

No. 25825

FEDERAL REPUBLIC OF GERMANY
and
BRAZIL

**Agreement concerning maritime transport. Signed at
Brasília on 4 April 1979**

**Additional Protocol to the above-mentioned Agreement.
Signed at Brasília on 4 April 1979**

Authentic texts: German and Portuguese.

Registered by the Federal Republic of Germany on 8 April 1988.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
BRÉSIL

**Accord relatif au transport maritime. Signé à Brasília
le 4 avril 1979**

**Protocole additionnel à l'Accord susmentionné. Signé à
Brasília le 4 avril 1979**

Textes authentiques : allemand et portugais.

Enregistrés par la République fédérale d'Allemagne le 8 avril 1988.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ CONCERNING MARITIME TRANSPORT BETWEEN
THE FEDERAL REPUBLIC OF GERMANY AND THE FEDERATIVE
REPUBLIC OF BRAZIL

The Federal Republic of Germany and the Federative Republic of Brazil,

Wishing to ensure the harmonious development of maritime trade between the Federal Republic of Germany and the Federative Republic of Brazil, based on their mutual interests and on the freedom of their external trade,

Recognizing that bilateral trade in goods should be accompanied by an effective exchange of services,

Recognizing the need for effective and regular maritime transport services based on economically viable freight rates,

Have agreed as follows:

Article 1. For the purposes of this Agreement:

1. The term "vessel of a Contracting Party" shall mean any vessel flying the flag of that Party in accordance with its legislation. However, the term shall not include:

- (a) Warships;
- (b) Other vessels manned by a crew belonging to the national naval forces;
- (c) Vessels used for research which are carrying out the relevant activities; and
- (d) Fishing boats.

2. The term "member of the crew of the vessel" shall refer to the captain and to a person entrusted with ship duties or services during a voyage who is in possession of an identity document as referred to in article VII and whose name is included in the crew list of the vessel.

Article 2. 1. The vessels of either Contracting Party shall be entitled to travel between the ports of the two Contracting Parties which are open to international trade and to transport passengers and cargo between the two Contracting Parties, or between either of them and third countries, pursuant to agreements concluded with such third countries.

2. Vessels flying the flag of third countries and operated by shipping enterprises of either Contracting Party may also participate in the above-mentioned transport services and shall enjoy the same rights as if they were flying the flag of either Contracting Party.

Article 3. 1. The Contracting Parties shall provide all possible support for the development of commercial shipping between their countries, and shall refrain from any action that may be harmful to normal development of free international commercial shipping, and to the participation of the shipping enterprises of the Con-

¹ Came into force on 22 October 1983, i.e., one month after the exchange of the instruments of ratification, which took place at Brasília on 22 September 1983, in accordance with article XVI (2).

tracting Parties in maritime transport services between the two countries and between the latter and third countries.

2. In particular, the Contracting Parties agree as follows:

(a) To promote the participation, on the basis of equal rights and mutual advantage, of the vessels of the shipping enterprises of the Contracting Parties and of the vessels referred to in article II, paragraph 2, in the transport of freight resulting from trade between the two countries; and

(b) To promote effective cooperation between the competent merchant shipping authorities of the two countries, and between their respective shipping enterprises, with a view to achieving optimum implementation of this Agreement.

Article 4. 1. Each Contracting Party shall grant to vessels of the other Contracting Party, in its ports and territorial waters, on the basis of reciprocity, the same treatment which it grants to its own vessels engaged in international transport in respect of access to and use of ports, assignment of berths, embarkation and disembarkation of passengers, loading and unloading of cargo and payment of charges and port and other dues.

2. The provisions in paragraph 1 of this article shall not apply to:

(a) Coastal shipping, salvaging, towing and other port services which, under the legislation of each country, are reserved for its own enterprises, companies and citizens;

(b) Regulations governing mandatory pilotage for foreign vessels; and

(c) Regulations concerning the entry and stay of foreign nationals.

Article 5. The Contracting Parties shall adopt, within the limits of their legislation and port regulations, all necessary measures to facilitate and increase maritime transport, to avoid unnecessary delay to vessels, and to expedite and simplify as much as possible the performance of customs and other formalities required in ports.

Article 6. 1. The nationality and tonnage certificates and other ship's papers issued or recognized by one of the Contracting Parties shall be recognized also by the other Party.

2. The vessels of either Contracting Party having duly issued tonnage certificates shall be exempt from re-measurement in the ports of the other Party. All port dues shall be calculated on the basis of these documents.

