INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING ELETTRONICA SICULA S.p.A. (ELSI)

(UNITED STATES OF AMERICA *v.* ITALY)

VOLUME I
Application; Memorial

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DE L'ELETTRONICA SICULA S.p.A. (ELSI)

(ÉTATS-UNIS D'AMÉRIQUE c. ITALIE)

VOLUME I
Requête; mémoire

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VOLUME I
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The case concerning *Elettronica Sicula S.p.A. (ELSI)*, entered on the Court's General List on 6 February 1987 under number 76, was the subject of a Judgment delivered on 20 July 1989 by the Chamber constituted by the Order made by the Court on 2 March 1987 (*Elettronica Sicula S.p.A. (ELSI), Judgment, I.C.J. Reports 1989*, p. 15).

The pleadings and oral arguments in the case are being published in the following order:

Volume I. Application instituting proceedings; Memorial of the United States of America.
Volume II. Counter-Memorial of Italy; Reply of the United States of America; Rejoinder of Italy.
Volume III. Oral Arguments; Documents submitted to the Chamber after the closure of the written proceedings; Correspondence.

In internal references, bold Roman numerals are used to refer to Volumes of this edition; if they are immediately followed by a page reference, this relates to the new pagination of the Volume in question. On the other hand, the page numbers which are preceded or followed by a reference to one of the pleadings only or which appear between square brackets relate to the original pagination of the document in question, which, in general, is not reproduced in the present edition.

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L'affaire de l'*Elettronica Sicula S.p.A. (ELSI)*, inscrite au rôle général de la Cour sous le numéro 76 le 6 février 1987, a fait l'objet d'un arrêt rendu le 20 juillet 1989 par la Chambre constituée par ordonnance de la Cour du 2 mars 1987 (*Elettronica Sicula S.p.A. (ELSI), arrêt, C.I.J. Recueil 1989*, p. 15).

Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant:

Volume I. Requête introductive d'instance; mémoire des Etats-Unis d'Amérique.
Volume II. Contre-mémoire de l'Italie; réplique des Etats-Unis d'Amérique; duplique de l'Italie.
Volume III. Procédure orale; documents présentés à la Chambre après la fin de la procédure écrite; correspondance.

S'agissant des renvois, les chiffres romains gras indiquent le volume de la présente édition; s'ils sont immédiatement suivis par une référence de page, cette référence renvoie à la nouvelle pagination du volume concerné. En revanche, les numéros de page qui ne sont précédés ou suivis que de la seule indication d'une pièce de procédure ou qui ont été mis entre crochets visent la pagination originale du document en question, qui, en principe, n'a pas été reproduit dans la présente édition.

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REQUÊTE INTRODUCTIVE D'INSTANCE PRÉSENTÉE PAR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

1. THE CHARGÉ D'AFFAIRES *AD INTERIM* OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE DEPUTY-REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

EMBASSY OF THE
UNITED STATES OF AMERICA,
THE HAGUE.

February 6, 1987.

On behalf of the Government of the United States of America, and in accordance with Article 40, paragraph 1, of the Statute of the Court, I have the honor to notify the Court that the United States wishes to initiate proceedings against the Republic of Italy. The United States requests that this Court determine whether Italy has violated the Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Italy and the supplementary agreement to that treaty, through Italy's actions with respect to an Italian company wholly owned by two United States corporations, and, if so, the amount of compensation due. The facts and contentions at issue in this proceeding are detailed in the application attached hereto.

The Government of the United States of America hereby requests, pursuant to Article 26, paragraph 3, of the Statute of the Court, that a chamber be formed composed of five judges to hear and determine this case. On the understanding that the Government of Italy agrees with this request, we will be happy to arrange for consultation with the President of the Court pursuant to Article 17, paragraph 2, of the Rules of Court, so that the President may ascertain the views of the parties regarding the composition of the chamber.

In accordance with Article 40 of the Rules of Court, the Government of the United States of America wishes to inform the Court that its agent will be the Legal Adviser of the United States Department of State, The Honorable Abraham D. Sofaer.

The address for service of the Agent for the United States of America is: Embassy of the United States of America to the Netherlands, Lange Voorhout 102, 2514 EJ The Hague.

(Signed) John P. HEIMANN.

II. APPLICATION INSTITUTING PROCEEDINGS

I have the honor to refer to Article 36 (1) of the Statute of the Court and Article XXVI of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic of 1948. Under the jurisdiction thereby conferred upon the Court, I hereby submit, in accordance with Article 40 (1) of the Statute and Article 38 of the Rules of Court, this Application instituting proceedings in the name of the Government of the United States of America against the Government of the Republic of Italy in the following case.

I. Statement of Facts

This dispute arises from the requisition of the Government of Italy of the plant and related assets of Elettronica Sicula S.p.A. ("ELSI"), an Italian company which was 100 percent owned by two United States corporations, Raytheon Company ("Raytheon") and Machlett Laboratories, Inc. ("Machlett"). This requisition was intended to, and did in fact, prevent Raytheon and Machlett from proceeding with their decision to conduct an orderly liquidation of ELSI, which caused significant financial injury to Raytheon. As a result of the requisition, it was necessary for ELSI to file a petition in bankruptcy. ELSI's plant and related goods were then acquired by a subsidiary of the Italian government-owned conglomerate, Istituto per la Ricostruzione Industriale ("IRI"), at substantially less than fair market value.

In 1956, Raytheon, a United States electronics manufacturer incorporated in the state of Delaware, became a minority shareholder in ELSI, at that time a relatively new Italian company operating in Palermo, Sicily. Due to ELSI's requirements for additional capital to which ELSI's Italian shareholders did not subscribe, Raytheon increased its ownership interest in ELSI during the next 12 years, ultimately acquiring more than 99 percent of the shares. Machlett, a United States company incorporated in the state of Connecticut, purchased the remainder in 1967.

By 1967, with the financial and technical assistance of Raytheon and Machlett, ELSI had become an established manufacturer of sophisticated electronics equipment, including microwave, x-ray, and cathode ray tubes. ELSI had a large, fully equipped plant in Palermo, a skilled work force of almost 900 employees, a reputation for quality products, and a significant volume of sales and export earnings. ELSI had not yet become profitable, however, and continued to accumulate losses. Raytheon had made repeated capital contributions to ELSI, without receiving any return on its investment.

In 1967, Raytheon decided to launch a major and final effort to make ELSI profitable. As part of this effort, Raytheon brought in management, financial and technical experts comprehensively to review and upgrade ELSI's plant and operations; it also made a further contribution of working capital to sustain their efforts. In Raytheon's view, however, it was more critical to ELSI's future financial well-being to develop new products and markets for ELSI, and to secure ELSI's place in the Italian electronics industry by finding a suitable Italian company as co-owner of ELSI. Senior Raytheon and ELSI officers accordingly

made extensive efforts to achieve these objectives, developing detailed plans for new products and markets and pursuing the possibilities of public and private participation and support.

In view of Italy's strong official policy of supporting business development in Sicily, Raytheon and ELSI officers held numerous discussions in 1967 and 1968 with Italian officials, seeking cooperation in maintaining ELSI's operations. They explained that, if ELSI could not be made profitable, they would have no alternative but to close the plant. The Sicilian Government industrial development agency was very interested in becoming an investor in ELSI. Similarly, other Italian and Sicilian Government officials expressed a strong interest in ELSI's survival and gave repeated assurances of the availability of incentives and other support.

In the end, however, such support was not provided; nor was Raytheon able, through its own extensive efforts, to make ELSI profitable. Consequently, in March 1968, upon the recommendation of the Board of Directors, ELSI's shareholders voted to close the plant and liquidate the company. By so doing, ELSI's creditors could be satisfied and ELSI's shareholders would forestall further losses. The orderly liquidation process began on 29 March 1968, with the dismissal of all employees not needed to carry out the liquidation plan.

On 27 and 30 March, the President of Sicily advised ELSI officials that the Government of Italy would, if necessary, requisition ELSI's plant in order to prevent the liquidation. This warning was proven true on 1 April 1968, when the Mayor of Palermo, acting as an official of the Government of Italy, issued an order requisitioning ELSI's plant and equipment for six months (Attachment 3). The order, which noted that the dismissal of employees and plant shutdown had caused public and press criticism of local authorities and that "unforeseeable disturbances of public order could take place", concluded that a requisition was necessary in order "to protect the general economic public interest . . . and public order . . .". No steps were then taken, however, to rehire the employees or to reopen the plant; nor did the public authorities take any steps to protect the plant premises from an occupation by the workers which began shortly thereafter.

ELSI unsuccessfully appealed to the Mayor and other Italian officials to set aside the requisition order. On 19 April 1968, it filed an appeal with the Prefect of Palermo. The next day, 20 April, the President of Sicily threatened that the requisition would be maintained indefinitely unless Raytheon abandoned its liquidation plan. With debts continuing to come due and with no prospect of regaining custody of ELSI's assets and conducting an orderly liquidation in the near future, ELSI's Italian counsel advised the Board of Directors that they were required to file a petition in bankruptcy. A bankruptcy petition was accordingly filed on 26 April 1968 with the Civil and Criminal Tribunal in Palermo, which declared ELSI bankrupt on 16 May.

On 25 July, the Government of Italy made public its intention to take over ELSI's assets through a subsidiary of IRI. In subsequent months, representatives of the Government of Italy and of Raytheon discussed a possible plan for such a take-over, which was to include a general settlement with ELSI's creditors. In November, however, the Government broke off these discussions, announcing that it had decided simply to acquire ELSI's assets through one of IRI's subsidiaries without a creditor settlement. In December, IRI formed a new subsidiary, Industria Elettronica Telecomunicazioni S.p.A. ("ELTEL"), in order to implement this decision.

