

No. 19834

UNITED STATES OF AMERICA
and
ITALY

Agreement on the matter of social security (with exchange of notes dated 16 and 20 January 1978 and procès-verbal dated 4 October 1978). Signed at Washington on 23 May 1973

Administrative Protocol for the implementation of the above-mentioned Agreement (with procès-verbal of 21 October 1977, exchange of notes dated 16 and 20 January 1978 and procès-verbal dated 4 October 1978). Signed at Rome on 22 November 1977

Authentic texts: English and Italian.

Registered by the United States of America on 10 June 1981.

ÉTATS-UNIS D'AMÉRIQUE
et
ITALIE

Accord relatif à la sécurité sociale (avec échange de notes en date des 16 et 20 janvier 1978 et procès-verbal en date du 4 octobre 1978). Signé à Washington le 23 mai 1973

Protocole administratif concernant l'application de l'Accord susmentionné (avec procès-verbal du 21 octobre 1977, échange de notes en date des 16 et 20 janvier 1978 et procès-verbal en date du 4 octobre 1978). Signé à Rome le 22 novembre 1977

Textes authentiques : anglais et italien.

Enregistrés par les États-Unis d'Amérique le 10 juin 1981.

AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON THE MATTER OF SOCIAL SECURITY

The President of the United States of America and the President of the Italian Republic,

Desirous of regulating the relations between the two States in the field of social security, in accordance with the principles established under article VII of the Agreement signed at Washington, D.C., September 16, 1951,² supplementing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic signed at Rome, February 2, 1948,³ have agreed to conclude an Agreement for that purpose and have therefore appointed as their plenipotentiaries: The President of the United States of America: Caspar W. Weinberger, Secretary of Health, Education, and Welfare, and

The President of the Italian Republic: Dionigi Coppo, Minister of Labor and Social Welfare,

who, having exchanged their full powers, found to be in good and due form, have agreed to the following provisions:

PART I. GENERAL PROVISIONS

Article 1. For purposes of the application of this Agreement:

a. The term “territory” shall mean, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa; and as regards the Italian Republic, Italy;

b. The term “national” shall mean, as regards the United States of America, “national of the United States” as defined in section 101, Immigration and Nationality Act of 1952, as amended; and as regards the Italian Republic, an Italian national;

c. The term “laws”, unless otherwise qualified, shall mean the laws, regulations, and any other measure concerning social security specified in article 2 of this Agreement;

d. The term “competent authorities” shall mean the authorities responsible for the administration of the laws, and specifically: in the case of the United States of America, the Secretary of Health, Education, and Welfare (*Ministro della Sanità, Educazione e Previdenza Sociale*); in the case of the Italian Republic, the Minister of Labor and Social Welfare (*Ministro del Lavoro e della Previdenza Sociale*);

e. The term “agency” shall mean for each Contracting State any agency, body or authority entrusted with the administration of an insurance system, under the laws specified in article 2 of this Agreement;

f. The term “periods of coverage” shall mean the periods of payment of contributions or periods of earnings based on wages for employment or self-employment income, as defined or recognized as periods of coverage by the law under which such

¹ Came into force on 1 November 1978, i.e., the first day of the month following the month in which the instruments of ratification were exchanged (at Washington on 12 October 1978), in accordance with article 24 (2).

² United Nations, *Treaty Series*, vol. 404, p. 326.

³ *Ibid.*, vol. 79, p. 171.

periods have been completed, or any similar periods insofar as they are recognized by such laws as equivalent to periods of coverage;

g. The term “workers” shall mean persons who have periods of coverage;

h. The term “family members” shall mean the persons defined as eligible for benefits on the earnings record or periods of coverage of a living worker, whichever is applicable, as established under the laws of each of the Contracting States;

i. The term “survivors” shall mean the persons defined as eligible for benefits on the earnings record or periods of coverage of a deceased worker, whichever is applicable, as established under the laws of each of the Contracting States;

j. The terms “benefits” and “pensions” shall mean any cash benefits payable under the laws specified in article 2 of this Agreement;

k. The term “basic benefit amount” (*importo della prestazione*) shall mean, as regards the United States of America, “primary insurance amount” as set forth in the table of benefits contained in section 215(a) of title II or deemed to be contained in such section of the Social Security Act of 1935, as amended, from which is derived by law the actual amount of the benefit which is payable; and as regards the Italian Republic, the amount of the benefit which is payable;

l. The term “beneficiary” shall mean any worker, family member or survivor who is entitled to benefits or pensions.

Article 2. 1. For purposes of this Agreement, the applicable laws relating to social security for disability, old-age, and survivorship are:

a. In the case of the Italian Republic, the legislation on compulsory general insurance for old-age, disability and survivors, as well as legislation providing benefits which are substitutes for benefits provided by said compulsory general insurance;

b. In the case of the United States of America, title II of the Social Security Act of 1935, as amended, and regulations promulgated under the authority provided therein, except sections 226 and 228 of such title and regulations pertaining to such sections;

provided, however, that for the United States the totalization of the periods of coverage in accordance with this Agreement shall not apply to periods of voluntary coverage provided for by such laws.

2. Notwithstanding the provisions of paragraph 1, as regards the Italian Republic, the present Agreement will be applied to legislation concerning other social security systems for similar cases which will be indicated by the competent authorities of the Italian Republic.

3. This Agreement shall also apply to future laws amending or supplementing the laws specified in this article.

Article 3. 1. The present Agreement shall apply to workers who have periods of coverage under the laws, and to their family members or survivors.

2. The present Agreement shall not apply to periods of service as a diplomatic or career consular officer, or officer of a chancery, nor, except insofar as provided under article 2.2, to periods of service covered under special systems for employees of the Government or of Government agencies or instrumentalities (*Enti pubblici*).