Article 7. On a basis of reciprocity each Contracting Party shall accept and recognize the identity documents of captains and crew members issued by the authorities of the other Contracting Party. Those documents shall be, in the case of the Federal Republic of Germany, for the captain his passport, and, for the crew members, each *Seefahrtsbuch* (seaman's registration book), issued by the *Seemannsamt* (Seaman's Law Office) and, in the case of the Federative Republic of Brazil, the *Caderneta de Inscrição e Registro* (enrolment book and register) issued by the Port Authority, Directorate of Ports and Coasts (DPC), Ministry of the Brazilian Navy.

Article 8. 1. Persons in possession of the identity documents referred to in article 7, whose names appear on the crew list and in the register presented to the port authorities, may disembark and move freely within the port where the vessel is berthed, and within the locality to which the port belongs, in accordance with the relevant legislation and the regulations in force in the respective country. The same shall apply

if a crew member leaves his vessel and embarks as a crew member on another vessel flying the same flag.

2. A crew member who has been hospitalized in the territory of either Contracting Party as a result of illness shall be permitted by the competent authorities of the respective Contracting Party to stay for such time as may be necessary for him to regain his health.

Article 9. The Contracting Parties reserve the right to prohibit the entry into their territory of persons in possession of identity documents, as referred to in article 7, if they are deemed to be undesirable.

Article 10. Each Contracting Party shall grant to the shipping enterprises of the other Contracting Party the right to apply, in its territory, the income received for shipping services to payments connected with shipping operations or to transfer them abroad.

Article 11. Vessels and crew members of either Contracting Party shall, during their stay in the territorial waters, internal waters and ports of the other Contracting Party, comply with its relevant laws and regulations.

Article 12. 1. Should a vessel of either Contracting Party be shipwrecked or stranded, run aground or suffer any other accident off the coast of the other Contracting Party, or be in distress for other reasons in the territorial waters of the other Contracting Party, the competent authorities of the other Contracting Party shall grant to the captain, the crew members, the passengers, the vessel and its cargo the same protection and assistance which it would provide to a vessel flying its own flag.

2. Should a vessel suffer an accident or damage, the Contracting Parties agree to exempt it from customs duties, taxes and other import dues of any kind on the cargo, equipment, materials, stores and other appurtenances of the vessel, provided that they are not intended for use or consumption in the territory of the other Contracting Party.

3. The provisions of paragraph 2 above shall not prevent implementation of the laws and regulations of the Contracting Parties governing the temporary storage of goods.

Article 13. 1. In order to achieve the objectives mentioned in article 3, paragraph 2 (b), and to facilitate implementation of this Agreement, the Contracting Parties shall hold consultations. The consultations may also be useful for analysing implementation of this Agreement and making it more effective or for considering questions of mutual interest, such as the employment of vessels of the Contracting Parties and the respective transport terms.

2. Either Contracting Party may propose consultations between the competent maritime authorities; such consultations must begin within 90 days following the date of notification of the proposal.

3. The Contracting Parties agree to settle the questions which are the subject of the consultations in accordance with the principle of equal rights and mutual advantage.

4. For the purposes of this Agreement, the competent maritime authorities shall be: in the case of the Federal Republic of Germany, the Federal Ministry of

Transport; in the case of the Federative Republic of Brazil, the National Department of the Merchant Marine — SUNAMAM.

Article 14. 1. This Agreement shall not affect other international agreements concluded by the Contracting Parties.

2. With the entry into force of this Agreement, the Protocol on maritime transport, concluded between the Government of the Federal Republic of Germany and the Government of the Federative Republic of Brazil on 30 November 1963,¹ shall cease to apply.

Article 15. This Agreement shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a declaration to the contrary to the Government of the Federative Republic of Brazil within three months following the entry into force of this Agreement.

Article 16. 1. This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. This Agreement shall enter into force one month following the exchange of the instruments of ratification.

3. This Agreement shall remain in force until terminated by either Contracting Party upon notification six months in advance.

DONE at Brasília, on 4 April 1979, in two originals, in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany:

PETER HERMES

For the Federative Republic of Brazil:

R. S. GUERREIRO

¹ United Nations, *Treaty Series*, vol. 658, p. 17.

[TRANSLATION — TRADUCTION]

ADDITIONAL PROTOCOL¹ TO THE AGREEMENT CONCERNING MARITIME TRANSPORT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE FEDERATIVE REPUBLIC OF BRAZIL²

In the interest of facilitating and increasing the maritime transport of goods resulting from trade between the two countries on vessels of the shipping enterprises of the two Contracting Parties, and in order to offer regular and effective liner services with a view to satisfying all the transport needs of Germano-Brazilian trade, the Contracting Parties, on signing the Agreement concerning Maritime Transport between the Federal Republic of Germany and the Federative Republic of Brazil,² have agreed as follows:

I. *For the purposes of implementing article 3 of the Agreement:*

1. Government cargo shall be transported by regular liner services of the shipping enterprises of the two Parties, and the tonnage and freight income shall be shared on a basis of equality. At the time of signature of this Protocol, government cargo shall include shipments deriving from agreements between the Governments of the Federal Republic of Germany and the Federative Republic of Brazil concerning financial cooperation and cooperation in the field of the peaceful uses of nuclear energy.

