

No. 22821

**BRAZIL
and
ECUADOR**

**Agreement on maritime transport. Signed at Brasília on
9 February 1982**

*Authentic texts: Portuguese and Spanish.
Registered by Brazil on 30 March 1984.*

**BRÉSIL
et
ÉQUATEUR**

**Accord sur les transports maritimes. Signé à Brasília le
9 février 1982**

*Textes authentiques : portugais et espagnol.
Enregistré par le Brésil le 30 mars 1984.*

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE REPUBLIC OF ECUADOR ON MARITIME TRANSPORT

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

Considering the desirability of developing trade between the Federative Republic of Brazil and the Republic of Ecuador;

Bearing in mind the particular desirability of promoting reciprocal trade by strengthening and duly protecting the economic stability of their respective merchant marines, the existence and development of which are considered essential not only for the expansion and diversification of economic relations between the two countries but also for strengthening the foundations on which trade between them can be increased;

Considering that bilateral trade in goods should be accompanied by an effective exchange of services;

Recognizing the need for effective and regular maritime transport services and for the adoption of an appropriate and stable freight rate;

Recognizing that the merchant marines of the two countries have a priority right to transport cargoes shipped in the context of their reciprocal trade;

Bearing in mind that Brazilian and Ecuadorian shipowners are the carriers directly concerned with maritime cargoes in the trade between the two countries and that the proceeds of freight charges in respect of the maritime transport of such cargoes should benefit shipowners of both countries;

Considering it desirable that the shipping companies should strengthen relations and maintain permanent contacts with each other,

Have agreed as follows:

Article 1. 1. The maritime transport of goods shipped in the context of the trade between the two countries must be effected in vessels flying the Brazilian or the Ecuadorian flag. Such goods shall include cargoes receiving favoured treatment from the Government of either country, which shall be understood to mean also those for which State financing, premiums or tax concessions are granted on the basis of cargo value, freight costs and insurance. Such favoured treatment shall be applied, provided that the goods are transported in vessels flying the Brazilian or the Ecuadorian flag.

2. Transport shall be effected in such a way that the total freight charges carried, in both directions, are divided equally between the flags of the two Contracting Parties.

3. If one of the Contracting Parties is unable at any time to effect transport in accordance with paragraph 2 of this article, the transport in question shall,

¹ Came into force on 9 February 1984, i.e., 90 days after the exchange of the instruments of ratification, which took place at Quito on 11 November 1983, in accordance with article XXVII.

where possible, be effected in vessels of the other Contracting Party and shall be counted as part of the ceding Party's 50 (fifty) per cent share.

4. Each Contracting Party may, subject to prior notification of the competent maritime authority of the other Contracting Party, authorize its shipowners to cede its 50 (fifty) per cent share to shipowners of States members of LAIA. Such cession may only be authorized when a reciprocal arrangement exists with the State member of LAIA in respect of another form of trade and shall not affect the responsibilities of the Contracting Parties under this Agreement.

5. Bulk shipments of ore where ore is the sole cargo, and those of petroleum and its derivatives shall be excluded from the scope of this Agreement and shall remain subject to the domestic legislation of each Contracting Party.

Article II. 1. Vessels shall be considered to be vessels flying the Brazilian or the Ecuadorian flag, as the case may be, if they are registered as such in accordance with the legislation in force in each of the Contracting Parties, and shall be entitled to a share of each State's cargo reserve in accordance with the legislation governing chartering and cargo reserves of each of the Contracting Parties.

2. Vessels owned by shipowners of States members of LAIA authorized to participate in the traffic in accordance with article I, paragraph 4, shall have the same rights and obligations under this Agreement as vessels flying the Brazilian or the Ecuadorian flag.

3. Vessels hired under time charter by national shipowners or legally constituted shipping companies whose charter parties have been registered with the competent maritime authority of each Contracting Party and which are consequently authorized to participate in the commercial traffic between the two countries, shall be treated in either country as national vessels for the duration of the charter.

4. Both the Contracting Parties and the States members of LAIA may use the voyage charter system until the two-way traffic becomes profitable enough to use the time charter system, or participate using their own vessels.

5. In cases of chartering, the shipowners of each Contracting Party must give preference, wherever possible, all other conditions being equal, to vessels flying the flag of their own country and, if none are available, firstly to vessels flying the flag of the other Contracting Party and secondly to vessels flying the flag of a third country.

6. The competent maritime authorities shall notify each other whenever they grant authorization for the chartering of vessels to be used in commercial traffic between the two countries.

Article III. The Contracting Parties undertake to avoid delays in the shipment of goods beyond the period determined by mutual agreement between the competent maritime authorities of the two countries. As a rule, delays may be no longer than 3 (three) days in the case of perishable or easily spoiled goods and 20 (twenty) days in the case of other cargoes.