Article 4. The persons to whom the provisions of this Agreement apply shall have the same rights and obligations under the social security laws of each Contracting State under the same conditions as if such persons were covered solely under the

social security laws of such State, whether they reside in the territory of a Contracting State or in a third State.

Article 5. For the purposes of eligibility for voluntary or optional insurance, in accordance with the provisions of the laws of a Contracting State, the periods of coverage completed under the laws of such State shall be combined, where necessary, with the periods of coverage completed under the laws of the other State.

Article 6. Except as otherwise provided in this Agreement, the persons eligible for benefits under the laws of one Contracting State, including benefits arising under this Agreement, shall receive them fully and without limitation or restriction while they reside in the territory of the other State. Such benefits shall be paid by each State to persons to whom the provisions of this Agreement apply who reside in a third State on the same terms and to the same extent that such benefits would be paid if such persons had been covered entirely under the social security laws of the paying State.

PART II. PROVISIONS RELATING TO THE APPLICABLE LAWS

Article 7. 1. Persons to whom this Agreement applies who are employed or self-employed (*che svolgono la loro attività*) within the territory of one of the Contracting States shall be subject to the laws of such State, except as otherwise provided in this article.

2. Services performed by a United States national in Italy which are covered under the laws of the United States shall remain covered under the laws of the United States.

3. Services performed by an Italian national in the United States for an Italian employer or for an enterprise controlled by an Italian firm shall be covered under the laws of Italy.

4. With respect to any services which are subject to the laws of both States, the following rules will be applied:

- a. A national of one of the States who, with respect to the same period of work, would be subject to the laws of both States shall remain subject for such period to the laws of the State of which he is a national and shall be exempt from the laws of the State of which he is not a national;
- b. A national of Italy or a national of both States who, with respect to the same period of work, would be subject to the laws of both States shall, for such period, elect to remain subject to the laws of one of the States and shall be exempt from the laws of the other State;
- c. A person who is not a national of either State and who, with respect to the same period of work, is subject to the laws of both States shall be subject, for such period, to the laws of the State in which the work is performed and shall be exempt from the laws of the other State.

5. The exemptions provided under this article shall be effective when the agency of the State in which the periods of work are covered pursuant to paragraph 4 certifies to the agency of the other State that such periods of work are covered under its laws.

6. The competent authorities of the two States may agree in the interest of a worker or on behalf of categories of workers to other exceptions to the rule provided in paragraph 1.

PART III. SPECIAL PROVISIONS: DISABILITY, OLD-AGE, AND SURVIVORSHIP

Article 8. 1. With respect to a period of work which results in a period of coverage under the laws of both Contracting States, the agency of each State shall for purposes of article 8.2 and article 9.2 take into consideration the period of coverage which results under the laws of that State.

2. If the laws of one State require completion of periods of coverage as a prerequisite for the acquisition, retention, or recovery of the right to benefits, the agency which applies such laws shall take into consideration, for such purpose, insofar as necessary, the periods of coverage completed under the laws of the other State, as if these were periods of coverage completed under the laws of the first State. Such agency shall take into consideration all the periods of coverage required to ensure the right to the fullest benefits provided for by the laws which it applies.

3. If the laws of a State establish as a condition for receiving certain benefits that the periods of coverage be completed in a given profession or occupation which is subject to a special system of insurance, in determining eligibility for such benefits only the periods completed under a corresponding system of the other State or, failing that, in the same profession or occupation — even if a special system for said profession or occupation does not exist in the other State — shall be counted. If the total of such periods of coverage does not result in entitlement under the special system, such periods shall be used to determine eligibility for benefits of the general system of insurance or some other applicable system of insurance; provided, however, that the provisions of this paragraph shall apply only when they would result in payment of the highest possible benefit amount.

4. The agency of Italy shall not be obliged to apply the provisions of this article in the case of a worker who has less than one year of coverage under the Italian law; the agency of the United States shall not be obliged to apply the provisions of this article in the case of a worker who has less than 6 quarters of coverage [(*sei trimestri di assicurazione*)] under the United States law.

Article 9. 1. When a worker, family member, or survivor satisfies the conditions imposed by the laws of a Contracting State for eligibility for benefits, without the need to invoke the provisions of article 8, the agency of that State shall establish, according to the provisions of the said laws, the basic benefit amount based on the total periods of coverage completed by the worker under the laws of such State.

2. Whether or not paragraph 1 applies, the agency of each of the States shall determine the theoretical basic benefit amount by considering all the periods of coverage completed under the laws of the two States as if they had been completed exclusively under its own laws. The agency in question shall then establish the pro rata basic benefit amount on the total periods of coverage completed under the laws which it applies to the total of all the periods of coverage completed under the laws of the two States.

3. The worker shall elect within a specified time whether benefits shall be awarded by each of the States in accordance with the provisions of paragraph 1 or paragraph 2, and such election shall be applicable to all benefits payable to the worker and family members by each State.

4. In the case of survivors, benefit amounts shall be established by each of the States under the provisions of paragraphs 1 and 2. Survivors benefits shall be awarded by each of the States based on the provisions of either paragraph 1 or 2, whichever results in the higher total benefits payable, unless all survivors eligible for benefits elect to receive the lower total benefits payable.

5. The elections provided for in paragraph 3 and paragraph 4 shall be final, except in situations where article 11 applies.

Article 10. 1. For purposes of the computation of the theoretical basic benefit amount, the agency of each Contracting State shall take account of a worker's earnings in the other State in the following manner:

- a. As regards the agency of the United States, the earnings in any year to be taken into consideration for periods of coverage completed under Italian laws shall be the equivalent of the earnings credited under the system of insurance in Italy for such year, subject to the maximum creditable earnings limitation under the laws of the United States for such year.
- b. As regards the agency of the Italian Republic, for the periods of coverage completed under the laws of the United States there shall be credited the average salary or average contributions derived exclusively from the salary received or the credited contributions resulting from the periods of coverage completed under the laws of Italy.