In order to monitor sharing on a basis of equality, the following procedure shall be used:

(a) The Ministry of Transport of the Federal Republic of Germany shall specify, to the representative of SUNAMAM at Hamburg, which projects and which shipments are to constitute the above-mentioned government cargo to be transported within a given period;

(b) On the basis of this information, the representative of SUNAMAM at Hamburg shall draw up, in cooperation with the Ministry of Transport of the Federal Republic of Germany, a plan to ensure that the regular liner services of the shipping enterprises of both countries have an equal share in transporting the above-mentioned shipments; and

(c) Equal sharing shall be based on the income earned from such transport, and the volume of shipment shall be balanced so far as possible.

2. Shipments covered at liner conferences for traffic between the two Parties shall be transported in accordance with the rules and percentages of the current pooling agreements signed by the German and Brazilian shipping enterprises and adopted by the Governments of the Contracting Parties.

The Governments of the Contracting Parties shall endorse the future pooling agreements of the above-mentioned liner conferences provided that they are in accordance with the legal provisions of each Contracting Party. Where necessary, the

¹ Came into force provisionally on 4 April 1979, the date of signature, and definitively on 22 October 1983, the date of entry into force of the above-mentioned Agreement of 4 April 1979, in accordance with section VI.

² See p. 22 of this volume.

Contracting Parties shall hold consultations in accordance with article 13 of the Agreement.

3. At the consultations held in accordance with article 13, the Contracting Parties shall seek ways and means of improving the share of their respective shipping enterprises in bulk cargo traffic between the two countries.

The first consultation on this topic shall be held within six (6) months following the entry into force of the Agreement concerning Maritime Transport between the Federal Republic of Germany and the Federative Republic of Brazil.

4. The Government of the Federal Republic of Germany shall take the necessary action to abolish the provision in force under German foreign-trade law whereby entering into transport agreements with Brazilian shipping enterprises is subject to authorization.

5. Where necessary in order to fulfil the provisions of this Protocol, the Government of the Federative Republic of Brazil shall exempt German shipping enterprises which have signed the pooling agreements from transporting cargo under the Brazilian flag which results from trade between the Federal Republic of Germany and the Federative Republic of Brazil. It shall take action to ensure that such exemptions are granted without delay.

For the transport of goods resulting from Germano-Brazilian trade by the shipping enterprises of the Federal Republic of Germany which have signed the pooling agreements adopted by the Contracting Parties, the Brazilian Government shall grant the same tax benefits as it has established for transport by the shipping enterprises of the Federative Republic of Brazil, as set forth in Decree No. 78,986 of 21 December 1976, or in other legal provisions of the same nature which supersede it.

II. *Balancing freight payments*

Where, at the end of two consecutive years, freight payments between the two countries show an imbalance in favour of either Party, the Contracting Parties shall meet, in accordance with article 13 of the Agreement concerning Maritime Transport between the Federal Republic of Germany and the Federative Republic of Brazil, with a view to taking corrective action, in accordance with their internal legislation, in order to balance the payments within the next period.

III. *Fixing freight rates*

The inputs of the shipping enterprises and exporters of the Contracting Parties shall be taken into account when changes in the freight rates are being considered by the liner conferences that deal with traffic between the two countries. Where necessary, the Contracting Parties shall hold consultations in accordance with article 13 of the Agreement.

IV. *Statistical data*

In order better to follow the development of maritime transport between the two countries and the impact of the Agreement and its Additional Protocol, the Contracting Parties shall annually exchange the necessary and available statistical data.

V. *United Nations Convention on a Code of Conduct for Liner Conferences*

As soon as the United Nations Convention on a Code of Conduct for Liner Conferences enters into force for both Contracting Parties, they shall begin negotia-

tions for adapting the provisions of paragraph I of this Protocol to the said Code of Conduct.

VI. Amendments and provisional and final application

The Contracting Parties may amend this Protocol by mutual agreement. The provisions of this Protocol shall apply provisionally from the date of its signature, and finally on the date of the entry into force of the Agreement concerning maritime transport, signed on the same date. If the Agreement concerning maritime transport has not yet entered into force fifteen (15) months following its signature, application of the provisions of this Protocol shall be suspended until such time as the Agreement enters into force.

DONE at Brasilia, on 4 April 1979, in two originals, in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany:

PETER HERMES

For the Federative Republic of Brazil:

R. S. GUERREIRO