The bankruptcy judge scheduled three auctions, in January, March, and May of 1969, at which ELSI's plant and other assets could be purchased as a single unit, at a minimum set price. Despite the announced intention of the Government

of Italy to take over ELSI, ELTEL did not bid at these auctions. Nor were there other bidders; the planned government take-over of the plant had been publicized and, by the time of the second auction, was well on the road to completion. The terms of the auction, moreover, excluded those whom Raytheon had earlier identified as the most likely purchasers — foreign companies interested in buying individual product lines.

ELTEL was similarly interested in buying only some of ELSI's assets — the plant and related equipment — and not all of the raw material and inventory of the particular products which ELSI had manufactured. Unlike others who might have been interested in acquiring only a portion of ELSI's assets, however, ELTEL was able to negotiate with the bankruptcy authorities its own terms of sale. As a first step, ELTEL leased the plant for a nominal rental, acquired the work in process at a bargain price, and resumed operations at ELSI's plant. Once it was firmly in control of ELSI's assets, ELTEL then offered to purchase the plant and most of the remaining tangible assets for substantially less than their fair market value. The bankruptcy judge accepted this offer and ordered a fourth auction, at which the minimum bid was set at the negotiated price. On 6 July 1969, therefore, ELTEL purchased ELSI's plant and equipment, and certain of its other assets, on the terms finally agreed to.

On 16 August 1969, 16 months after the requisition began but only six weeks after ELTEL had acquired ELSI's assets, the Prefect of Palermo annulled the Mayor's order of requisition, finding that it was not justified by any legal grounds and, moreover, appeared to have been motivated by improper considerations. The delay in issuing this decision deprived ELSI of any effective redress for the requisition, which had caused ELSI to file a petition in bankruptcy and in turn provided the opportunity for ELTEL to manipulate the sales price of ELSI's assets to its benefit.

As a result of these events, Raytheon suffered substantial financial injury. The planned liquidation, had it been allowed to occur, would have generated sufficient funds to satisfy a substantial portion of ELSI's outstanding Italian bank loans which had been guaranteed by Raytheon and of ELSI's debt to Raytheon and a wholly-owned subsidiary for goods and services provided on open account. Because of the bankruptcy, however, Raytheon itself had to pay the guaranteed loans in full and recovered nothing of what was owed on the open accounts. Thus, Raytheon's actual losses were significantly greater than they would have been, had Raytheon been allowed to proceed with the liquidation. In addition, Raytheon incurred substantial expenses in defending against lawsuits brought by Italian government-controlled banks, mitigating the damage to its reputation and credit, and pursuing its claim for redress.

II. The Jurisdiction of the Court

As Members of the United Nations, Italy and the United States are parties to the Statute of the Court, Article 36 (1) of which provides that "The jurisdiction of the Court comprises . . . all matters specifically provided for . . . in treaties and conventions in force". In 1948, the two countries entered into the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic (the "Treaty") (79 *UNTS* 171), which remains in effect, as supplemented by the Agreement Supplementing the Treaty of Friendship, Commerce and Navigation of 1961 (the "Supplement") (404 *UNTS* 326) (Attachment 1). Article XXVI of the Treaty provides that:

"Any dispute between the High Contracting Parties as to the interpretation or the application of this Treaty, which the High Contracting Parties shall not satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties shall agree to settlement by some other pacific means."

In the circumstances which are described above and which the Government of the United States will set our more fully in its Memorial and subsequent written and oral pleadings, a dispute exists between the Government of Italy and the Government of the United States concerning the interpretation and application of the Treaty and Supplement. The United States contends that Italy's actions with respect to ELSI violated certain of the provisions of the Treaty and Supplement. The Government of Italy has denied this contention. Efforts to resolve the dispute through diplomatic means, commencing in 1969 and continuing into 1985, have been unsuccessful (Attachment 2). There are no other efforts toward settlement pending, nor have the parties agreed to settlement by any other means.

Accordingly, the United States submits that the Court has jurisdiction over this dispute pursuant to Article 36 (1) of the Statute of the Court.

III. The Contentions of the United States

The Government of the United States contends that, by its requisition and subsequent measures against Raytheon's interests in its Italian subsidiary ELSI, and by its discrimination against and failure to afford national treatment to ELSI, the Government of Italy has violated the Treaty and the Supplement. In particular, the United States contends that:

(a) the Government of Italy's requisition of ELSI's assets, which had the object and effect of preventing the orderly liquidation of ELSI and its subsequent conduct violated Articles III and VII of the Treaty and Article I of the Supplement;

(b) the requisition, culminating in the acquisition of ELSI's assets by a government-controlled company, also violated Article V of the Treaty;

(c) the failure of Italian authorities to afford protection of ELSI's plant during the requisition and subsequent period, and the failure of the Prefect promptly to rule on the requisition, violated Article V of the Treaty and Article I of the Supplement; and

(d) the discrimination against ELSI by Italian authorities and failure to afford national treatment violated a number of Articles, including particularly Articles II, III and V of the Treaty and Articles I and V of the Supplement.

IV. Judgment Requested

Accordingly, while reserving the right to supplement and amend this submission as appropriate in the course of further proceedings, the United States requests the Court to adjudge and declare as follows:

(a) that the Government of Italy has violated the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic of 1948, in particular Articles II, III, V and VII of the Treaty, and Articles I and V of the 1961 Supplement; and

(b) that the Government of Italy is responsible to pay compensation to the United States, in an amount to be determined by the Court, as measured by the injuries suffered by United States nationals as a result of these violations, including the additional financial losses which Raytheon suffered in repaying the guaranteed loans and in not recovering amounts due on open accounts, as well as expenses incurred in defending against Italian bank lawsuits, in mitigating the damage to its reputation and credit, and in pursuing its claim for redress.

The Government of the United States has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the United States, The Hague, Lange Voorhout 102.

Respectfully submitted,

(Signed) Abraham D. SOFAER,

Agent for the Government of
the United States of America.

Attachment 1

FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty, protocol, additional protocol, and exchanges of notes signed at Rome February 2, 1948.

Senate advice and consent to ratification June 2, 1948;
Ratified by the President of the United States June 16, 1949;
Ratified by Italy June 18, 1949;
Ratifications exchanged at Rome July 26, 1949;
Entered into force July 26, 1949;
Proclaimed by the President of the United States August 5, 1949;
Supplemented by agreement of September 26, 1951[1].

63 Stat. 2255; Treaties and Other International Acts Series 1965

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC

The UNITED STATES OF AMERICA and the ITALIAN REPUBLIC, desirous of strengthening the bond of peace and the traditional ties of friendship between the two countries and of promoting closer intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of their peoples, have resolved to conclude a Treaty of Friendship, Commerce and Navigation based in general upon the principles of national and of most-favored-nation treatment in the unconditional form, and for that purpose have appointed as their Plenipotentiaries,

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

Mr. JAMES CLEMENT DUNN, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Italian Republic,

and,

THE PRESIDENT OF THE ITALIAN REPUBLIC:

The Honorable CARLO SFORZA, Minister Secretary of State for Foreign Affairs.

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

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[1] 12 *UST* 131; *TIAS* 4685.

Article I

1. The nationals of either High Contracting Party shall be permitted to enter the territories of the other High Contracting Party, and shall be permitted freely to reside and travel therein.

2. The nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted, without interference, to exercise, in conformity with the applicable laws and regulations, the following rights and privileges upon terms no less favorable than those now or hereafter accorded to nationals of such other High Contracting Party:

(a) to engage in commercial, manufacturing, processing, financial, scientific, educational, religious, philanthropic and professional activities except the practice of law[1];

(b) to acquire, own, erect or lease, and occupy appropriate buildings, and to lease appropriate lands, for residential, commercial, manufacturing, processing, financial, professional, scientific, educational, religious, philanthropic and mortuary purposes;

(c) to employ agents and employees of their choice regardless of nationality; and

(d) to do anything incidental to or necessary for the enjoyment of any of the foregoing rights and privileges.

3. Moreover, the nationals of either High Contracting Party shall not in any case, with respect to the matters referred to in paragraphs 1 and 2 of this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country.

4. The provisions of paragraph 1 of this Article shall not be construed to preclude the exercise by either High Contracting Party of reasonable surveillance over the movement and sojourn of aliens within its territories or the enforcement of measures for the exclusion or expulsion of aliens for reasons of public order, morals, health or safety.

Article II

1. As used in this Treaty the term "corporations and associations" shall mean corporations, companies, partnerships and other associations, whether or not with limited liability and whether or not for pecuniary profit, which have been or may hereafter be created or organized under the applicable laws and regulations.

2. Corporations and associations created or organized under the applicable laws and regulations within the territories of either High Contracting Party shall be deemed to be corporations and associations of such High Contracting Party and shall have their juridical status recognized within the territories of the other High Contracting Party whether or not they have a permanent establishment, branch or agency therein.

3. Corporations and associations of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted, without interference, to exercise all the rights and privileges enumerated in paragraph 2 of Article I, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations of such other High Contracting Party. The preceding sentence, and all other provisions of this Treaty according to corporations and associations of the Italian

[1] See also para. 4 of Protocol, p. 26, *infra*.

Republic rights and privileges upon terms no less favorable than those now or hereafter accorded to corporations and associations of the United States of America, shall be construed as according such rights and privileges, in any state, territory or possession of the United States of America, upon terms no less favorable than those upon which such rights and privileges are or may hereafter be accorded therein to corporations and associations created or organized in other states, territories or possessions of the United States of America.

