

Luxembourg Friends ip, Establis ment and Navigation Treaty

Treaty and protocol signed at Luxembourg February 23, 1962;

Ratification advised by t e Senate of t e United States of America September 19, 1962;

Ratified by t e President of t e United States of America November 9, 1962;

Ratified by Luxembourg January 30, 1963;

Ratifications exc angled at Was ington February 28, 1963;

Proclaimed by t e President of t e United States of America Marc 6, 1963;

Entered into force Marc 28, 1963.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of friends ip, establis ment and navigation between t e United States of America and t e Grand Duc y of Luxembourg, toget er wit a related protocol, was signed at Luxembourg on February 23, 1962, h t e originals of w ic treaty and protocol, in t e Englis and Frenc languages, are word for word as follows:

TREATY of Friends ip, Establis ment and Navigation between t e United States of America and t e Grand Duc y of Luxembourg

T e President of t e United States of America

and

Her Royal Hig ness t e Grand Duc ess of Luxembourg

desirous of strengt ening t e bonds of peace and friends ip traditionally existing between t eir two countries and of encouraging closer economic and cultural relations between t e two peoples, and being cognizant of t e contributions w ic may be made towards t ese ends by arrangements specifying mutually accorded rig ts and privileges and promoting mutually advantageous commercial intercourse and investments, h

ave resolved to conclude a Treaty of Friends ip, Establis ment and Navigation, and for t at purpose ave appointed as t eir Plenipotentiaries,

T e President of t e United States of America:

His Excellency Mr. James W. Wine, Ambassador Extraordinary and Plenipotentiary of t e United States of America in Luxembourg,

and

Her Royal Hig ness t e Grand Duc ess of Luxembourg:

His Excellency Mr. Eugene Sc aus, Minister of Foreign Affairs, h

Who, aving communicated to eac ot er t eir full powers found to be in good and due form, ave agreed as follows:

Article I h

Each Contract a Party shall allow measures accorded equitably to all men and effective protection to the persons, property, enterprises, firms and interests of nationals and companies of the other Party.

Article II

1. Nationals of the Contracting Party shall, subject to the laws relating to the entry, sojourn and establishments of aliens, be permitted to enter the territories of the other Party, to travel freely, and to reside and establish themselves at places of their choice. Nationals of the other Party shall not particularly be permitted to enter the territories of the other Party and to reside therein:

a) for the purpose of carrying on trade between the two countries and entering into related commercial activities;

b) for the purpose of development and decision the operations of an enterprise in which they have invested, or actively in the process of investment, a substantial amount of capital.

2. Nationals of the other Party and nationals of third countries en route from the territories of such a Party shall, subject to the provisions of paragraph 1 of the present article, be accorded freedom of transit for themselves and their baggage through the territories of the other Party by the routes most convenient for international transit. In particular, they shall be free from equipping themselves with unnecessary delays and impediments. They shall be subject, however, to regulations with respect to their baggage applicable to aliens generally in order to prevent abuse of their transit privileges.

3. Nationals of the other Party, with the exception of the other Party, shall enjoy freedom of conscience; and they shall be able to hold religious services, both public and private, at suitable places of their choice.

4. Nationals of the other Party shall be permitted, with the exception of the other Party, to obtain information material for dissemination on the public abroad, and shall enjoy freedom of transmission of such material to be used for publication by the press, radio, television, motion pictures and other means; and they shall be permitted to communicate freely with their persons residing outside such territories by mail, telegraph and other means open to general public use.

5. The provisions of the present article shall be subject to the right of the other Party to apply measures having a necessary or mainly a public order and protection of public health, morals and safety.

Article III

1. Nationals of the Contracting Party with the exception of the other Party shall be accorded full legal and judicial protection for their persons, firms and interests. Such nationals shall be free from molestation and shall receive constant protection, in no case less than that required by international law.

2. To the extent they shall not particularly have the right of access, on the same basis and on the same conditions as nationals of such other Party, to the courts of justice and administrative tribunals and agencies in all departments of jurisdiction and shall have the right to the services of competent persons of their choice.

