2. If no solution is found, the difference shall be submitted
  - (a) if the two Contracting Parties agree, to the International Court of Justice;
  - (a) if the two Contracting Parties agree, to the International Court of Justice; (b) if not, and at the request of a Contracting Party, to an arbitral tribunal.
  3. (a) The arbitral tribunal shall be constituted from time to time and shall consist of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators so appointed shall appoint a President who shall be a national of a third State.
    - (b) Each Contracting Party shall appoint its own arbitrator within two months after the submission of a relevant request by the other Contracting Party; if it fails to do so, the arbitrator shall be appointed, at the request of the other Contracting Party, by the President of the International Court of Justice.
    - (c) If the arbitrators cannot agree within one month after their appointment on the choice of the president of the arbitral tribunal, the latter shall be appointed, at the request of a Contracting Party, by the President of the International Court of Justice.
    - (d) If the President of the International Court of Justice is prevented from making the appointments referred to in subparagraphs (b) and (c) of this paragraph or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President of the Court. If the Vice-President of the Court is also prevented from making an appointment or is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.
    - (e) Unless the two Contracting Parties agree otherwise, the arbitral tribunal shall establish its own rules of procedure.
    - (f) The arbitral tribunal shall act by a majority of votes. Its decisions shall be binding on the two Contracting Parties, which shall implement them.

## **Article 40.**

1. This Treaty shall be ratified and the exchange of the instruments of ratification shall take place in Bonn as soon as possible.
2. This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and, in the event that either Contracting Party has not denounced it in writing one year before the date of its expiry, it shall be extended indefinitely. After the expiry of the 10-year period, the Treaty may be terminated at any time, but shall remain in force for one year from the date of termination.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty and have affixed their seals thereto.

DONE at Rome, this 21st day of November, 1957, in two originals in the German and Italian languages, both texts being equally authentic.

For the Italian Republic:

Pella

For the Federal Republic of Germany

von Brentano

## Protocol

AT THE SIGNING OF the Treaty of Friendship, Commerce and Navigation between the Italian Republic and the Federal Republic of Germany, the undersigned Plenipotentiaries have also agreed upon the following provisions which shall be considered as an integral part of the aforesaid Treaty:

1. The term "public health" in Article 2 paragraph 1 and Article 3 paragraph 3 includes the protection of life and health of humans, animals and plants.
2. Persons who are nationals of both Contracting Parties and who have their permanent residence and basis of existence in the territory of one of the Contracting Parties may be called upon only by the latter Party to perform any legal obligation of military service (see Article 5, paragraph 1).
3. The term "natural disasters and similar disasters" in Article 5 paragraph 4 does not cover wars and warlike situations.
4. Ships and aircraft flying the flag of either Contracting Party may not, in the territory of the other Party, be subjected to the measures referred to in Article 5(3) and Article 6(4).
5. The provisions of Article 6(4) and (5) shall also apply where a private enterprise becomes publicly owned or subject to public control or similar action by public authorities.
6. The two Contracting Parties agree that it is desirable in the interests of their economic relations that nationals of one Contracting Party be permitted to serve as arbitrators in the territory of the other Contracting Party in the same manner as nationals in arbitration proceedings where the choice of arbitrators is left exclusively to the parties concerned. In this connection, the two Contracting Parties shall make every effort to ensure such a regulation (see Article 7).
7. The national treatment referred to in Article 7 does not extend to the grant of legal aid and the exemption from *cautio iudicatum solvi*, since in this respect the International Convention on Civil Procedure concluded at The Hague on 17 July 1905 continues to apply.
8. The provision in the second sentence of Article 8(4) shall apply to the following professions or activities
  - (a) accountants
  - (b) engineers;
  - (c) architects;
  - (d) chemists (excluding pharmacists);
  - (e) actuaries
  - (f) agronomists
  - (g) surveyors
  - (h) industrial experts
  - (i) forestry and agricultural experts.