4. Moreover, corporations and associations of either High Contracting Party shall not in any case, with respect to the matters referred to in this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to corporations and associations of any third country.

Article III

1. The nationals, corporations and associations of either High Contracting Party shall enjoy, throughout the territories of the other High Contracting Party, rights and privileges with respect to organization of and participation in corporations and associations of such other High Contracting Party, including the enjoyment of rights with respect to promotion and incorporation, the purchase, ownership and sale of shares and, in the case of nationals, the holding of executive and official positions, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country. Corporations and associations of either High Contracting Party, organized or participated in by nationals, corporations and associations of the other High Contracting Party pursuant to the rights and privileges enumerated in this paragraph, and controlled by such nationals, corporations and associations, shall be permitted to exercise the functions for which they are created or organized, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations that are similarly organized or participated in, and controlled, by nationals, corporations and associations of any third country.

2. The nationals, corporations and associations of either High Contracting Party shall be permitted, in conformity with the applicable laws and regulations within the territories of the other High Contracting Party, to organize, control and manage corporations and associations of such other High Contracting Party for engaging in commercial, manufacturing, processing, mining, educational, philanthropic, religious and scientific activities. Corporations and associations, controlled by nationals, corporations and associations of either High Contracting Party and created or organized under the applicable laws and regulations within the territories of the other High Contracting Party, shall be permitted to engage in the aforementioned activities therein, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations of such other High Contracting Party controlled by its own nationals, corporations and associations.

Article IV

The nationals, corporations and associations of either High Contracting Party shall be permitted within the territories of the other High Contracting Party to explore for and to exploit mineral resources, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country.

Article V

1. The nationals of each High Contracting Party shall receive, within the territories of the other High Contracting Party, the most constant protection and security for their persons and property, and shall enjoy in this respect the full protection and security required by international law. To these ends, persons accused of crime shall be brought to trial promptly, and shall enjoy all the rights and privileges which are or may hereafter be accorded by the applicable laws and regulations; and nationals of either High Contracting Party, while within the custody of the authorities of the other High Contracting Party, shall receive reasonable and humane treatment. In so far as the term "nationals" where used in this paragraph is applicable in relation to property it shall be construed to include corporations and associations.

2. The property of nationals, corporations and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation. The recipient of such compensation shall, in conformity with such applicable laws and regulations as are not inconsistent with paragraph 3 of Article XVII of this Treaty, be permitted without interference to withdraw the compensation by obtaining foreign exchange, in the currency of the High Contracting Party of which such recipient is a national, corporation or association, upon the most favorable terms applicable to such currency at the time of the taking of the property, and exempt from any transfer or remittance tax, provided application for such exchange is made within one year after receipt of the compensation to which it relates[1].

3. The nationals, corporations and associations of either High Contracting Party shall within the territories of the other High Contracting Party receive protection and security with respect to the matters enumerated in paragraphs 1 and 2 of this Article, upon compliance with the applicable laws and regulations, no less than the protection and security which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party and no less than that which is or may hereafter be accorded to the nationals, corporations and associations of any third country. Moreover, in all matters relating to the taking of privately owned enterprises into public ownership and the placing of such enterprises under public control, enterprises in which nationals, corporations and associations of either High Contracting Party have a substantial interest shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than that which is or may hereafter be accorded to similar enterprises in which nationals, corporations and associations of such other High Contracting Party have a substantial interest, and no less favorable than that which is or may hereafter be accorded to similar enterprises in which nationals, corporations and associations of any third country have a substantial interest.

4. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of access to the courts of justice and to administrative tribunals and agencies in the territories of the other High Contracting Party, in all degrees of jurisdiction established by law, both in pursuit and in defense of their rights; shall be at liberty to choose and employ lawyers and representatives in the prosecution and defense of their rights before such courts, tribunals and agencies; and shall be permitted to exercise all these rights and privileges, in

[1] See also para. 1 of Protocol, p. 26, and paras. 5 and 6 of Additional Protocol, p. 28, *infra*.

conformity with the applicable laws and regulations, upon terms no less favorable than the terms which are or may hereafter be accorded to the nationals, corporations and associations of the other High Contracting Party and no less favorable than are or may hereafter be accorded to the nationals, corporations and associations of any third country. Moreover, corporations and associations of either High Contracting Party which are not engaged in business or in non-profit activities within the territories of the High Contracting Party shall be permitted to exercise the rights and privileges accorded by the preceding sentence without any requirement of registration or domestication.

Article VI

The dwellings, warehouses, factories, shops, and other places of business, and all premises thereto appertaining, of the nationals, corporations and associations of either High Contracting Party, located in the territories of the other High Contracting Party, shall not be subject to unlawful entry or molestation. There shall not be made any visit to, or any search of, any such dwellings, buildings or premises, nor shall any books, papers or accounts therein be examined or inspected, except under conditions and in conformity with procedures no less favorable than the conditions and procedures prescribed for nationals, corporations and associations of such other High Contracting Party under the applicable laws and regulations within the territories thereof. In no case shall the nationals, corporations or associations of either High Contracting Party in the territories of the other High Contracting Party be treated less favorably with respect to the foregoing matters than the nationals, corporations or associations of any third country. Moreover, any visit, search, examination or inspection which may be permissible under the exception stated in this Article shall be made with due regard for, and in such a way as to cause the least possible interference with, the occupants of such dwellings, buildings or premises or the ordinary conduct of any business or other enterprise.

Article VII

1. The nationals, corporations and associations of either High Contracting Party shall be permitted to acquire, own and dispose of immovable property or interests therein within the territories of the other High Contracting Party upon the following terms:

(a) in the case of nationals, corporations and associations of the Italian Republic, the right to acquire, own and dispose of such property and interests shall be dependent upon the laws and regulations which are or may hereafter be in force within the state, territory or possession of the United States of America wherein such property or interests are situated; and

(b) in the case of nationals, corporations and associations of the United States of America, the right to acquire, own and dispose of such property and interests shall be upon terms no less favorable than those which are or may hereafter be accorded by the state, territory or possession of the United States of America in which such national is domiciled, or under the laws of which such corporation or association is created or organized, to nationals, corporations and associations of the Italian Republic; provided that the Italian Republic shall not be obligated to accord to nationals, corporations and associations of the United States of America rights in this connection more extensive than those which are or may hereafter be accorded within the territories of such Republic to nationals, corporations and associations of such Republic.

2. If a national, corporation or association of either High Contracting Party, whether or not resident and whether or not engaged in business or other activities within the territories of the other High Contracting Party, is on account of alienage prevented by the applicable laws and regulations within such territories from succeeding as devisee, or as heir in the case of a national, to immovable property situated therein, or to interests in such property, then such national, corporation or association shall be allowed a term of three years in which to sell or otherwise dispose of such property or interests, this term to be reasonably prolonged if circumstances render it necessary. The transmission or receipt of such property or interests shall be exempt from the payment of any estate, succession, probate or administrative taxes or charges higher than those now or hereafter imposed in like cases of nationals, corporations or associations of the High Contracting Party in whose territory the property is or the interests therein are situated.

3. The nationals of either High Contracting Party shall have full power to dispose of personal property of every kind within the territories of the other High Contracting Party, by testament, donation or otherwise and their heirs, legatees or donees, being persons of whatever nationality or corporations or associations wherever created or organized, whether resident or non-resident and whether or not engaged in business within the territories of the High Contracting Party where such property is situated, shall succeed to such property, and shall themselves or by their agents be permitted to take possession thereof, and to retain or dispose of it at their pleasure. Such disposition, succession and retention shall be subject to the provisions of Article IX and exempt from any other charges higher, and from any restrictions more burdensome, than those applicable in like cases of nationals, corporations and associations of such other High Contracting Party. The nationals, corporations and associations of either High Contracting Party shall be permitted to succeed, as heirs, legatees and donees, to personal property of every kind within the territories of the other High Contracting Party, left or given to them by nationals of either High Contracting Party or by nationals of any third country, and shall themselves or by their agents be permitted to take possession thereof, and to retain or dispose of it at their pleasure. Such disposition, succession and retention shall be subject to the provisions of Article IX and exempt from any other charges, and from any restrictions, other or higher than those applicable in like cases of nationals, corporations and associations of such other High Contracting Party. Nothing in this paragraph shall be construed to affect the laws and regulations of either High Contracting Party prohibiting or restricting the direct or indirect ownership by aliens or foreign corporations and associations of the shares in, or instruments of indebtedness of, corporations and associations of such High Contracting Party carrying on particular types of activities.

4. The nationals, corporations and associations of either High Contracting Party shall, subject to the exceptions in paragraph 3 of Article IX, receive treatment in respect of all matters which relate to the acquisition, ownership, lease, possession or disposition of personal property, no less favorable than the treatment which is or may hereafter be accorded to nationals, corporations and associations of any third country.

Article VIII

The nationals, corporations and associations of either High Contracting Party shall enjoy, within the territories of the other High Contracting Party, all rights and privileges of whatever nature in regard to patients, trade marks, trade labels,

trade names and other industrial property, upon compliance with the applicable laws and regulations respecting registration and other formalities, upon terms no less favorable than are or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party, and no less favorable than the treatment now or hereafter accorded to nationals, corporations and associations of any third country.