3. The provisions of paragraphs 1 and 2 of the present article shall extend and apply in the same manner to companies. In the absence of, moreover, the right of such access shall be enjoyed without any equipment of essential or domestic origin:

a) in the case of Luxembourg companies not entered in activities in the territories of the United States of America; and

b) in the case of United States companies established in the territories of the Grand Duchy of Luxembourg.

4. If a national of the other Party is taken into custody with the exception of the other Party, the nearest consular representative of his country shall on the demand of such national be admitted immediately and shall have the right of visit and communication with such national without unnecessary delay. Such national shall:

a) receive reasonable and humane treatment, in no case less than that required by international law; j

b) be formally immediate informants of the charges against him;

c) be brought to trial separately in accordance with the proper preparation of his defence, for which he shall enjoy reasonable facilities, including the services of competent counsel.

5. The warehouses, offices, warehouses, factories and other premises of factories and companies of either Party located within the territories of the other Party shall not be subject to searches or measures other than those permitted by way of execution of warrants or searches or expropriations of such premises and their contents, whenever necessary, shall be made in accordance with the relevant provisions for the convenience of the occupants of the conduct of business.

6. Contracts entered into between factories and companies of either Party and factories and companies of the other Party, that provide for the settlement of arbitration of controversies, shall not be deemed enforceable within the territories of such other Party merely on the grounds that the parties signed for the arbitration proceedings is outside such territories or that the arbitration of one or more of the arbitrators is not that of such other Party. No war undertaken pursuant to such contract, if enforceable under the laws of the place where it was entered, shall be deemed invalid if it is effective measures of enforcement by the authorities of either Party merely on the grounds that the place where such war was entered is outside the territories of such Party or that the arbitration of one or more of the arbitrators is not that of such Party.

Article IV

1. Property that factories and companies of either Contracting Party own within the territories of the other Party shall enjoy the same security there through full judicial protection.

2. Neither Party shall take unreasonable or discriminatory measures that would impair the acquire rights interests within its territories of factories and companies of the other Party in the enterprises which they have established, in their capital, or in the skills, arts or technology which they have supplied.

3. Nationalities and companies or [1] either Party shall not be expropriated of their property within the territories of the other Party except for public benefit with the prompt payment of just compensation. Such compensation shall be immediately realized and shall represent the full equivalent of the property taken. Furthermore, equitable provisions shall have been made at the time of taking for the permanent payment thereof.

1 Shall read "of".

4. Nationalities and companies of either Party shall enjoy the same security, within the territories of the other Party, as shall factories and companies with respect to the matters set forth in paragraph 3 of the present article and in paragraph 5 of article III. Moreover, enterprises in which nationalities and companies of either Party have substantial interests shall be accorded, within the territories of the other Party, not less than the same treatment in matters relating to the taking of private ownership enterprises into public ownership as to the taking of such enterprises under public control.

Article V

1. Nationalities and companies of either Contracting Party shall be accorded, within the territories of the other Party, the same treatment with respect to obtaining patents of invention, with respect to rights in trademarks, trade names, trade secrets and industrial property of kinds. 2. The Parties deem that it is highly desirable to further, through cooperative and other appropriate means, the interchange and use of scientific and technical knowledge, particularly in the interests of increasing productivity and improving standards of living within their respective territories.

Article VI

1. Nationalities and companies of either Contracting Party shall be accorded the same treatment with respect to foreign investments in the fields of commerce, industry, finance and other activities for gain (business activities) within the O

territories of the other party whether directly or by the medium of any form of lawful juridical entity. Accordingly, such negotiations and companies shall be permitted within such territories:

a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business;

b) to organize companies under the general company laws of such other party and to acquire majority interests in companies of such other party;

c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control whether in time form of individuals, proprietors, companies or otherwise shall in all that relates to the conduct of their activities thereof be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other party.

2. Each party reserves the right to determine the extent to which aliens may establish, acquire interests in or carry on enterprises engaged within its territories in communications, air or water transport, banking, insurance, fiduciary or depositor functions or the exploitation of land or other natural resources. However, new limitations imposed by either party on the extent to which aliens are accorded national treatment with respect to carrying on such activities within its territories shall not be applied to existing enterprises which are regularly engaged in such activities therein at the time such new limitations are adopted and which are owned or controlled by nationals and companies of the other party. Moreover, neither party shall deny to transportation, communications and banking enterprises of the other party the right to maintain branches and agencies to perform functions necessary for essential international operations in which they are permitted to engage.