9. The provision of Article 8, paragraph 7, shall not apply to persons employed by one Contracting Party in the territory of the other Contracting Party.

10. The provisions of Article 12 shall not prevent a Contracting State from requiring, as a condition for registration in its register, that vessels or aircraft shall not be owned by nationals or companies of a foreign State.

11. The national treatment laid down in Article 14 shall not preclude the levying of taxes. It shall also be without prejudice to the rules in force in either country concerning the imposition of corporate tax on foreign companies.

12. Each Contracting Party may make the importation of capital subject to an authorisation (see Article 15).

13. a) Each Contracting Party undertakes not to invoke from the other Party the application of the provisions of Article 22 to an extent different from or more burdensome than if the other Party applied similar provisions in multilateral agreements to which both Contracting Parties are parties. However, this shall be without prejudice to any greater advantage arising from the most-favoured-nation treatment.

(b) Should the Multilateral Agreements referred to in subparagraph (a) cease to have effect with respect to one or both Contracting Parties, the Contracting Parties shall consult each other as soon as possible in order to determine the conditions under which the provisions of Article 22 may continue to be applied. Until such time as these conditions have been agreed, each Contracting Party may apply these provisions subject to the limitations provided for by its own legislation.

This shall be without prejudice, however, to any greater advantage which may accrue from the most-favoured-nation treatment.

14. The provision of Article 25 paragraph 2 shall not apply to the Postal and Telecommunications Administrations of the two Contracting Parties.

15. The provisions of paragraph 1 of Article 32 shall not affect the existing rules of both Contracting Parties relating to road and air traffic regulations.

16. The provisions of paragraph 2 of Article 32 shall not prevent the levying on transit traffic of taxes or other charges payable in respect of the carriage or movement of means of transport, provided that such taxes and charges are levied in accordance with national and most-favoured-nation treatment.

17. Natural persons may prove their nationality under this Treaty

(a) in the case of Italians

(a) in the case of Italians: by presenting a national passport or a citizenship certificate issued by the authorities of the Republic of Italy, or a seaman's book issued by the authorities of the Republic of Italy, provided that the entry therein states that the holder is an Italian citizen

b) in the case of Germans:

by presenting a national passport or a certificate issued by the Authorities of the Federal Republic of Germany stating that the holder is a German citizen, or by means of a navigation licence issued by the Authorities of the Federal Republic of Germany, provided that the entry therein states that the holder is German;

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol and have affixed their seals thereto.

DONE at Rome, this 21st day of November 1957, in two originals in the German and Italian languages, both texts being equally authentic.

For the Italian Republic:

Pella

For the Federal Republic of Germany

von Brentano

**Protocol of Errata Corrigendum to the text of the Treaty of Friendship, Commerce and Navigation between the Italian Republic and the Federal Republic of Germany, signed at Rome on 21 November 1957**

In view of the fact that a misprint was found in the Italian text of the Treaty of Friendship, Commerce and Navigation between the Italian Republic and the Federal Republic of Germany, signed in Rome on 21 November 1957, the Governments of the Italian Republic and the Federal Republic of Germany agree as follows:

In Article 20(e) of the Italian text, the word "exports" shall be corrected to "exhibitions". The above amendment shall be deemed to have been made to the text of the Treaty on the date of signature of the Treaty.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Protocol.

DONE at Rome, this 24th day of March 1958, in two originals, each in the German and Italian languages, both texts being equally authentic.

For the Government of the Italian Republic:

For the Government of the Federal Republic of Germany,

Klaiber

## **Exchange of Notes**

1. The Federal Minister of Foreign Affairs

Excellency!