Article IX

1. Nationals, corporations and associations of either High Contracting Party shall not be subjected to the payment of internal taxes, fees and charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of the other High Contracting Party:

(a) more burdensome than those borne by nationals, residents, and corporations and associations of any third country;

(b) more burdensome than those borne by nationals, corporations and associations of such other High Contracting Party, in the case of persons resident or engaged in business within the territories of such other High Contracting Party, and in the case of corporations and associations engaged in business therein, or organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

2. In the case of corporations and associations of either High Contracting Party, engaged in business within the territories of the other High Contracting Party, and in the case of nationals of either High Contracting Party engaged in business within the territories of the other High Contracting Party but not resident therein, such other High Contracting Party shall not impose or apply any internal tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of corporations and associations organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

3. Notwithstanding the provisions of paragraph 1 of the present Article, each High Contracting Party reserves the right to: *(a)* extend specific advantages as to taxes, fees and charges to nationals, residents, and corporations and associations of all foreign countries on the basis of reciprocity; *(b)* accord to nationals, residents, and corporations and associations of a third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue; and *(c)* accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature than are accorded to other nonresident persons.

Article X

Commercial travelers representing nationals, corporations or associations of either High Contracting Party engaged in business within the territories therof, shall, upon their entry into and sojourn within the territories of the other High Contracting Party and on departure therefrom, be accorded treatment no less favorable than the treatment now or hereafter accorded to commercial travelers of any third country in respect of customs and other rights and privileges and,

subject to the exceptions in paragraph 3 of Article IX, in respect of all taxes and charges applicable to them or to their samples.

Article XI

1. The nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted to exercise liberty of conscience and freedom of worship, and they may, whether individually, collectively or in religious corporations or associations, and without annoyance or molestation of any kind by reason of their religious belief, conduct servies, either within their own houses or within any other appropriate buildings, provided that their teachings or practices are not contrary to public morals or public order.

2. The High Contracting Parties declare their adherence to the principles of freedom of the press and of free interchange of information. To this end, nationals, corporations and associations of either High Contracting Party shall have the right, within the territories of the other High Contracting Party, to engage in such activities as writing, reporting and gathering of information for dissemination to the public, and shall enjoy freedom of transmission of material to be used abroad for publication by the press, radio, motion pictures, and other means. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of publication in the territories of the other High Contracting Party, in accordance with the applicable laws and regulations, upon the same terms as nationals, corporations or associations of such other High Contracting Party. The term "information", as used in this paragraph, shall include all forms of written communications, printed matter, motion pictures, recordings and photographs[1].

3. The nationals of either High Contracting Party shall be permitted within the territories of the other High Contracting Party to bury their dead according to their religious customs in suitable and convenient places which are or may hereafter be established and maintained for the purpose, subject to the applicable mortuary and sanitary laws and regulations.

Article XII

1. The nationals of either High Contracting Party, regardless of alienage or place of residence, shall be accorded rights and privileges no less favorable than those accorded to the nationals of the other High Contracting Party, under laws and regulations within the territories of such other High Contracting Party that *(a)* establish a civil liability for injury or death, and give a right of action to an injured person, or to the relatives, heirs, dependents or personal representative as the case may be, of an injured or deceased person, or that *(b)* grant to a wage earner or an individual receiving salary, commission or other remuneration, or to his relatives, heirs or dependents, as the case may be, a right of action, or a pecuniary compensation or other benefit or service, on account of occupational disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of this Article, the nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be accorded, upon terms no less favorable than those applicable to nationals of such other High Contracting Party, the benefits of laws and regulations establishing systems of compulsory insurance, under which benefits are paid without an individual test of financial need: *(a)*

[1] See also para. 5 of Protocol, p. 26, *infra*.

against loss of wages or earnings due to old age, unemployment or sickness or other disability, or *(b)* against loss of financial support due to the death of father, husband or other person on whom such support had depended.

Article XIII

1. The nationals of each High Contracting Party shall be exempt, except as otherwise provided in paragraph 2 of this Article, from compulsory training or service in the armed forces of the other High Contracting Party, and shall also be exempt from all contributions in money or in kind imposed in lieu thereof.

2. During any period of time when both of the High Contracting Parties are, through armed action in connection with which there is general compulsory service, *(a)* enforcing measures against the same third country or countries in pursuance of obligations for the maintenance of international peace and security, or *(b)* concurrently conducting hostilities against the same third country or countries, the exemptions provided in paragraph 1 of this Article shall not apply. However, in such an event the nationals of either High Contracting Party in the territories of the other High Contracting Party, who have not declared their intention to acquire the nationality of such other High Contracting Party, shall be exempt from service in the armed forces of such other High Contracting Party if within a reasonable period of time they elect, in lieu of such service, to enter the armed forces of the High Contracting Party of which they are nationals. In any such situation the High Contracting Parties will make the necessary arrangements for giving effect to the provisions of this paragraph.

Article XIV

1. In all matters relating to *(a)* customs duties and subsidiary charges of every kind imposed on imports or exports and in the method of levying such duties and charges, *(b)* the rules, formalities, and charges imposed in connection with the clearing of articles through the customs, and *(c)* the taxation, sale, distribution or use within the country of imported articles and of articles intended for exportation, each High Contracting Party shall accord to articles the growth, produce or manufacture of the other High Contracting Party, from whatever place arriving, or to articles destined for exportation to the territories of such other High Contracting Party, by whatever route, treatment no less favorable than the treatment now or hereafter accorded to like articles the growth, produce or manufacture of, or destined for, any third country.

2. With respect to the matters referred to in paragraph 1 of this Article, the nationals, corporations and associations of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than the treatment which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party; and with respect to such matters the nationals, corporations and associations, vessels and cargoes of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than the treatment which is or may hereafter be accorded to nationals, corporations and associations, vessels and cargoes of any third country.

3. No prohibition or restriction of any kind shall be imposed by either High Contracting Party on the importation, sale, distribution or use of any article the growth, produce or manufacture of the other High Contracting Party, or on the exportation of any article destined for the territories of the other High Contracting Party, unless the importation, sale, distribution or use of the like article the

growth, produce or manufacture of all third countries, or the exportation of the like article to all third countries, respectively, is similarly prohibited or restricted[1].

4. If either High Contracting Party imposes any quantitative regulation, whether made effective through quotas, licenses or other measures, on the importation or exportation of any article, or on the sale, distribution or use of any imported article, it shall as a general rule give public notice of the total quantity or value of such article permitted to be imported, exported, sold, distributed or used during a specified period, and of any change in such quantity or value. Furthermore, if either High Contracting Party allots to any third country a share of such total quantity or value of any article in which the other High Contracting Party has an important interest, it shall as a general rule allot to such other High Contracting Party a share of such total quantity or value based upon the proportion of the total quantity or value supplied by, or in the case of exports a share based upon the proportion exported to, the territories of such other High Contracting Party during a previous representative period, account being taken in so far as practicable of any special factors which may have affected or may be affecting the trade in that article. The provisions of this paragraph relating to imported articles shall also apply in respect of the quantity or value of any article permitted to be imported free of duty or tax, or at a lower rate of duty or tax than the rate of duty or tax imposed on imports in excess of such quantity or value.

5. If either High Contracting Party requires documentary proof of origin of imported articles, the requirements imposed therefor shall be reasonable and shall not be such as to constitute an unnecessary hindrance to indirect trade.

Article XV

1. Laws, regulations of administrative authorities and decisions of administrative or judicial authorities of each High Contracting Party that have general application and that pertain to the classification of articles for customs purposes or to rates of duty shall be published promptly in such a manner as to enable traders to become acquainted with them. Such laws, regulations and decisions shall be applied uniformly at all ports of each High Contracting Party, except as otherwise specifically provided for in statutes of the United States of America with respect to the importation of articles into its insular territories and possessions.

2. No administrative ruling by the United States of America effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the Italian Republic, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the Italian Republic already en route at the time of publication thereof in accordance with the preceding paragraph; reciprocally, no administrative ruling by the Italian Republic effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the United States of America, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the United States of America already en route at the time of publication thereof in accordance with the preceding paragraph. However, if either High Contracting Party customarily exempts from such new or increased obligations articles entered for consumption or withdrawn from warehouse for consumption

[1] See also paras. 1 and 2 of Additional Protocol, p. 27, *infra*.

during a period of thirty days after the date of such publication, such practice shall be considered full compliance by such High Contracting Party with this paragraph. The provisions of this paragraph shall not apply to administrative orders imposing antidumping or countervailing duties or relating to regulations for the protection of human, animal or plant life or health, or relating to public safety, or giving effect to judicial decisions.

3. Each High Contracting Party shall provide some administrative or judicial procedure under which the nationals, corporations and associations of the other High Contracting Party, and importers of articles the growth, produce or manufacture of such other High Contracting Party, shall be permitted to appeal against fines and penalties imposed upon them by the customs authorities, confiscations by such authorities and rulings of such authorities on questions of customs classification and of valuation of articles for customs purposes. Greater than nominal penalties shall not be imposed by either High Contracting Party in connection with any importation by the nationals, corporations or associations of the other High Contracting Party, or in connection with the importation of articles the growth, produce or manufacture of such other High Contracting Party, because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established.

4. Each High Contracting Party will accord sympathetic consideration to such representations as the other High Contracting Party may make with respect to the operation or administration of import or export prohibitions or restrictions, quantitative regulations, customs regulations or formalities, or sanitary laws, or regulations for the protection of human, animal or plant life or health.

Article XVI

1. Articles the growth, produce or manufacture of either High Contracting Party, imported into the territories of the other High Contracting Party, shall be accorded treatment with respect to all matters affecting internal taxation, or the sale, distribution or use within such territories, no less favorable than the treatment which is or may hereafter be accorded to like articles of national origin[1].