2. If, under the laws of one State, the amount of benefits varies according to the number of family members or survivors, the agency of such State shall also take into account family members or survivors who are residing in the territory of the other State.

Article 11. 1. Upon application, benefits awarded under the provisions of article 9.2 shall be recomputed by both States in accordance with the provisions of article 9.2 to take into account additional periods of coverage completed under the laws of either Contracting State.

2. Notwithstanding the provisions of article 9.5, benefits shall be recomputed under the provisions of article 9 when:

- a. A worker who has made an election under article 9.3 subsequently becomes eligible for benefits under the laws of one or both States without the need to invoke the provisions of article 8; or
- b. The method of computing benefits under the system of insurance of a State is changed by amendments to the law governing such computations.

3. Notwithstanding the provisions of article 9.5, if the entitlement of all beneficiaries receiving benefits under the provisions of article 9 terminates, the benefits of any person who later becomes entitled to benefits based on the periods of coverage of the same worker shall be computed under the provisions of article 9.

Article 12. If the beneficiary becomes eligible under article 9.2 for benefits paid by the agencies of both Contracting States and if the amount of such combined benefits is less than the benefit amount which would be payable, based on the minimum basic benefit amount, to such beneficiary by the agency of the State in which he resides, the agency of that State shall, at its own expense, pay the difference between the amount of such combined benefits and the amount of benefits which would be payable to such beneficiary based on such minimum basic benefit amount.

PART IV. MISCELLANEOUS, TRANSITORY, AND FINAL PROVISIONS

Article 13. The competent authorities and agencies of the two Contracting States shall assist each other in applying the present Agreement as if they were applying their respective laws; such reciprocal assistance shall be free of charge.

Article 14. 1. The competent authorities of the two Contracting States shall by mutual agreement establish such administrative procedures as may be required to implement this Agreement, and each competent authority shall designate one coordinating agency or organization to facilitate the application of this Agreement.

2. The competent authorities of the two States shall communicate to each other all information relating to regulations, administrative procedures, and amendments to their laws which may affect the application of this Agreement.

Article 15. The diplomatic and consular authorities of each Contracting State shall be empowered to address themselves directly to the competent authorities or agency of the other State in order to obtain useful information for safeguarding the interests of their own nationals, and may represent them without special mandate.

Article 16. 1. Exemptions from duties, taxes, and fees provided for by the laws of either State shall also be valid for the application of the present Agreement, irrespective of the nationality of the beneficiaries.

2. The requirements imposed by the laws or regulations of either Contracting State relating to the certification (*legalizzazione*) of all certificates or other documents shall be applied in respect to all certificates or other documents which must be presented for purposes of the application of this Agreement.

3. The certification as to the authenticity of a certificate or document, or a copy thereof, by the competent authorities or agency of one State shall be accepted as authentic by the competent authorities or agency of the other State.

Article 17. The competent authorities and the designated coordinating agencies or organizations of the two Contracting States may correspond directly with each other and with any persons wherever they may reside, whenever such correspondence is necessary for the administration of this Agreement. Correspondence may be drafted in the writer's official language.

Article 18. The petitions which the beneficiaries address to the competent authorities or agency of either Contracting State for the application of the present Agreement may not be rejected merely because they are written in the official language of the other State.

Article 19. 1. The applications and other documents presented in writing to the competent authorities or agency of either Contracting State shall have the same effect as if they were presented to the corresponding authorities or agency of the other State.

2. An application for benefits filed with the competent authorities or agency of one State is to be considered as an application for the payment of benefits by the agency of the other State, if the applicant explicitly requests that his application be so considered.

3. An appeal which must be filed within a given period of time with the competent authorities or agency of one of the States shall be considered to have been filed

within such time limit if the appeal has been filed within such a period of time with the competent authorities or agency of the other State. In such case the authorities or agency with which an appeal is filed shall without delay transmit the said appeal to the competent authorities or agency of the other State, and acknowledge to the appellant that the appeal has been received.

Article 20. 1. The competent authorities of the two Contracting States shall jointly establish procedures to resolve any problems or disagreements which may arise with regard to the application or interpretation of the present Agreement.

2. The competent authorities of the two States shall establish a permanent arbitration procedure for the consideration and resolution of any problems or disagreements which cannot be resolved under procedures established in accordance with paragraph 1. The arbitral body established under this paragraph shall settle questions referred to it in accordance with the principles of this Agreement. Decisions of the arbitral body shall be final and binding for purposes of the question referred to it, on the competent authorities and agencies of both States.

3. The arbitral body established under paragraph 2 shall consist of three members. The competent authorities of the two States shall each designate one member. The third member shall be designated by agreement of the two competent authorities.

Article 21. 1. Pending the final determination of a beneficiary's rights under this Agreement, including settlement of any question under article 20 between the competent authorities and agencies of the two Contracting States, the beneficiary whose rights are involved shall be awarded provisional benefits in accordance with this article until such time as such determination has been made.

2. Each agency shall award the beneficiary, as provisional benefits, the benefits, if any, to which he would be entitled under its own laws or under this Agreement.

3. *a.* The agencies of both States shall establish procedures for adjusting their respective liabilities for benefits during the period in which provisional benefits were paid pending the final determination referred to in paragraph 1.

b. In giving effect to such procedures, the agency of either State shall withhold from payments it makes, based on the rights of a beneficiary as finally determined, amounts permitted by the laws of that State sufficient to reimburse the agency of the other State for amounts paid as provisional benefits in excess of the amounts finally awarded to such beneficiary.

Article 22. 1. The agencies of the Contracting States, which have obligations relating to benefits to be paid in the other State under the present Agreement, shall validly discharge such obligations in the currency of their own State.

2. In case provisions designed to restrict the exchange of currencies are issued in either State, both Governments shall immediately adopt the necessary measures to insure, in conformity with the provisions of the present Agreement, the transfer of sums owed by either party.