Rome, 21 November 1957

I have the honour to refer to the Treaty of Friendship, Trade and Navigation between the Federal Republic of Germany and the Italian Republic signed today and to note the following further agreements:

In view of the special circumstances which led to the conclusion of the Treaty on Relations between the Federal Republic of Germany and the Three Powers and the Supplementary Treaties as amended by the Protocol signed in Paris on 23 October 1954, I have the honour to refer to the following agreements. The provisions of the Treaty of Friendship, Commerce and Navigation shall not affect the actual and legal position of Italian nationals, companies and property with regard to the above-mentioned agreements and the application of the corresponding German legislation, in accordance with the Protocol signed in Paris on 23 October 1954 on the termination of the occupation regime in the Federal Republic of Germany and on the granting of advantages to nationals and companies of other countries in the field of emergency aid and equalisation of burdens legislation and special intergovernmental agreements in the field of equalisation of burdens.

The Government of the Federal Republic of Germany and the Government of the Italian Republic will, however, enter into negotiations and endeavour to resolve those questions which, in connection with the agreements and benefits referred to in the preceding paragraph, are of interest to the relations between the two Contracting States.

I would be grateful if you would confirm the contents of the above agreements, which form an integral part of the Treaty of Friendship, Commerce and Navigation concluded today.

Please accept, Excellency, the assurance of my highest consideration.

From Brentano

His Excellency

the Minister of Foreign Affairs of the Italian Republic,

Professor Giuseppe Pella

Rome

The Minister of Foreign Affairs

Your Excellency

Rome, 21 November 1957

I have the honour to acknowledge receipt of your note dated today which has the following content:

(...)

I have the honour to confirm to Your Excellency the content of the above understanding which forms an integral part of the Treaty of Friendship, Commerce and Navigation concluded today.

Please accept, Sir, the assurance of my highest consideration.

Pella

S. E. Dr. Heinrich von Brentano

Minister for Foreign Affairs of the Federal Republic of Germany

Rome

2. The Federal Minister of Foreign Affairs

Excellency!

Dr. Heinrich von Brentano

Rome

Rome, 21 November 1957

With reference to the Treaty of Friendship, Trade and Navigation between the Federal Republic of Germany and the Italian Republic signed today, I have the honour to inform you of the following:

The Government of the Federal Republic of Germany, in agreement with the Senate of Berlin, desires to include the Land of Berlin in the Treaty of Friendship, Commerce and Navigation between the Federal Republic of Germany and the Italian Republic, and therefore proposes to the Government of the Italian Republic the conclusion of the following agreement:

"The Treaty shall also apply to the Land of Berlin unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Italian Government within three months of the entry into force of the Treaty."

If the Italian Government agrees with the foregoing, may I suggest that this note and your reply constitute the formal confirmation of the agreement reached between our two Governments, which forms an essential part of the Treaty of Friendship, Commerce and Navigation signed today.

Please accept, Sir, the assurance of my highest consideration.

From Brentano

His Excellency

the Minister of Foreign Affairs of the Italian Republic,

Professor Giuseppe Pella

Rome

The Minister of Foreign Affairs

Rome, 21 November 1957

Your Excellency

I have the honour to acknowledge receipt of your note of today's date which reads as follows:

With reference to the Treaty of Friendship, Commerce and Navigation signed today between the Federal Republic of Germany and the Italian Republic, I have the honour to inform you of the following:

In agreement with the Senate in Berlin, the Government of the Federal Republic of Germany wishes to extend the Treaty of Friendship, Commerce and Navigation between the Federal Republic of Germany and the Italian Republic to the Land of Berlin and proposes to the Italian Republic the conclusion of the following agreement:

(...)

I have the honour to inform Your Excellency that the proposal of the Government of the Federal Republic of Germany has met with the approval of the Italian Government.

Your note and this reply therefore constitute official confirmation of the agreement between our two Governments, which forms an integral part of the Treaty of Friendship, Commerce and Navigation signed today.

Please accept, Your Excellency, the assurance of my highest consideration.

Pella

H.E. Dr. Heinrich von Brentano

Minister for Foreign Affairs of the Federal Republic of Germany

Rome