2. Articles grown, produced or manufactured within the territories of either High Contracting Party in whole or in part by nationals, corporations and associations of the other High Contracting Party, or by corporations and associations of the High Contracting Party within the territories of which such articles are grown, produced or manufactured which are controlled by nationals, corporations and associations of the other High Contracting Party, shall be accorded within such territories treatment with respect to all matters affecting internal taxation, or the sale, distribution or use therein, or exportation therefrom, no less favorable than the treatment now or hereafter accorded to like articles grown, produced or manufactured therein in whole or in part by nationals, corporations and associations of the High Contracting Party within the territories of which the articles are grown, produced or manufactured, or by corporations and associations of such High Contracting Party which are controlled by such nationals, corporations and associations. The articles specified in the preceding sentence shall not in any case receive treatment less favorable than the treatment which is or may hereafter be accorded to like articles grown, produced or manufactured in whole or in part by nationals, corporations and associations of any third country, or by corporations and associations controlled by such nationals, corporations and associations.

[1] See also para. 3 of Additional Protocol, p. 28, *infra*.

3. In all matters relating to export bounties, customs drawbacks and the warehousing of articles intended for exportation, the nationals, corporations and associations of either High Contracting Party shall be accorded within the territories of the other High Contracting Party treatment no less favorable than the treatment which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party.

Article XVII

1. The treatment prescribed in this Article shall apply to all forms of control of financial transactions, including *(a)* limitations upon the availability of media necessary to effect such transactions, *(b)* rates of exchange, and *(c)* prohibitions, restrictions, delays, taxes, charges and penalties on such transactions; and shall apply whether a transaction takes place directly, or through an intermediary in another country. As used in this Article, the term "financial transactions" means all international payments and transfers of funds effected through the medium of currencies, securities, bank deposits, dealings in foreign exchange or other financial arrangements, regardless of the purpose or nature of such payments and transfers.

2. Financial transactions between the territories of the two High Contracting Parties shall be accorded by each High Contracting Party treatment no less favorable than that now or hereafter accorded to like transactions between the territories of such High Contracting Party and the territories of any third country.

3. Nationals, corporations and associations of either High Contracting Party shall be accorded by the other High Contracting Party treatment no less favorable than that now or hereafter accorded to nationals, corporations and associations of such other High Contracting Party and no less favorable than that now or hereafter accorded to nationals, corporations and associations of any third country, with respect to financial transactions between the territories of the two High Contracting Parties or between the territories of such other High Contracting Party and of any third country.

4. In general, any control imposed by either High Contracting Party over financial transactions shall be so administered as not to influence disadvantageously the competitive position of the commerce or investment of capital of the other High Contracting Party in comparison with the commerce or the investment of capital of any third country.

Article XVIII

1. If either High Contracting Party establishes or maintains a monopoly or agency for the importation, exportation, purchase, sale, distribution or production of any article, or grants exclusive privileges to any agency to import, export, purchase, sell, distribute or produce any article, such monopoly or agency shall accord to the commerce of the other High Contracting Party fair and equitable treatment in respect of its purchases of articles the growth, produce or manufacture of foreign countries and its sales of articles destined for foreign countries. To this end, the monopoly or agency shall, in making such purchases or sales of any article, be influenced solely by considerations, such as price, quality, marketability, transportation and terms of purchase or sale, which would ordinarily be taken into account by a private commercial enterprise interested solely in purchasing or selling such article on the most favorable terms. If either High Contracting Party establishes or maintains a monopoly or agency for the sale of any service or grants exclusive privileges to any agency to sell any service, such monopoly

or agency shall accord fair and equitable treatment to the other High Contracting Party and to the nationals, corporations and associations and to the commerce thereof in respect of transactions involving such service as compared with the treatment which is or may hereafter be accorded to any third country and to the nationals, corporations and associations and to the commerce thereof[1].

2. Each High Contracting Party, in the awarding of concessions and other contracts, and in the purchasing of supplies, shall accord fair and equitable treatment to the nationals, corporations and associations and to the commerce of the other High Contracting Party as compared with the treatment which is or may hereafter be accorded to the nationals, corporations and associations and to the commerce of any third country.

3. The two High Contracting Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among public or private commercial enterprises may have harmful effects upon the commerce between their respective territories. Accordingly, each High Contracting Party agrees upon the request of the other High Contracting Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects.

Article XIX

1. Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its national law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both within the ports, places and waters of the other High Contracting Party and on the high seas. As used in this Treaty, "vessels" shall be construed to include all vessels of either High Contracting Party whether privately owned or operated or publicly owned or operated. However, the provisions of this Treaty other than this paragraph and paragraph 4 of Article XX shall not be construed to accord rights to vessels of war or fishing vessels of the other High Contracting Party; nor shall they be construed to extend to nationals, corporations and associations, vessels and cargoes of, or to articles the growth, produce or manufacture of, such other High Contracting Party any special privileges restricted to national fisheries or the products thereof.

3. The vessels of either High Contracting Party shall have liberty, equally with the vessels of any third country, to come with their cargoes to all ports, places and waters of the other High Contracting Party which are or may hereafter be open to foreign commerce and navigation.

Article XX

1. The vessels and cargoes of either High Contracting Party shall, within the ports, places and waters of the other High Contracting Party, in all respects be accorded treatment no less favorable than the treatment accorded to the vessels and cargoes of such other High Contracting Party, irrespective of the port of departure or the port of destination of the vessel, and irrespective of the origin or the destination of the cargo.

2. No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges, of whatever kind or denomination,

[1] See also para. 3 of Protocol, p. 26, *infra*.

levied in the name or for the profit of the government, public functionaries, private individuals, corporations or establishments of any kind, shall be imposed in the ports, places and waters of either High Contracting Party upon the vessels of the other High Contracting Party, which shall not equally and under the same conditions be imposed upon national vessels.

3. No charges upon passengers, passenger fares or tickets, freight moneys paid or to be paid, bills of lading, contracts of insurance or re-insurance, no conditions relating to the employment of ship brokers, and no other charges or conditions of any kind, shall be imposed in a way tending to accord any advantage to national vessels as compared with the vessels of the other High Contracting Party.

4. If a vessel of either High Contracting Party shall be forced by stress of weather or by reason of any other distress to take refuge in any of the ports, places or waters of the other High Contracting Party not open to foreign commerce and navigation, it shall receive friendly treatment and assistance and such repairs, as well as supplies and materials for repair, as may be necessary and available. This paragraph shall apply to vessels of war and fishing vessels, as well as to vessels as defined in paragraph 2 of Article XIX.

5. The vessels and cargoes of either High Contracting Party shall not in any case, with respect to the matters referred to in this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to the vessels and cargoes of any third country.

Article XXI

1. It shall be permissible, in the vessels of either High Contracting Party, to import into the territories of the other High Contracting Party, or to export therefrom, all articles which it is or may hereafter be permissible to import into such territories, or to export therefrom, in the vessels of such other High Contracting Party or of any third country; and such articles shall not be subject to any higher duties or charges whatever than those to which the articles would be subject if they were imported or exported in vessels of the other High Contracting Party or of any third country.

2. Bounties, drawbacks and other privileges of this nature of whatever kind or denomination which are or may hereafter be allowed, in the territories of either High Contracting Party, on articles imported or exported in national vessels or vessels of any third country shall also and in like manner be allowed on articles imported or exported in vessels of the other High Contracting Party.

Article XXII

1. Vessels of either High Contracting Party shall be permitted to discharge portions of cargoes, including passengers, at any ports, places or waters of the other High Contracting Party which are or may hereafter be open to foreign commerce and navigation, and to proceed with the remaining portions of such cargoes or passengers to any other such ports, places or waters, without paying higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner, in the same voyage outward, at the various ports, places and waters which are or may hereafter be open to foreign commerce and navigation. The vessels and cargoes of either High Contracting Party shall be accorded, with respect to the matters referred to in this paragraph, treatment in the ports, places and waters of the other High Contracting Party no less favorable than the treatment which is or may hereafter be accorded to the vessels and cargoes of any third country.

2. The coasting trade and inland navigation of each High Contracting Party are excepted from the requirements of national and most-favored-nation treatment.

Article XXIII

There shall be freedom of transit through the territories of each High Contracting Party by the routes most convenient for international transit *(a)* for persons who are nationals of any third country, together with their baggage, directly or indirectly coming from or going to the territories of the other High Contracting Party, *(b)* for persons who are nationals of the other High Contracting Party, together with their baggage, regardless of whether they are coming from or going to the territories of such other High Contracting Party, and *(c)* for articles directly or indirectly coming from or going to the territories of the other High Contracting Party. Such persons, baggage and articles in transit shall not be subject to any transit duty, to any unnecessary delays or restrictions, or to any discrimination in respect of charges, facilities or any other matter; and all charges and regulations prescribed in respect of such persons, baggage or articles shall be reasonable, having regard to the conditions of the traffic. Either High Contracting Party may require that such baggage and articles be entered at the proper customhouse and that they be kept whether or not under bond in customs custody; but such baggage and articles shall be exempt from all customs duties or similar charges if such requirements for entry and retention in customs custody are complied with and if they are exported within one year and satisfactory evidence of such exportation is presented to the customs authorities. Such nationals, baggage, persons and articles shall be accorded treatment with respect to all charges, rules and formalities in connection with transit no less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country, together with their baggage, or to persons and articles coming from or going to the territories of any third country.