Article 23. 1. The provisions of this Agreement shall apply to any application for benefits (including a new application of an individual who has previously applied for benefits) which is filed on or after the date this Agreement enters into force.

2. In the application of the present Agreement, the periods of coverage completed prior to its entry into force shall be taken into consideration except that

neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

3. If previous claims were satisfied through a lump-sum payment because of insufficient periods of coverage and if, with the application of the provisions of this Agreement, the beneficiary meets the conditions required for receiving a pension, he may request a review of action taken on his case.

4. This Agreement shall not result in the payment of benefits for periods prior to the date of its entry into force.

Article 24. 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 on the first day of the month following the month in which the instruments of ratification are exchanged.

3. *a.* This Agreement may be amended from time to time by supplementary agreements which shall take effect on the first day of the month following the month in which the instruments of ratification of such supplementary agreements are exchanged; provided, however, that nothing in this paragraph shall be construed to prevent such supplementary agreements from being given retroactive effect if they so specify.

b. Any supplementary agreement which takes effect under the terms of this paragraph shall be deemed thereafter for purposes of this article to be an integral part of this Agreement.

c. A meeting for the consideration of a supplementary agreement shall be called at the request of the competent authorities of either State.

4. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its renunciation is delivered to the competent authorities of one Contracting State by the competent authorities of the other State.

5. If this Agreement is renounced, rights acquired shall be retained under the provisions of this Agreement and rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

DONE in Washington on this twenty-third day of May, 1973, in duplicate, in English and Italian, the two texts being equally authentic.

For the Government of the United States of America:

[Signed — Signé]¹

For the Government of the Italian Republic:

[Signed — Signé]²

¹ Signed by Caspar W. Weinberger — Signé par Caspar W. Weinberger.

² Signed by Dionigi Coppo — Signé par Dionigi Coppo.

EXCHANGE OF NOTES — ÉCHANGE DE NOTES

[For the text of the exchange of notes, see p. 118 of this volume]

PROCÈS-VERBAL

[For the text of the procès-verbal, see p. 120 of this volume]

ADMINISTRATIVE PROTOCOL¹ FOR THE IMPLEMENTATION OF THE AGREEMENT ON [THE MATTER OF] SOCIAL SECURITY BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC²

PART I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purposes of the application of the Agreement and this Protocol:

1. The term "Agreement" means the Agreement between the United States of America and the Italian Republic on the matter of Social Security signed at Washington, D.C., on May 23, 1973;²

2. The term "claimant" means a worker, family member, or survivor who has filed an application for benefits under the laws of either State or of both States;

3. The term "provisional benefits" means any benefit to which a claimant may be entitled before a final determination as to the claimant's rights has been made;

4. The terms defined in article 1 of the Agreement shall have the meaning given to them by the said article.

Article 2. AGENCIES RESPONSIBLE FOR IMPLEMENTATION

1. The agencies responsible for applying this Protocol are:

(a) For the United States of America: the Social Security Administration;

(b) For the Italian Republic:

— I.N.P.S. (Istituto Nazionale della Previdenza Sociale), General Directorate, Rome, for matters concerning disability, old-age and survivors insurance of employees, farmers, agricultural workers and sharecroppers, artisans, and businessmen;

— E.N.P.A.L.S. (Ente Nazionale di Previdenza e Assistenza per i Lavoratori dello Spettacolo), General Directorate, Rome, concerning disability, old-age and survivors insurance for workers in the entertainment business;

— I.N.P.D.A.I. (Istituto Nazionale di Previdenza per i Dirigenti di Aziende Industriali), General Directorate, Rome, concerning disability, old-age and survivors insurance for managerial personnel in industry;

— I.N.P.G.I. (Istituto Nazionale di Previdenza per i Giornalisti Italiani), General Directorate, Rome, concerning disability, old-age and survivors insurance for professional journalists.

2. The coordinating agencies designated under article 14.1 of the Agreement to facilitate its application are:

(a) For the United States of America: the Social Security Administration;

(b) For the Italian Republic: the Istituto Nazionale della Previdenza Sociale, General Directorate, Rome.

¹ Came into force on 1 November 1978, the date on which the Agreement of 23 May 1973 came into force, in accordance with article 12.

² See p. 82 of this volume.

3. In carrying out their responsibilities under article 14.1 of the Agreement, the Coordinating Agencies designated in paragraph 2 of this article shall be responsible for the development of uniform policies and procedures and their uniform implementation by the Agencies in their respective States; for providing a channel of communication between the Agencies of one State and the Agencies of the other State; for determining which Agency is competent for the determination of a particular claim; and for facilitating the resolution of any issues that arise between the Agencies of the two States that cannot be resolved directly.

PART II. PROVISIONS RELATING TO APPLICABLE LAWS

Article 3. COVERAGE AND EXEMPTIONS

1. The Agency of the State under whose laws the services of a worker will remain covered in accordance with paragraphs 2, 3, or 4 of article 7 of the Agreement shall issue to the worker, his employer, or the Agency of the other State, a certificate to that effect when requested to do so by the worker, his employer, or the Agency of the other State.

2. An exemption from the laws of one of the States, as provided for in article 7.4 of the Agreement, shall apply to the period of work for which the certificate referred to in paragraph 1 of this article was issued.

3. An election provided for in article 7.4.b of the Agreement or in this paragraph shall be exercised within 3 months following the month in which a period of work for any employer begins or the right to amend the election arises. The election shall be binding with respect to that period of work. In the case of an Italian national who is not a national of both States, any such election may be amended during the second year after the beginning of the period of work and the election as amended shall be applicable from the date it is made for future periods of work where article 7.4.b of the Agreement applies; except that such an Italian national shall be afforded the opportunity to further amend his election if he subsequently acquires or loses the status of permanent resident of the United States.