3. The provisions of the present article shall not prevent either party from prescribing special formalities in connection with the establishment of companies or enterprises within its territories which are managed or controlled by aliens; but such formalities may not impair the substance of the rights set forth in paragraph 1 of the present article.

4. Nationals and companies of either party shall be accorded national treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other party. They shall be accorded the right to form associations under the laws of such other party for the purpose of engaging in the foregoing activities. Nothing in the present Treaty shall be deemed to grant or to imply a right to engage in political activities.

Article VII

1. The Contracting Parties recognize that it is desirable for conditions of competitive equality to be maintained in situations in which public, owned or controlled trading or manufacturing enterprises are in competition within the territories of either party with privately owned and controlled enterprises of nationals or companies of the other party.

2. Accordingly, such state-owned enterprises should not be given special economic privileges which could injure the competitive position of such private enterprises. However, this principle shall not be construed to prevent either party from making such special concessions in aid of state-owned enterprises as it deems necessary during periods of economic crisis especially to relieve unemployment. This principle moreover is without prejudice to special duties levied in connection with:

a) manufacturing goods for government use or supplying goods and services to the Government for government use; or

b) supplying at prices substantially below competitive prices the needs of particular population groups for essential goods and services not otherwise practicable obtainable by such groups.

Article VIII

1. Nationals and companies of either Contracting Party shall be permitted to engage within the territories of the other party the services of accountants and technical experts of all kinds, executive personnel, tour operators and

and other real estate of the holder.

2. National and Company of the Party shall be permitted to engage the services of a accountant and other technical experts regardless of the extent to which they may have qualified for the state of a profession with the territory of the other Party, for the purpose of making examination, audit and technical investigation and ending operations in the private sector of the national and company in connection with the planning and operation of the enterprise, and enterprises in which they have a financial interest, within the territory.

Article X

1. National and Company of the Contracting Party shall be allowed within the territory of the other Party:

a) national treatment with respect to leasing land, building and other real estate activities related to the conduct of activities in which they are permitted to engage pursuant to article V and for educational purposes, and with respect to ordinary and ordinary household activities; and

b) other rights in real estate permitted by the applicable laws of the other Party.

2. National and Company of the Party shall be allowed within the territory of the other Party national treatment with respect to acquiring, by purchase, lease, or otherwise, and with respect to owning and operating, real estate of all kinds, both tangible and intangible. However, the Party may impose restrictions on alienation of real estate of all kinds, both tangible and intangible, but only to the extent that they can be done without impairing the rights and privileges used by Article V or by other provisions of the present Treaty.

3. National and Company of the Party shall be allowed national treatment within the territory of the other Party with respect to acquiring real estate of all kinds by testamentary succession or through judicial sale. Should they be aware of the availability of the real estate to continue to own any household activities, they shall be allowed a period of at least five years in which to dispose of it.

4. National and Company of the Party shall be allowed within the territory of the other Party national treatment with respect to disposal of real estate of all kinds.

Article X

1. National of the Contracting Party residing within the territory of the other Party, and national and companies of the Party engaged in trade or other gainful activities in the territory of the other Party, shall not be subject to the payment of taxes, fees or charges imposed on or assessed to income, capital, transactions, activities or any other object, or to equipment with respect to the levy and collection thereof, within the territory of the other Party, more burdensome than those borne by national and companies of the other Party in like situation.

2. With respect to national of the Party who are neither dependent nor engaged in trade or other gainful activities within the territory of the other Party, and with respect to companies of the Party which are not engaged in trade or other gainful activities within the territory of the other Party, there shall be the same of the other Party to a largely general principle set forth in paragraph 1 of the present article.

3. National and Company of the Party owned by paragraph 2 of the present article shall not be subject, within the territory of the other Party, to the payment of taxes, fees or charges imposed on or assessed to income, capital, transactions, activities or any other object, or to equipment with respect to the levy and collection thereof, more burdensome than those borne by national and companies of any third country.