Article XXIV

1. Nothing in this Treaty shall be construed to prevent the adoption or enforcement by either High Contracting Party of measures:

(a) relating to the importation or exportation of gold or silver;

(b) relating to the exportation of objects the value of which derives primarily from their character as works of art, or as antiquities, of national interest or from their relationship to national history, and which are not in general practice considered articles of commerce;

(c) relating to fissionable materials, to materials which are the source of fissionable materials, or to radio-active materials which are by-products of fissionable materials;

(d) relating to the production of and traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;

(e) necessary in pursuance of obligations for the maintenance of international peace and security, or necessary for the protection of the essential interests of such High Contracting Party in time of national emergency; or

(f) imposing exchange restrictions, as a member of the International Monetary Fund, in conformity with the Articles of Agreement thereof signed at Washington December 27, 1945[1], but without utilizing its privileges under Article VI, section 3,

[1] *TIAS* 1501, Vol. 3, p. 1351.

of that Agreement so as to impair any provision of this Treaty; provided that either High Contracting Party may, nevertheless, regulate capital transfers to the extent necessary to insure the importation of essential goods or to effect a reasonable rate of increase in very low monetary reserves or to prevent its monetary reserves from falling to a very low level. If the International Monetary Fund should cease to function, or if either High Contracting Party should cease to be a member thereof, the two High Contracting Parties, upon the request of either High Contracting Party, shall consult together and may conclude such arrangements as are necessary to permit appropriate action in contingencies relating to international financial transactions comparable with those under which exceptional action had previously been permissible.

2. Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either High Contracting Party against the other High Contracting Party or against the nationals, corporations, associations, vessels or commerce thereof, in favor of any third country or the nationals, corporations, associations, vessels or commerce thereof, the provisions of this Treaty shall not extend to prohibitions or restrictions:

(a) imposed on moral or humanitarian grounds;
(b) designed to protect human, animal or plant life or health;
(c) relating to prison-made goods; or
(d) relating to the enforcement of police or revenue laws.

3. The provisions of this Treaty according treatment no less favorable than the treatment accorded to any third country shall not apply to:

(a) advantages which are or may hereafter be accorded to adjacent countries in order to facilitate frontier traffic;
(b) advantages accorded by virtue of a customs union of which either High Contracting Party may, after consultation with the other High Contracting Party, become a member so long as such advantages are not extended to any country which is not a member of such customs union;
(c) advantages accorded to third countries pursuant to a multilateral economic agreement of general applicability, including a trade area of substantial size, having as its objective the liberalization and promotion of international trade or other international economic intercourse, and open to adoption by all the United Nations[1];
(d) advantages now accorded or which may hereafter be accorded by the Italian Republic to San Marino, to the Free Territory of Trieste or to the State of Vatican City, or by the United States of America or its territories or possessions to one another, to the Panama Canal Zone, to the Republic of Cuba, to the Republic of the Philippines or to the Trust Territory of the Pacific Islands; or
(e) advantages which, pursuant to a decision made by the United Nations or an organ thereof or by an appropriate specialized agency in relationship with the United Nations, may hereafter be accorded by either High Contracting Party to areas other than those enumerated in subparagraph *(d)* of the present paragraph.

The provisions of subparagraph *(d)* shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America or its territories or possessions to one another irrespective of any change in the political status of any of the territories or possessions of the United States of America.

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[1] For an understanding relating to para. 3 *(c)* of Article XXIV, see exchanges of notes, pp. 29-31, *infra*.

4. The provisions of this Treaty shall not be construed to accord any rights or privileges to persons, corporations and associations to engage in political activities, or to organize or participate in political corporations and associations.

5. Each High Contracting Party reserves the right to deny any of the rights and privileges accorded by this Treaty to any corporation or association created or organized under the laws and regulations of the other High Contracting Party in the ownership or direction of which nationals of any third country or countries have directly or indirectly a controlling interest.

6. No enterprise of either High Contracting Party which is publicly owned or controlled shall, if it engages in commercial, manufacturing, processing, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, from suit, from execution of judgment, or from any other liability to which a privately owned and controlled enterprise is subject therein.

7. The provisions of this Treaty shall not be construed to affect existing laws and regulations of either High Contracting Party in relation to immigration or the right of either High Contracting Party to adopt and enforce laws and regulations relating to immigration; provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling and residing in the territories of the other High Contracting Party in order to carry on trade between the two High Contracting Parties or to engage in any commercial activity related thereto or connected therewith, upon terms as favorable as are or may hereafter be accorded to the nationals of any third country entering, traveling and residing in such territories in order to carry on trade between such other High Contracting Party and such third country or to engage in commercial activity related to or connected with such trade.

Article XXV

Subject to any limitation or exception provided in this Treaty or hereafter agreed upon between the High Contracting Parties, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land and water under the sovereignty or authority of either of the High Contracting Parties, other than the Canal Zone, and other than the Trust Territory of the Pacific Islands except to the extent that the President of the United States of America shall by proclamation extend provisions of the Treaty to such Trust Territory.

Article XXVI

Any dispute between the High Contracting Parties as to the interpretation or the application of this Treaty, which the High Contracting Parties shall not satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties shall agree to settlement by some other pacific means.

Article XXVII

1. This Treaty shall be ratified, and the ratifications thereof shall be exchanged at Rome as soon as possible.

2. This Treaty shall enter into force on the day of the exchange of ratifications, and shall continue in force for a period of ten years from that day.

3. Unless one year before the expiration of the aforesaid period of ten years either High Contracting Party shall have given written notice to the other High

Contracting Party of intention to terminate this Treaty upon the expiration of the aforesaid period, the Treaty shall continue in force thereafter until one year from the date on which written notice of intention to terminate it shall have been given by either High Contracting Party.

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

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome, this second day of February one thousand nine hundred forty-eight.

For the
Government of the United States
of America:
James Clement DUNN.

For the
Italian Government:
SFORZA.

PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered as integral parts of said Treaty:

1. The provisions of paragraph 2 of Article V, providing for the payment of *compensation, shall extend to interests held directly or indirectly by nationals*, corporations and associations of either High Contracting Party in property which is taken within the territories of the other High Contracting Party.

2. Rights and privileges with respect to commercial, manufacturing and processing activities accorded, by the provisions of the Treaty, to privately owned and controlled enterprises of either High Contracting Party within the territories of the other High Contracting Party shall extend to rights and privileges of an economic nature granted to publicly owned or controlled enterprises of such other High Contracting Party, in situations in which such publicly owned or controlled enterprises operate in fact in competition with privately owned and controlled enterprises. The preceding sentence shall not, however, apply to subsidies granted to publicly owned or controlled enterprises in connection with: *(a)* manufacturing or processing goods for government use, or supplying goods and services to the government for government use; or *(b)* supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practicably obtainable by such groups.

3. The concluding sentence of paragraph 1 of Article XVIII shall not be construed as applying to postal services.

4. The provisions of paragraph 2 *(a)* of Article I shall not be construed to extend to the practice of professions the members of which are designated by law as public officials.

5. The provisions of paragraph 2 of Article XI shall not be construed to affect measures taken by either High Contracting Party to safeguard military secrets.

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

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome this second day of February one thousand nine hundred forty-eight.

For the
Government of the United States
of America:
James Clement DUNN.

For the
Italian Government:
SFORZA.

ADDITIONAL PROTOCOL

In view of the grave economic difficulties facing Italy now and prospectively as a result of, *inter alia*, the damage caused by the late military operations on Italian soil; the looting perpetrated by the German forces following the Italian declaration of war against Germany; the present inability of Italy to supply, unassisted, the minimum needs of its people or the minimum requirements of Italian economic recovery; and Italy's lack of monetary reserves; at the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered as integral parts of said Treaty:

1. The provisions of paragraph 3 of Article XIV of the abovementioned Treaty and that part of paragraph 4 of the same Article which relates to the allocation of shares, shall not obligate either High Contracting Party with respect to the application of quantitative restrictions on imports and exports:

(a) that have effect equivalent to exchange restrictions authorized in conformity with section 3 *(b)* of Article VII of the Articles of Agreement of the International Monetary Fund;

(b) that are necessary to secure, during the early post-war transitional period, the equitable distribution among the several consuming countries of goods in short supply;

(c) that are necessary in order to effect, for the purchase of imports, the utilization of accumulated inconvertible currencies; or

(d) that have effect equivalent to exchange restrictions permitted under section 2 of Article XIV of the Articles of Agreement of the International Monetary Fund.

2. The privileges accorded to either High Contracting Party by subparagraphs *(c)* and *(d)*, paragraph 1, of the present Protocol, shall be limited to situations in which *(a)* it is necessary for such High Contracting Party to apply restrictions on imports in order to forestall the imminent threat of, or to stop, a serious decline in the level of its monetary reserves or, in the case of very low monetary reserves, to achieve a reasonable rate of increase in its reserves, and *(b)* the application of the necessary restrictions in the manner permitted by the aforesaid paragraph 1 will yield such High Contracting Party a volume of imports above the maximum level which would be possible if such restrictions were applied in the manner prescribed in paragraphs 3 and 4 of Article XIV of the Treaty.

3. During the current transitional period of recovery from the recent war, the provisions of Article XVI, paragraph 1, of the Treaty shall not prevent the application by either High Contracting Party of needed controls to the internal sale, distribution or use of imported articles in short supply, other than or different from controls applied with respect to like articles of national origin. However, no such controls over the internal distribution of imported articles shall be *(a)* applied by either High Contracting Party in such a manner as to cause unnecessary injury to the competitive position within its territories of the commerce of the other High Contracting Party, or *(b)* continued longer than required by the supply situation.

4. Neither High Contracting Party shall impose any new restriction under paragraph 1 of the present Protocol without having given the other High Contracting Party notice thereof which shall, if possible, be not less than thirty days in advance and shall not in any event be less than ten days in advance. Each High Contracting Party shall afford to the other High Contracting Party opportunity for consultation at any time concerning the need for and application of restrictions to which such paragraph relates as well as concerning the application of paragraph 3; and either High Contracting Party shall have the right to invite the International Monetary Fund to participate in such consultation, with reference to restrictions to which subparagraphs *(a)*, *(c)* and *(d)* of paragraph 1 relate.