Article IV. 1. Shipment in vessels flying the flag of a third State may be authorized when no space is available, within the time-limits laid down in article III, in vessels flying the Brazilian or the Ecuadorian flag or in vessels of LAIA countries, duly authorized in accordance with the provisions of article I, paragraph 4, of this Agreement.

2. Such authorizations shall be granted by the competent maritime authority of the country of shipment, subject to consultation with the Committee of the Agreement on Rates and Services, and on the basis of an application by the shipper submitted at least 10 days before the planned date of departure of the ship flying the flag of a third State.

3. Goods transported in vessels flying the flag of a third State, in accordance with the previous paragraph, shall be counted in the percentage share allotted to the shipowners of the Contracting Party which did not have a vessel suitably located, in accordance with the itineraries laid down in the Agreement on Rates and Services.

Article V. Preference with respect to transport shall be applied in such a way that it does not result in higher freight rates which might affect trade between the two countries.

Article VI. 1. For the purpose of implementing this Agreement, Brazilian and Ecuadorian shipowners shall establish an Agreement on Rates and Services.

2. The Agreement on Rates and Services shall be responsible for organizing the maritime traffic covered by this Agreement with a view to maximum efficiency and economy.

3. The said Agreement shall deal with the various aspects of Brazilian-Ecuadorian maritime transport, promoting ongoing contact between the commercial sectors concerned and the competent authorities of both countries.

Article VII. The Contracting Parties shall promote the establishment of one or more full money pools comprising the shipowners of both countries.

Article VIII. 1. The transport of cargoes shipped from Brazilian to Ecuadorian ports and vice versa shall be effected only by shipowners authorized by the respective competent maritime authorities to engage in such traffic.

2. Shipowners of States members of LAIA who have been authorized in accordance with the provisions of article I, paragraph 4, shall comply with the provisions of the Agreement on Rates and Services. The ceding Brazilian or Ecuadorian shipowner shall assume responsibility with respect to the said Agreement for failure to comply with the provisions of this Agreement and with any supplementary rules which may be laid down.

Article IX. 1. The Regulations of the Agreement on Rates and Services shall include provisions to ensure its proper operation. Such provisions shall be established in a broad and non-restrictive manner by the authorized shipping companies of both countries, subject to approval by the competent maritime authorities of both Contracting Parties.

2. The freight rate structure shall be based on a comprehensive system of classification of the cargoes involved, in accordance with the rules laid down in the customs nomenclature to be adopted by both Contracting Parties.

Article X. If agreement on freight rates and conditions of carriage is not reached in the Agreement on Rates and Services, such rates and conditions shall be determined by agreement between the competent maritime authorities of the two Contracting Parties.

Article XI. In accordance with the legislation in force in the two countries, the freight rates and general conditions of carriage established by mutual agree-

ment between the shipowners of the two countries, and revisions and amendments thereof, shall be submitted to the maritime authorities of both Contracting Parties for their approval.

Article XII. 1. The competent maritime authorities of the Contracting Parties shall decide directly between themselves on the time-limits for approving, formulating objections to, or disapproving freight rates and the procedure for consultation in the event that one of the Parties, with the knowledge of the other, enters an objection to, or signifies its disapproval of, the said rates.

2. The competent maritime authorities of the Contracting Parties shall fix the time-limits for communications with each other concerning approval of, objection to or disapproval of rates and transport conditions, as well as the length of advance notice which must be given to shippers with regard to changes in freight rates.

Article XIII. In the event of failure to reach a solution in the Agreement on Rates and Services, within the specified time-limit, regarding objection to or disapproval of rates or conditions of carriage by the competent maritime authority of one Contracting Party, the said maritime authority shall arrange a meeting with the competent maritime authority of the other Contracting Party in order to proceed in accordance with the provisions of article XII of this Agreement.

Article XIV. When the interests of trade, of shippers or of carriers are adversely affected by the application of freight rates or conditions of carriage, the Contracting Parties shall, within their respective jurisdictions, promote consultations between the sectors concerned, following which the aforementioned authorities shall take the relevant decisions.

Article XV. 1. To enable the competent maritime authorities of each Contracting Party to monitor the services and verify the degree of participation of shipowners and vessels flying its flag in the traffic provided for in this Agreement, the Agreement on Rates and Services shall transmit each month to the said authorities copies of the schedules of account of the pools, and the timetables and itineraries covered during the period by the vessels of authorized shipowners.

2. The authorized shipowners of each of the Contracting Parties shall transmit to the Agreement on Rates and Services copies of manifests and corrections thereto, and timetables and itineraries covered by their vessels.

3. The Agreement on Rates and Services shall supply the competent maritime authority with such information as may be requested of it in connection with its activities.