4. The obligation for payment of contributions and taxes in respect of old-age, survivors, and disability insurance of the United States of America shall be subject to the provisions of chapter 2 and chapter 21 of the Internal Revenue Code of 1954, as amended.

PART III. APPLICATION OF PARTICULAR PROVISIONS OF THE AGREEMENT REGARDING DISABILITY, OLD-AGE, AND SURVIVORS INSURANCE

Article 4. FILING AND PROCESSING CLAIMS

1. Claimants may avail themselves of their right to benefits under articles 8 to 12 of the Agreement by filing an application with an Agency of either State, according to the rules of that Agency. Such application must specifically express intent to claim benefits from the Agency of the other State. An application with a Consulate of the United States of America located in the Italian Republic shall be deemed to be filed with the Agency of the United States of America; however, the Consulate of the United States of America with which the application was filed shall transmit, without delay, a copy thereof to the Italian Agency.

2. The date an application referred to in paragraph 1 is filed with the Agency of one State shall be recognized as the date of filing by the Agencies of both States; however, the claimant may request that an application be effective on a different date in the other State, within the limitations of and in conformity with the laws of the other State.

3. The Agency with which a claim was first filed shall transmit without delay to the Agency of the other State applications and other forms agreed upon by the Competent Authorities of the two States. Such forms shall contain all available information considered necessary to credit periods of coverage completed in both States, and such other information for determining a claimant's entitlement to benefits and the amount of benefits, including earnings amounts needed for its own calculations by the U. S. Coordinating Agency. Earnings amounts provided by the Italian Agency for years in which coverage is reported in terms of contributions and not in terms of earnings may be amounts derived by converting contributions made by workers into earnings amounts, using conversion tables agreed upon by the Competent Authorities of both States. In the case of an application for a disability benefit or, when necessary for a survivor's benefit, the relevant medical documentation which the Agency has in its possession shall be enclosed with the application form. The data on applications and forms shall be duly authenticated by the Agency that transmits the forms, and data on the authenticated forms shall be accepted as valid as the data on the original documents from which the data were extracted.

4. The Agency of a State which receives an application filed in the other State shall transmit without delay to the Agency of the other State the earnings information and other information referred to in the preceding paragraph.

5. The Agency of each State after determining the benefit amount due a claimant under the Agreement shall promptly advise the Agency of the other State of the benefit amount.

6. Each Agency shall be the final judge of the quality or probative value of documentary evidence presented to it from whatever source.

7. The limitations and restrictions mentioned in article 6 of the Agreement refer only to limitations and restrictions on payment of benefits based solely on the physical presence or residence of the beneficiary.

Article 5. TOTALIZATION AND PRO RATA CALCULATIONS

1. For the purpose of taking into consideration the periods of coverage as provided in article 8 and for the purpose of computing benefits under article 9.2 of the Agreement, the following rules apply (subject to the conditions established in article 8.4 of the Agreement and the proviso in article 2.1.b of the Agreement):

- a. The periods of coverage completed under the laws of one State shall be added to the periods of coverage completed under the laws of the other State, even if these periods have already given rise to the payment of a benefit from the first State;
- b. When a period of coverage under compulsory insurance completed under the laws of one State coincides with a period of coverage under compulsory insurance completed under the laws of the other State, the Agency of each State shall consider for purposes of determining the right to benefits and the benefit amount only those periods that were completed under its laws;
- c. If a period of coverage under compulsory insurance completed under the laws of one State coincides with a period of coverage based on voluntary insurance under

the laws of the other State, only the period of coverage under compulsory insurance shall be considered.

2. For purposes of calculating a benefit payable by an Agency of the Italian Republic in accordance with article 9.2 of the Agreement, if a period of coverage under voluntary insurance completed under Italian law coincides with a period of coverage under compulsory insurance completed under United States law, only the latter period shall be considered. In such cases, the period of voluntary coverage shall be considered by the above-mentioned Agency according to the provisions of Italian law.

3. For the purposes of calculating a benefit payable by the United States of America, the pro rata basic benefit amount may be rounded to the nearest primary insurance amount appearing in column IV of the table of benefits contained in section 215(a) of the Social Security Act (or deemed to be contained in such section) or to a primary insurance amount as set forth in an extension of that column from the minimum primary insurance amount down to the amount of \$1.00 in increments to be determined by the competent Authority of the United States of America.

4. Where a worker's periods of coverage are less than the minimum period required by article 8.4 of the Agreement under the laws of one State, those periods of coverage will nevertheless be considered by the Agency of the other State as if they were periods of coverage under its own laws in order to both establish the right to benefits under article 8.2 of the Agreement and the amount of the benefit under article 9.2 of the Agreement, provided that:

- a. The worker has the minimum period required by article 8.4 of the Agreement under the laws of the other State; and
- b. The individual claiming benefits based on the periods of coverage of the worker is not eligible for a benefit based on those periods of coverage under the laws of the other State without recourse to totalization under article 8.2 of the Agreement.

5. When a claimant is entitled to a benefit under the provisions of paragraph 1 of article 9 of the Agreement which would result in a higher benefit amount than would result from the claimant's entitlement under the provisions of paragraph 2 of article 9, the Agency shall award benefits in accordance with paragraph 1. The notice of award shall also advise the claimant that he has the right to elect to receive benefit payments as provided for in either paragraph 3 or paragraph 4 of article 9, within 3 months from the date of the award.

Article 6. RECOVERY OF OVERPAYMENTS

1. Whenever the Agency of one State has paid provisional benefits under paragraphs 1 and 2 of article 21 of the Agreement to an individual in excess of the amount to which the individual is entitled under terms of the Agreement, the Agency may, within the conditions and limits prescribed by its laws, request the Agency of the other State to deduct the amount of the overpayment from the benefits which may later be payable by the other Agency to that individual, within the limits and conditions prescribed by the law under which it operates.