5. Whenever exchange difficulties necessitate that pursuant to Article XXIV, paragraph 1 *(f)*, the Italian Government regulate the withdrawals provided for in Article V, paragraph 2, the Italian Government may give priority to applications made by nationals, corporations and associations of the United States of America to withdraw compensation received on account of property acquired on or before December 8, 1934, or, if subsequently acquired:

(a) in the case of immovable property, if the owner at the time of acquisition had permanent residence outside Italy, or, if a corporation or association, had its center of management outside Italy;

(b) in the case of shares of stock, if at the time of acquisition Italian laws and regulations permitted such shares to be traded outside Italy;

(c) in the case of bank deposits, if carried on free account at the time of taking;

(d) in any case, if the property was acquired through importing foreign exchange, goods or services into Italy, or through reinvestments of profits or accrued interest from such imports whenever made.

The Italian Government undertakes to grant every facility to assist applicants in establishing their status for the purposes of this paragraph; and to accept evidence of probative value as establishing, in the absence of preponderant evidence to the contrary, a priority claim.

6. Whenever a multiple exchange rate system is in effect in Italy, the rate of exchange which shall be applicable for the purposes of Article V, paragraph 2, need not be the most favorable of all rates applicable to international financial transactions of whatever nature; provided, however, that the rate applicable will in any event permit the recipient of compensation actually to realize the full economic value thereof in United States dollars. In case dispute arises as to the rate applicable, the rate shall be determined by agreement between the High Contracting Parties.

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

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome, this second day of February one thousand nine hundred forty-eight.

For the
Government of the United States
of America:
James Clement DUNN.

For the
Italian Government:
SFORZA.

EXCHANGES OF NOTES

The American Ambassador to the Minister of Foreign Affairs

F.O. NO. 827

Rome, February 2, 1948.

Excellency:

I have the honor to refer to the proposals advanced by representatives of your Government, during the course of negotiations for the Treaty of Friendship, Commerce and Navigation signed this day, for facilitating and expanding the cultural relations between the peoples of our two countries.

I take pleasure in informing you that my Government, recognizing the importance of cultural ties between nations as developing increased understanding and friendship, will undertake to stimulate and foster cultural relations between our two countries, including the interchange of professors, students, and professional and academic personnel between the territories of the United States of America and of Italy, and agrees to discuss at a later time the possibility of agreements designed to establish arrangements whereby such interchange may be facilitated and whereby the cultural bonds between the two peoples may generally be strengthened.

Accept, Excellency, the renewed assurances of my highest consideration.

James Clement DUNN.

His Excellency Count Carlo Sforza,
Minister of Foreign Affairs,
Rome.

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

THE MINISTER OF FOREIGN AFFAIRS

Rome, February 2, 1948.

Excellency:

I have the honor to refer to Your Excellency's note of this date, which reads as follows:

[For text of the United States note, see above.]

I have the honor to inform Your Excellency that the Italian Government will undertake, for its part, to stimulate and foster cultural relations, including the interchange of professors, students and academic personnel, and to discuss the possibility of cultural agreements between our two Governments in accordance with the ideas expressed in Your Excellency's note.

I take pleasure in availing myself of this occasion, Excellency, to renew to you the assurances of my highest consideration.

SFORZA.

To His Excellency James Clement Dunn,
Ambassador of the United States of America,
Rome.

The American Ambassador to the Minister of Foreign Affairs

EMBASSY OF THE UNITED STATES OF AMERICA

F.O. NO. 3170

Excellency:

I have the honor to refer to paragraph 3 *(c)* of Article XXIV of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic signed at Rome on February 2, 1948, and to inform Your Excellency that it is the understanding of the Government of the United States of America that the provisions of the aforesaid Treaty relating to the treatment of goods do not preclude action by either of the parties thereto which is required or specifically permitted by the General Agreement on Tariffs and Trade[1] or by the Havana Charter for an International Trade Organization[2], during such time as the party applying such measures is a contracting party to the General Agreement or is a member of the International Trade Organization, as the case may be.

I shall be glad if Your Excellency will confirm this understanding on behalf of the Government of the Italian Republic.

Accept, Excellency, the renewed assurances of my highest consideration.

James Clement DUNN.

Rome, July 26, 1949.

His Excellency Count Carlo Sforza,
Minister of Foreign Affairs,
Rome.

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[1] *TIAS* 1700, Vol. 4, p. 641.

[2] Unperfected; for excerpts, see *A Decade of American Foreign Policy: Basic Documents, 1941-49* (S. Doc. 123, 81st Cong, 1st sess.), p. 391.

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS

Rome, July 26, 1949.

Excellency:

I have the honor to refer to your letter dated today in which, referring to paragraph 3 *(c)* of Article XXIV of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, signed at Rome on February 2, 1948, you inform me that it is the understanding of the Government of the United States of America that the provisions of the aforesaid Treaty relating to the treatment of goods do not preclude action by either of the parties thereto which is required or specifically permitted by the General Agreement on Tariffs and Trade or by the Havana Charter for an International Trade Organization, during such time as the party applying such measures is a contracting party to the General Agreement or is a member of the International Trade Organization.

I have the honor to inform you that the Italian Government agrees to the foregoing.

Accept, Excellency, the assurances of my high consideration.

SFORZA.

His Excellency James Clement Dunn,
Ambassador of the United States of America,
Rome.

ITALY

FRIENDSHIP, COMMERCE AND NAVIGATION

Agreement supplementing the treaty of February 2, 1948.
Signed at Washington September 26, 1951;
Ratification advised by the Senate of the United States of America, with an understanding, July 21, 1953;
Ratified by the President of the United States of America with said understanding, September 22, 1960;
Ratified by Italy October 28, 1960;
Instruments of ratification exchanged at Washington March 2, 1961;
Proclaimed by the President of the United States of America March 8, 1961;
Entered into force March 2, 1961.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS an agreement supplementing the treaty of friendship, commerce and navigation between the United States of America and the Italian Republic was signed at Washington on September 26, 1951, the original of which agreement, in the English and Italian languages, is word for word as follows:

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC

The United States of America and the Italian Republic, desirous of giving added encouragement to investments of the one country in useful undertakings in the other country, and being cognizant of the contribution which may be made toward this end by amplification of the principles of equitable treatment set forth in the Treaty of Friendship, Commerce and Navigation signed at Rome on February 2, 1948[1], have resolved to conclude a supplementary Agreement, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

Dean Acheson, Secretary of State of the United States of America, and

The President of the Italian Republic:

Giuseppe Pella, Minister of the Budget of the Italian Republic,

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[1] *TIAS* 1965; 63 Stat., pt. 2, p. 2255.

Who, having communicated to each other their full powers found to be in due form, have agreed as follows:

Article I

The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: *(a)* preventing their effective control and management of enterprises which they have been permitted to establish or acquire therein; or, *(b)* impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise. Each High Contracting Party undertakes not to discriminate against nationals, corporations and associations of the other High Contracting Party as to their obtaining under normal terms the capital, manufacturing processes, skills and technology which may be needed for economic development.

Article II

With reference to Article I, paragraph 2 *(c)*, of the said Treaty of Friendship, Commerce and Navigation, laws regarding qualifications for the practice of a profession shall not prevent the nationals, corporations and associations of either High Contracting Party from engaging, or contracting for the services of, technical and administrative experts for the particular purpose of making, exclusively within the enterprise, examinations, audits and technical investigations for, and rendering reports to, such nationals, corporations and associations in connection with the planning and operation of their enterprise, and enterprises in which they have a financial interest, within the territories of the other High Contracting Party.

Article III

1. Regarding the transferability of capital invested by nationals, corporations and associations of either High Contracting Party in the territories of the other, and the returns thereon, the High Contracting Parties undertake to grant each other the most liberal treatment practicable.

2. Each High Contracting Party will permit the nationals, corporations and associations of the other High Contracting Party to transfer freely, by obtaining exchange in the currency of their own country:

(a) Earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and funds for amortization of loans and depreciation of direct investments, and

(b) Funds for capital transfers.

If more than one rate of exchange is in force, the rate applicable to transfers referred to in the present paragraph shall be a rate which is specifically approved by the International Monetary Fund[1] for such transactions or, in the absence of such specifically approved rate, an effective rate which, inclusive of any tax or surcharges on exchange transfers, is just and reasonable.

[1] *TIAS* 1501; 60 Stat. 1401.

Article IV

1. Notwithstanding the provisions of Article III of the present Agreement, each High Contracting Party shall retain the right, in periods of foreign exchange stringency, to apply: *(a)* exchange restrictions to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people; *(b)* exchange restrictions to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves; and *(c)* particular exchange restrictions specifically authorized or requested by the International Monetary Fund. In the event that either High Contracting Party applies exchange restrictions, it shall within a period of three months make reasonable and specific provisions for the transfers referred to in Article III, paragraph 2 *(a)*, together with such provisions for the transfers referred to in Article III, paragraph 2 *(b)*, as may be feasible, giving consideration to special needs for other transactions, and shall afford the other High Contracting Party adequate opportunity for consultation at any time regarding such provisions and other matters affecting such transfers. Such provisions shall be reviewed in consultation with such other High Contracting Party at intervals of not more than twelve months.

2. The provisions of the present Article, rather than those of Article XXIV, paragraph 1 *(f)*, of the said Treaty, shall govern as to the matters treated in the present Agreement.