4. In the case of companies of the Party engaged in trade or other gainful activities within the territory of the other Party, national of the Party engaged in trade or other gainful activities within the territory of the other Party but not dependent thereon, the other Party shall not impose on any tax, fees or charges upon any income, capital or other basis in excess of that equitably allowable or ascertainable to the territory, no grant deduction and exemption less than those equitably allowable or ascertainable to the territory. A comparable I

rule shall also apply in the case of companies organized and operated exclusively for scientific, educational, religious or charitable purposes.

5. The provisions of the restatement article shall not obligate either Party to extend to the other Party tax advantages accorded to the other Party as a domestic company of the other Party by virtue of agreements for the avoidance of double taxation. Furthermore, each Party reserves the right to apply its own extended tax advantages to its residents consistent with its tax return obligations and all gift taxes for the United States exempt transfers and estate taxes.

Article XI

1. National companies of either Contracting Party shall be accorded by the other Party the same treatment as national companies of such other Party in like situations, with respect to amounts, remittances and transfers of funds for a calculation of income between the territories of the two Parties as well as between the territories of such other Party and foreign territories. This treatment shall be no less favorable than that accorded to national companies of a third country in like situations.

2. Neither Party shall impose exchange restrictions as defined in paragraph 5 of the restatement article except to the extent necessary to maintain a reserve adequate to its monetary reserves, particularly relating to external commercial and financial requirements. It is understood that the provisions of the restatement article do not alter the obligations of either Party to maintain the International Monetary Fund to include in its balance of payments either Party's exchange restrictions whenever the Fund's executive authorities request.

3. If either Party imposes exchange restrictions according to paragraph 2 of the restatement article, it shall, to the extent possible, after making whatever provisions may be necessary to assure the availability of foreign exchange for essential goods and services, make provisions to the fullest extent practicable in light of the level of the monetary reserves and its balance-of-payments, for the withdrawal of the currency of the other Party, for:

a) the compensation referred to in Article IV, paragraph 3,

b) earnings, whether from salaries, interest, dividends, commissions, royalties, amounts for technical services, or otherwise,

c) amounts for amortization of loans, de-recapitalization of direct investments, and, to the extent feasible, capital transfers, goods and services. If more than one rate of exchange is in force, the rate applicable to such withdrawal shall be a rate which is effective for the International Monetary Fund for such transactions, or, in the absence of a rate so approved, an effective rate which, plus value added taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either Party to a major or necessary detriment to arbitrage and discrimination in the claims, investments, transport, trade and other interests of the national companies of the other Party, or to the competitive structure thereof.

5. The term "exchange restrictions" as used in the restatement article includes all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with amounts, remittances, or transfers of funds for a calculation of income between the territories of the two Parties.

6. Questions arising under the restatement article concerning exchange restrictions affecting aliens are governed by the provisions of the restatement article.

Article XII

Commercial travelers residing in a domestic company of either Contracting Party engaged in business with the territories thereof shall be accorded with the territories of the other Party treatment no less favorable than that accorded to commercial travelers residing in a domestic company of such other Party with respect to the exercise of their functions. Such cases the temporary importation of samples and other items referred to above shall be accorded most-favorable treatment. A

Article

between the territories of the two Contracting Parties there shall be freedom of navigation

2 Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other Party; and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other Party, with respect to:

- a) duties and charges of all kinds,
- b) the administration of the customs, and
- c) bounties, drawbacks and other privileges of this nature

Article V

The present Treaty shall not preclude the application by either Contracting Party of measures:

- a) regulating time importation or exportation of gold and silver;
- b) relative to its national fisheries and to the products thereof;
- c) relating to fissionable materials, to radioactive by products of the utilization or processing thereof, or to materials that are the source of fissionable materials;
- d) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
- e) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests;
- f) for the protection of national treasures having an artistic, historical or archeological value; or
- g) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly the controlling interest, the advantages of the present Treaty, except with respect to recognition of juridical status and with respect to access to courts

Article V

The term "national treatment" means treatment accorded within the territories of a Contracting Party upon terms no less favorable than the treatment accorded therein, in like situation, to nationals, companies, products, vessels or other objects, as the case may be, of such Party

2 The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels, or other objects, as the case may be, of any third country

3 As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party

4 National treatment accorded under the provisions of the present Treaty to companies of the Grand Duchy of Luxembourg shall, in any State or possession of the United States of America, be the treatment accorded therein to companies created or organized in other States and possessions of the United States of America

Article V

The territories to which the present Treaty extends shall comprise all areas of land and water under the sovereignty or authority of each Contracting Party, other than the Panama Canal Zone and the Trust Territory of p

the Pacific and .