Article XVI. 1. Brazilian or Ecuadorian maritime navigation companies, founded in the territory of one of the Contracting Parties and parties to the Agreement on Rates and Services, shall be exempt from payment, in the territory of the other Contracting Party, of taxes on income and profit gained from commercial transport operations.

2. The Contracting Parties undertake to intercede with the fixed authorities to ensure that there is prompt liquidation and transfer of the sums accruing from the payment of freight charges to authorized shipowners in each of the countries signing this Agreement.

Article XVII. The Contracting Parties undertake to adopt, within their respective jurisdictions, the necessary measures to expedite the operation of vessels.

Article XVIII. For the purpose of implementing the provisions of article I of this Agreement, the competent authorities of each Contracting Party shall take the necessary measures to ensure that documents in respect of cargoes shipped in the context of trade between the two countries bear a stamp indicating that shipment must be made in vessels flying the flag of one of the signatories to the Agreement.

Article XIX. 1. Vessels flying the Brazilian or the Ecuadorian flag which carry cargo between the two countries shall be entitled in each country to the same treatment as that received by vessels flying the national flag which are engaged in the same traffic, without prejudice to the sovereign rights of each country to impose restrictions in respect of certain areas for reasons of national security.

2. The provisions of paragraph 1 shall not affect payment of the contribution for light and buoy dues or the requirement that foreign merchant ships must use pilotage services within the national waters of each country, in accordance with the domestic laws and regulations of each Contracting Party.

3. The equal treatment provided for in paragraph 1 of this article shall confer no right to fuelling at the prices fixed by the laws or regulations of the Contracting Parties for national vessels, fuelling in this case being governed by the domestic provisions of each country.

Article XX. 1. Nothing in this Agreement shall be interpreted as restricting the right of each country to regulate its domestic coastal shipping or shipping to and from third countries.

2. Similarly, nothing herein shall be interpreted as restricting the right of each country to facilitate in any manner the domestic coastal shipping services provided by its vessels.

3. For the purposes of this Agreement, domestic coastal trade and shipping means water transport services between ports or geographical points within the same country in accordance with its legislation.

Article XXI. The application of the provisions of this Agreement shall not result in discrimination with regard to cargoes, unjustified refusal of shipments, excessive freight rates, delays in shipment, the granting of rebates or the adoption of other measures constituting unfair competitive practices which might adversely affect participation of vessels flying the flag of either Contracting Party.

Article XXII. 1. The Contracting Parties undertake to require the Agreement on Rates and Services envisaged in article VI to adopt a uniform system of statistics showing the time and balanced share in the traffic covered by this Agreement of vessels flying the flags of both countries.

2. The competent maritime authorities shall exchange the fullest information concerning cargoes carried under the conditions laid down in article IV of this Agreement.

Article XXIII. The competent maritime authorities shall exchange information with a view to achieving maximum efficiency in maritime transport between the Contracting Parties.

Article XXIV. 1. For the purposes of this Agreement, the competent maritime authorities shall be, in the Federative Republic of Brazil, the National

Department of the Merchant Marine (SUNAMAM) of the Ministry of Transport, and, in the Republic of Ecuador, the Directorate for the Merchant Marine and Coastal Navigation Department of the Ministry of Defence.

2. If, as a result of any change in the legislation of either Contracting Party, the competence of the maritime authority referred to in paragraph 1 of this article is changed, the other Contracting Party shall be notified of the designation of the new authority by means of a diplomatic note.

Article XXV. 1. Either Contracting Party may request meetings for consultation between the competent maritime authorities concerning the provisions and the implementation of this Agreement; such meetings shall begin within 90 days of the date of notification of the request and shall be held in the territory of the country making the request, unless otherwise agreed. Requests for consultation shall be made through the normal diplomatic channels.

2. The competent maritime authorities may also communicate with each other directly, either by correspondence or through representatives, for the purpose of dealing with matters which are not of such importance as to require formal consultation and considering the conditions and results of the operation of this Agreement and seeking to improve them.

Article XXVI. This Agreement may be revised or amended, as necessary, by agreement between the Contracting Parties, in accordance with the constitutional provisions in force in each country.

Article XXVII. This Agreement shall enter into force 90 days after the exchange of the instruments of ratification of the Contracting Parties; it shall remain in force for a period of five years and be automatically renewable for the same period, unless one of the Contracting Parties informs the other at any time, with at least 120 days' notice, of its desire to denounce it.

DONE at Brasília on 9 February 1982 in duplicate, in Portuguese and Spanish, both texts being equally authentic.

For the Government
of the Federative Republic
of Brazil:

[Signed]

RAMIRO SARAIVA GUERREIRO

For the Government
of the Republic of Ecuador:

[Signed]

LUÍS VALENCIA RODRÍGUEZ