Article V

In addition, and without prejudice to the other provisions of the present Agreement or of the said Treaty, there shall be applied to the investments made in Italy the regulations covering the special advantages set forth in the fields of taxation, customs and transportation rates, for the industrialization of Southern Italy under Law No. 1598 of December 14, 1948, and for the development of the Apuanian industrial area and the industrial areas of Verona, Gorizia, Trieste, Leghorn, Marghera, Bolzano and other areas covered by the Italian legislation now existing or which may in the future be adopted.

Article VI

The clauses of contracts entered into between nationals, corporations and associations of either High Contracting Party, and nationals, corporations and associations of the other High Contracting Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of the other High Contracting Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories, or that the nationality of one or more of the arbitrators is not that of such other High Contracting Party. No award duly rendered pursuant to any such contractual clause, which is final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either High Contracting Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such High Contracting Party. It is understood that nothing herein shall be construed to entitle an award to be

executed within the territories of either High Contracting Party until after it has been duly declared enforceable therein.

Article VII

1. The two High Contracting Parties, in order to prevent gaps in the social insurance protection of their respective nationals who at different times accumulate substantial periods of coverage under the principal old-age and survivors insurance system of one High Contracting Party and also under the corresponding system of the other High Contracting Party, declare their adherence to a policy of permitting all such periods to be taken into account under either such system in determining the rights of such nationals and of their families. The High Contracting Parties will make the necessary arrangements[1] to carry out this policy in accordance with the following principles:

(a) Such periods of coverage shall be combined only to the extent that they do not overlap or duplicate each other, and only in so far as both systems provide comparable types of benefits.

(b) In cases where an individual's periods of coverage are combined, the amount of benefits, if any, payable to him by either High Contracting Party shall be determined in such a manner as to represent, so far as practicable and equitable, that proportion of the individual's combined coverage which was accumulated under the system of that High Contracting Party.

(c) An individual may elect to have his right to benefits, and the amount thereof, determined without regard to the provisions of the present paragraph.

Such arrangements may provide for the extension of the present paragraph to one or more special old-age and survivors insurance systems of either High Contracting Party, or to permanent or extended disability insurance systems of either High Contracting Party.

2. At such time as the Maintenance of Migrants' Pension Rights Convention of 1935 enters into force with respect to both High Contracting Parties, the provisions of that Convention shall supersede, to the extent that they are inconsistent therewith, paragraph 1 of the present Article and arrangements made thereunder.

Article VIII

Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such questions as the other High Contracting Party may raise with respect to any matter affecting the operation of the present Agreement or of the said Treaty.

Article IX

The present Agreement shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible. It shall enter into force on the day of exchange of ratifications, and shall thereupon constitute an integral part of the said Treaty of Friendship, Commerce and Navigation.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Agreement and have affixed hereunto their seals.

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[1] For understanding of the two Governments concerning arrangements under Art. VII, para. 1, see *post*, p. 36.

DONE in duplicate, in the English and Italian languages, both equally authentic, at Washington, this twenty-sixth day of September, one thousand nine hundred fifty-one.

For the United States of America:
Dean ACHESON.
[SEAL]

For the Italian Republic:
Giuseppe PELLA.
[SEAL]

WHEREAS the Senate of the United States of America by their resolution of July 21, 1953, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said agreement "subject to the understanding that the arrangements referred to in Article VII, paragraph 1, of the said agreement shall be made by the United States only in conformity with provisions of statute";

WHEREAS the text of the said understanding was communicated by the Government of the United States of America to the Government of the Italian Republic by a note dated July 24, 1953, and was accepted by the Government of the Italian Republic on a reciprocal basis;

WHEREAS the said agreement was ratified by the President of the United States of America on September 22, 1960, in pursuance of the aforesaid advice and consent of the Senate and subject to the said understanding, and was ratified on the part of the Italian Republic;

WHEREAS the respective instruments of ratification as aforesaid, were exchanged at Washington on March 2, 1961, and a protocol of exchange, in the English and Italian languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and the Italian Republic, the said protocol of exchange declaring that "it is understood that the entry into force of the arrangements mentioned in Article VII, paragraph 1, of the said agreement is subordinate in any case to the fulfilling on the part of the United States of America of its provisions of statute and on the part of the Italian Republic of its constitutional requirements";

AND WHEREAS it is provided in Article IX of the said agreement that the agreement shall enter into force on the day of exchange of ratifications;

NOW, THEREFORE, be it known that I, John F. Kennedy, President of the United States of America, do hereby proclaim and make public the said agreement to the end that the same and every article and clause thereof may be observed and fulfilled in good faith on and after March 2, 1961, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, subject to the said understanding.

IN TESTIMONY WHEREOF, I have caused the Seal of the United States of America to be hereunto affixed.

DONE at the city of Washington this eighth day of March in the year of our Lord one thousand nine hundred and sixty-one and of the independence of the United States of America the one hundred eighty-fifth.

[SEAL]

John F. KENNEDY.

By the President:

Dean RUSK.

Secretary of State.

Attachment 2

SUMMARY OF DIPLOMATIC EFFORTS TO RESOLVE THIS DISPUTE

The Governments of the United States and the Republic of Italy have engaged in extensive but unsuccessful diplomatic exchanges regarding this dispute.

As early as April 1969, U.S. Commerce Secretary Stans met with Italian Industry and Commerce Minister Tanassi and conveyed the U.S. Government's desire for the amicable resolution of this dispute. In this and other diplomatic contacts through the end of 1973, the United States asked Italy to negotiate directly with Raytheon and Machlett and to compensate them for their losses. These early efforts were unsuccessful.

On February 7, 1974, therefore, the United States submitted its own diplomatic claim against Italy, asking for monetary reparations for the damages caused by Italy's wrongful actions. Included with that claim was a detailed legal memorial in which the U.S. alleged that Italy had violated the FCN Treaty and the Supplementary Agreement, as well as customary international law and municipal Italian law. On June 25, 1975, at Italy's request, the United States supplied a complete Italian translation of the factual and legal statements of the claim.

During the next three years, the United States claim was raised repeatedly with Italian officials, including demarches to Italian Foreign Minister Forlani by U.S. Ambassadors Volpe and Gardner in 1976 and 1977 respectively. Italy did not make a formal response.

Finally, on June 13, 1978, Italy denied the claim in a written Aide-Mémoire. On April 15, 1979, the United States replied in writing to the objections Italy raised in its denial and again asked for reparations. The United States also continued its efforts to resolve this claim through diplomatic communications, including unsuccessful discussions during a May 1979 meeting in Rome between U.S. Secretary of State Vance and Italian Foreign Minister Forlani.

The United States then determined that this dispute could only be resolved through third party dispute resolution. On January 6, 1981, and again on May 15, 1981 and April 5, 1982, the United States presented Diplomatic Notes to Italy asking that the claim be submitted to binding arbitration. The United States and Italy were unable to agree to this or any other method of dispute resolution.

On August 31, 1984 and on March 28, 1985, the United States therefore sent additional Diplomatic Notes to Italy asking that the claim be submitted to binding arbitration. On June 5, 1985, Italy invited a U.S. delegation to meet with representatives of the Ministry of Foreign Affairs to negotiate an arbitration agreement. United States and Italian delegations met in Rome in October 1985. The Italian delegation indicated during these meetings that Italy was not prepared to submit the dispute to arbitration. Instead, the delegations concurred that this dispute would be resolved through a contentious proceeding before a Chamber of this Court and jointly approved a press release setting forth this view.

Attachment 3

[Translation]

ORDER MADE ON 1 APRIL 1968 BY THE MAYOR OF PALERMO

THE MAYOR OF THE MUNICIPALITY OF PALERMO,

TAKING INTO CONSIDERATION that Raytheon-ELSI of Palermo has decided to close its plant located in this city at Via Villagrazia 79, because of market difficulties and lack of orders;

THAT the company has furthermore decided to send dismissal letters to the personnel consisting of about 1,000 persons;

TAKING NOTICE that ELSI's actions, beside provoking the reaction of the workers and of the unions giving rise to strikes (both general and sectional) has caused a wide and general movement of solidarity of all public opinion which has strongly stigmatized the action taken considering that about 1,000 families are suddenly destituted;

THAT, considering the fact that ELSI is the second firm in order of importance in the District, because of the shutdown of the plant a serious damage will be caused to the District, which has been so severely tried by the earthquakes had during the month of January 1968;

CONSIDERING also that the local press is taking a great interest in the situation and that the press is being very critical toward the authorities and is accusing them of indifference to this serious civic problem;

THAT, furthermore, the present situation is particularly touchy and unforeseeable disturbances of public order could take place;

TAKING INTO CONSIDERATION that in this particular instance there is sufficient ground for holding that there is a grave public necessity and urgency to protect the general economic public interest (already seriously compromised) and public order, and that these reasons justify requisitioning the plant and all equipment owned by Raytheon-ELSI located here at Via Villagrazia 79;

HAVING NOTED Article 7 of the law of 20 March 1865 No. 2248 enclosure e;

HAVING NOTED Article 69 of the Basic Regional Law EE.LL.,

ORDERS

the requisition, with immediate effect and for the duration of six months, except as may be necessary to extend such period, and without prejudice for the rights of the parties and of third parties, of the plant and relative equipment owned by Raytheon-ELSI of Palermo.

WITH a subsequent decree, the indemnification to be paid to said company for the requisition will be established.

CERTIFICATION OF TRANSLATION

I hereby certify that the above translation bearing LS No. 118355 was prepared by the Office of Language Services of the Department of State and that it is a correct translation to the best of my knowledge and belief.

Dated: Jan. 16, 1987.

(Signed) [Illegible],
Chief, Translating Division.