2. When Agencies of both States have overpaid benefits to the same individual, an Agency may give precedence to recovery of the overpayment under its laws.

3. The Competent Authorities of both States shall establish by common agreement procedures for processing amounts of overpaid provisional benefits recovered by each State on the account of the other during the calendar year.

Article 7. MEDICAL EXAMINATIONS FOR DISABILITY

1. In making a determination of the degree of disability of a claimant or of a beneficiary for a benefit based on a disability, the Agency of each State shall take into account any medical findings provided by the Agency of the other State. This shall be without prejudice to the right of the Agency of each State to have the claimant examined by a qualified physician.

2. The Agency of one State shall make available to the Agency of the other State, at its request, any medical information and documentation concerning the claimant which may be in its possession.

3. Where the Agency of either State requires that the claimant submit to a medical examination, such examination shall if requested be arranged by the Agency of the State in which the claimant resides at the expense of the Agency which requests the examination. Where such a medical examination has been secured for its own purposes by an Agency which receives such a request, it shall furnish a report of the examination without expense to the other Agency.

Article 8. RECOMPUTATION OF BENEFITS

1. A beneficiary may file an application with the Agency of either State for a recomputation of the benefit amount in accordance with article 11.1 of the Agreement, to take into account additional periods of coverage completed under the laws of either State. An application for recomputation may be filed within the time limits provided by the laws of the State under which it is filed but in any case not more frequently than once per year. All such applications must be in written form and signed by the beneficiary involved. The Agency of the United States of America shall recompute benefits only if the additional earnings would increase the average monthly earnings on which the current benefit was computed. The Agency making the recomputation shall send the Agency of the other State information concerning the additional earnings or periods of coverage and concerning the amounts of the current and recomputed benefits. If the total amount of the benefits payable by both States after recomputation is less than the total payable without recomputation, the recomputation shall be disregarded.

2. (a) The Agency of each State shall upon request send the other State information concerning additional earnings or periods of coverage credited under its laws to claimants who have been awarded benefits in accordance with article 8.2 of the Agreement.

(b) When an individual is entitled to a benefit from a State under article 8.2 of the Agreement and subsequently meets the prerequisites for the receipt of a higher benefit from the same State under article 9.1 of the Agreement, the higher benefit shall be paid automatically or upon request. In any case, the benefit shall be paid from the date that the prerequisites are met.

PART IV. MISCELLANEOUS AND FINAL PROVISIONS

Article 9. EXCHANGE OF INFORMATION

1. The Competent Authorities of the two States shall develop operating procedures and forms for the implementation of the Agreement and shall establish by common agreement procedures for the expeditious processing of claims filed under the Agreement.

2. The Competent Authorities of the two States shall meet to establish procedures for the implementation of article 12 of the Agreement.

3. At the specific request of the Agency of one State, the Agency of the other State shall furnish information or copies of documents available to it relating to any specified claimant.

Article 10. APPEALS

1. An appeal from a decision of the Agency of one State may be filed with the Agency of either State for the purpose of protecting the filing date.

2. The Agency with which an appeal is filed shall notify the Agency of the other State if it is determined to be an appeal from a decision of the other State. The State whose decision is being appealed shall follow its normal appellate process on an appeal, and shall notify the other State of its decision.

Article 11. CONFIDENTIALITY OF EXCHANGED INFORMATION

1. The use of information furnished by one State to another with regard to an individual shall be governed by this article.

2. Any information transmitted by one State to the other State about an individual shall be treated as confidential by the other State and its officials receiving such information, including the officials mentioned in article 15 of the Agreement, and shall be used exclusively for purposes of the implementation of the provisions contained in the Agreement and this Protocol or for the purpose of administering other benefit programs under the legislation of the other State.

3. The term "information" includes, but is not limited to, application forms, documentary evidence, medical evidence, certificates of election, any other papers furnished by an individual, notices to an individual, and all records, in whatever form, furnished by one State to the other which contain information concerning an individual, his earnings, the names of his employers, his present or past whereabouts, or his medical condition.

4. Use of information which does not pertain to or which does not identify a specific individual, such as in the case of statistical or research reports, shall be governed by the legislation or regulations of the respective States.

5. The right of an individual to inspection of records containing information pertaining to him shall be governed by the legislation or regulations of the State where the record is maintained.

Article 12. ENTRY INTO FORCE

This Administrative Protocol shall enter into force on the date the Agreement enters into force and shall be coterminous with that Agreement.

DONE in Rome, November 22, 1977, in duplicate originals in the English and Italian languages, each equally valid.

For the United States of America:

[Signed — Signé]¹

For the Italian Republic:

[Signed — Signé]²

¹ Signed by Joseph A. Califano, Jr. — Signé par Joseph A. Califano.

² Signed by Tina Anselmi — Signé par Tina Anselmi.

PROCÈS-VERBAL OF THE MEETINGS BETWEEN THE DELEGATIONS OF THE UNITED STATES OF AMERICA AND OF THE ITALIAN REPUBLIC FROM OCTOBER 17 THROUGH 21, 1977, FOR THE COMPLETION OF THE ADMINISTRATIVE PROTOCOL FOR THE APPLICATION OF THE UNITED STATES-ITALY AGREEMENT ON SOCIAL SECURITY OF MAY 23, 1973

Delegations of the United States and Italy met in Rome from October 17 to 21, 1977, to complete the draft of an Administrative Protocol to the Agreement on Social Security between the United States of America and the Italian Republic of May 23, 1973.

The names of the participants in the discussions are listed in the attached annex A.¹

As a basis for their discussions, the delegations followed the text of a preliminary draft worked out during their last meeting in October, 1974, and considered a number of amendments to that draft subsequently proposed by both delegations. After a thorough examination of all of the proposed amendments, the two delegations agreed on the final draft texts which are attached as annexes B and C² in their respective official languages.

As regards the text of the Administrative Protocol, the two delegations wish to make the following clarifications:

1. With reference to the question of voluntary social insurance coverage in Italy, which is an integral part of its social insurance pension system but is presently excluded from consideration under the principal Agreement, the parties are agreed that they will endeavour to seek a satisfactory resolution of the question as soon as possible but without prejudice to the prompt implementation of the principal Agreement and the Administrative Protocol.
2. The parties are also agreed that since, under the terms of article 9.2 of the Administrative Protocol, it is necessary to establish special procedures for the implementation of article 12 of the principal Agreement, the implementation of the said article 12 will be undertaken after the formulation of the said procedures.
3. As regards the recognition of the qualification as an Italian employer for the purposes of article 7 of the Agreement, the two delegations have agreed that it is the responsibility of the employer in the United States to establish that he is an Italian employer.
4. Under article 2.3 of the Administrative Protocol, it is understood that the coordinating Agency of Italy in the first phase of the implementation of the Agreement will be responsible for determining which of the regional offices of I.N.P.S. has jurisdiction over new claims filed initially with the United States and for directing those claims to the appropriate office. Once the appropriate regional office has communicated with the United States Agency, with respect to a claim, subsequent communications concerning that claim shall be made directly between those Agencies. Any question regarding regional office jurisdiction and any other questions which cannot be resolved satisfactorily by the respective Agencies will be resolved by the Coordinating Agencies. It is agreed by both parties that if these

¹ See p. 117 of this volume.

² Annexes B and C were of a preliminary nature and do not form an integral part of the Agreement, (Information supplied by the Government of the United States.)

arrangements, and procedures adopted to implement them, prove to be unsatisfactory, the Coordinating Agencies, at the request of either party, shall consider revisions of the arrangements and procedures within the terms of the principal Agreement.

The two delegations are agreed that, as soon as an independent comparison of the respective language texts has been completed to assure that they are parallel, they will recommend to their Governments that the Administrative Protocol be signed as soon as possible.

Rome, October 21, 1977

For the Italian Delegation:

[Signed — Signé]¹

[Signed — Signé]²

[Signed — Signé]³

[Signed — Signé]⁴

[Signed — Signé]⁵

[Signed — Signé]⁶

For the United States Delegation:

[Signed — Signé]⁷

[Signed — Signé]⁸

[Signed — Signé]⁹

¹ Signed by Sergio Angeletti — Signé par Sergio Angeletti.

² Signed by Gabriella Pirrone — Signé par Gabriella Pirrone.

³ Signed by Salvatore Randisi — Signé par Salvatore Randisi.

⁴ Signed by Vittorio Tedeschi — Signé par Vittorio Tedeschi.

⁵ Signed by Corrado Gianturco — Signé par Corrado Gianturco.

⁶ Signed by Dario Bosso — Signé par Dario Bosso.

⁷ Signed by William M. Yoffee — Signé par William M. Yoffee.

⁸ Signed by Ivan J. Rice — Signé par Ivan J. Rice.

⁹ Signed by Irving J. Jacobs — Signé par Irving J. Jacobs.

ANNEX A

UNITED STATES—ITALY DISCUSSIONS ON THE CONCLUSION OF AN ADMINISTRATIVE PROTOCOL
ON SOCIAL SECURITY

United States Delegation:

Mr. William M. Yoffee (Head of Delegation)	International Liaison Officer Social Security Administration
Mr. Irving Jacobs	Chief, Coverage Planning Branch, OPEP, SSA
Mr. Jack Rice	Division of International Operations SSA
Avv. Mario Gallotti	U.S. Embassy Rome (Legal Consultant)

[Italian Delegation:]

Ministro Sergio Angeletti (Head of Delegation)	Vice Direttore Generale della Emigrazione e A.S.
Dott. Vittorio Tedeschi	Consigliere di Legazione
Dott. Corrado Gianturco	Segretario di Legazione-D.G.E.A.S. Uff. 3°
Dott. Giuseppe Cinti	Segretario di Legazione Ufficio Trattati
Dott.ssa Gabriella Pirrone	Primo Dirigente Ministero Lavoro e Previdenza Soc.
Dott.ssa Franca Selvaggi	Direttore Capo Aggiunto del Ministero Lavoro e Previdenza Soc.
Dott. Salvatore Randisi	Dirigente Superiore Istituto Nazionale Previdenza Soc.
Dott. Dario Bosso	Istituto Nazionale Previdenza Soc.

EXCHANGE OF NOTES — ÉCHANGE DE NOTES

I

Rome, January 16, 1978

No. 33

Excellency:

I have the honor to refer to the Agreement between the United States of America and [the] Italian Republic on the matter of social security signed in Washington on May 23, 1973, to the Administrative Protocol for the implementation of the 1973 Agreement signed in Rome on November 22, 1977, and to article 2, paragraph 3, of the 1973 agreement.

The social security amendments of 1977 (Public Law 95-216) which became law on December 20, 1977, have, *inter alia*, altered the method of computing benefits under the Social Security Act after December 31, 1978. As a result of this change, which in general eliminates the use of a benefit table for computing benefits after December 31, 1978, the definition of "basic benefit amount" which is applicable to the United States now contained in article 1.k of the 1973 agreement will be obsolete after that date. Since the continued reference to that definition would make the 1973 agreement, as a practical matter, inoperable under United States law after December 31, 1978, and since that would be contrary to the purposes of the agreement and to the intent of the contracting parties, the United States proposes to use the following language as the definition for purposes of implementing the 1973 agreement after December 31, 1978. If this definition is acceptable to the Government of the Italian Republic, the Congress of the United States will be so informed during the process of review leading to the approval of the 1973 agreement and the 1977 Administrative Protocol and their subsequent implementation.

It is therefore proposed that, beginning on January 1, 1979, that portion of article 1.k of the 1973 agreement which defines "basic benefit amount" with respect to the United States of America shall be interpreted to mean:

and as regards the United States of America, "primary insurance amount" based on a worker's average monthly earnings or average indexed monthly earnings, as provided in section 215(a) of the Social Security Act as amended by the Social Security amendments of 1977;

Except with respect to this interpretation, all terms and conditions of the 1973 Agreement and the 1977 Administrative Protocol remain the same. I propose that, as to the interpretation of article 1.k of the 1973 Agreement, this note and your reply concurring therein constitute an agreement between our two Governments effective on the date of your note in reply.

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

RICHARD N. GARDNER

His Excellency Arnaldo Forlani
Minister of Foreign Affairs
Rome

II

[ITALIAN TEXT — TEXTE ITALIEN]

[TRANSLATION¹ — TRADUCTION²]

IL MINISTRO DEGLI AFFARI ESTERI

THE MINISTER OF FOREIGN AFFAIRS

Roma, 20 gennaio 1978

Rome, January 20, 1978

No. 82

No. 82

Signor Ambasciatore,

Mr. Ambassador:

ho l'onore di riferirmi alla Sua lettera n. 33 del 16 gennaio 1978, del seguente tenore:

I have the honor to refer to your letter No. 33 of January 16, 1978 which reads as follows:

[See note I — Voir note I]

[See note I]

Al riguardo ho l'onore di comunicarLe che il mio Governo concorda circa la proposta contenuta nella lettera medesima, concernente l'interpretazione dell'articolo 1.k dell'Accordo fra gli Stati Uniti d'America e la Repubblica Italiana in materia di sicurezza sociale firmato a Washington il 23 maggio 1973.

I have the honor to inform you that my Government agrees to the proposal contained in the foregoing letter concerning the interpretation of article 1.k of the Agreement between the United States of America and the Italian Republic on the matter of Social Security signed in Washington on May 23, 1973.

Voglia accettare, signor Ambasciatore, i rinnovati sensi della mia più alta considerazione.

Accept, Mr. Ambassador, the renewed assurances of my highest consideration.

A. FORLANI

A. FORLANI

S.E. l'Ambasciatore Richard Gardner
Ambasciata degli Stati Uniti
d'America
Roma

His Excellency Richard Gardner
Embassy of the United States
of America
Rome

¹ Translation supplied by the Government of the United States.

² Traduction fournie par le Gouvernement des Etats-Unis.

PROCÈS-VERBAL CONCERNING THE COMPARISON OF THE ENGLISH AND ITALIAN LANGUAGE TEXTS OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON THE MATTER OF SOCIAL SECURITY SIGNED ON MAY 23, 1973, OF THE ADMINISTRATIVE PROTOCOL FOR THE IMPLEMENTATION OF THE SAID AGREEMENT, SIGNED ON NOVEMBER 22, 1977, AND THE RELATED PROCÈS-VERBAL DATED OCTOBER 21, 1977

A comparison of the English and Italian language texts of the subject instruments, having been made by responsible officials of the two Contracting Parties, has revealed that in several instances indicated below there are divergences in the language of the respective language texts. The two Contracting Parties are agreed that these divergences do not represent any differences in the substance of the points agreed to which are enumerated in detail in the instruments, and they are in complete accord in respect to the substance of the matters which are the subject of the instruments.

Nevertheless, the two Contracting Parties being desirous of avoiding any possible misinterpretations of said instruments have listed the following points and have clarified the understanding that exists between them on these points:

1. Wherever the Italian language texts use the word "*istituto*," it is understood that it is the intention of the parties to mean "*istituzione*" as that term is defined in article 1(e) of the Agreement.
2. In article 8.3 of the Agreement, it is understood that there is no difference between "the highest possible benefit" referred to in the English language text and "a higher benefit" referred to in the Italian language text, since it is intended that the benefit paid under this paragraph will be the higher of two or the highest of several benefits to which the claimant may become entitled under the provisions of law referred to.
3. In article 9.3 of the Agreement, it is understood that the phrase "by each of the States" in the English language text is inferred in the Italian language text.
4. In article 9.4 of the Agreement, it is understood that although the verb "awarded" is used in the English language text and the verb "*calcolato*" (computed) is used in the Italian language text, the practical result is intended to be the same under both texts since the benefit that is computed is to be the benefit that is awarded in this context.
5. In article 10.1 of the Agreement, it is understood that despite the differences in the English and Italian language texts of the introductory phrase, which is intended to be descriptive of what the paragraph is intended to do, subparagraphs (a) and (b) in both language texts are sufficiently clear as to the manner in which the agencies of both parties shall proceed.
6. In article 10.1(a) of the Agreement, it is understood that the English language text is correct in incorporating the phrase "for such year" and that since this paragraph applies exclusively to the United States of America, no addition to the Italian language text is necessary.
7. In article 19.2 of the Agreement, it is understood that any apparent differences in the two language texts are clarified by article 4.1 of the Administrative Protocol.

8. It is noted that although the intent of article 5.5 of the Administrative Protocol is clear in both language texts, the final sentence of this paragraph in the Italian language text would more clearly reflect that intent by being worded as follows:

“Con la comunicazione della concessione il richiedente sarà informato che ha la facoltà, nei tre mesi dalla data della concessione della prestazione, di optare in base a quanto previsto o al paragrafo 3 o al paragrafo 4 dell’art. 9 dell’Accordo.”

DONE at Rome on October 4, 1978, in duplicate, in the English and Italian languages, both texts being equally authentic.

For the Government
of the United States of America:

[Signed — Signé]¹

For the Government
of the Italian Republic:

[Signed — Signé]²

¹ Signed by Herbert W. Baker — Signé par Herbert W. Baker.

² Signed by Sergio Angeletti — Signé par Sergio Angeletti.