2. It is understood that the present Treaty does not apply to territories under the authority of either Party or by a military base or by reason of temporary military occupation .

Article XV

1. Each Contracting Party has accorded sympathetic consideration to and shall afford adequate opportunity for consultation regarding such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the Parties as to the interpretation or application of the present Treaty not satisfactorily adjusted by diplomacy shall be submitted to the International Court of Justice unless the Parties agree to settle the matter by some pacific means .

Article XV

The present Treaty shall terminate the Declaration between the Grand Duchy of Luxembourg and the United States of America on the Effective Protection of Trade-marks signed at Luxembourg December 23 1904 and at The Hague December 27 1904.[1]

1 TS 442; 34 Stat. 2868.

Article XX

1. The present Treaty shall be ratified and ratifications thereof shall be exchanged at Washington as soon as possible.

2. The present Treaty shall enter into force on the day of exchange of instruments of ratification .

3. The present Treaty shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein .

4. Either Contracting Party may by giving one year's written notice to the other Party terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

Witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals .

Done in duplicate in the English and French languages both equally authentic at Luxembourg this twenty-third day of February one thousand nine hundred sixty-two.

For the United States of America

JAMES W. WINE

For the Grand Duchy of Luxembourg

E. SCHAUS

PROTOCOL

At the time of signing the Treaty of Friendship Establishment and Navigation between the United States of America and the Grand Duchy of Luxembourg the undersigned Plenipotentiaries duly authorized have further agreed on the following provision which shall be considered integral part of the aforesaid Treaty.

1. The provision of article paragraph 1 (b) of the Treaty shall be construed as extending to persons who represent and companies of the same nationality which have invested or are actively in the process of investing a substantial amount of capital in enterprises in the territories of the other Party and who are employed by such nationality and companies in a responsible capacity. ,

2. With respect to the provisions of Article III, paragraph 2, a High Party agrees that, with its territories, the latter Party shall be entitled to the same duties as its own territories.

3. The provisions of Article IV, paragraph 3, providing for the payment of compensation shall extend to the holders directly or indirectly by title of compensation of the High Party in proportion to the territories of the latter Party.

4. The provisions of Article VI, paragraph 1, shall be construed as to the right of Luxembourg authorities to require that aliens may be allowed to exercise activities in Luxembourg only after appropriate authorization is granted. However, in principle with the terms of that paragraph, the regulations governing activities shall be applied in a liberal fashion.

5. The provisions of Article VI, paragraph 1, shall extend to persons who, because they involve variousially participate in the exercise of public authority relating to the public health and safety, are established or reserved by law to the latter Party.

6. The provisions of Article VI, paragraph 1, shall extend to the activity of professional artists in the exercise of their occupations.

7. It is understood that the provisions of Article VIII, paragraph 1, do not prevent the application of the laws of the latter Party, particularly in the case of the latter Party.

8. The treatment provided in Article XI, paragraph 1, is designed to provide discrimination against the ground of nationality but does not, in itself, provide for the treatment based upon residence requirements.

9. The provisions of Article XIII, paragraph 2, shall apply to postal services.

I witness whereof the respective Plenipotentiaries have signed this Protocol and have affixed their seals.

Done in duplicate, in the English and French languages, both equally authentic, at Luxembourg this twenty-third day of February, the said day of the month of sixty-two.

For the United States of America,

JAMES W. WINE

For the Grand Duchy of Luxembourg,

E. SCHAUS

EN FOI DE QUOI, les Plénipotentiaires respectifs ont signé le présent Protocole et y ont apposé leurs sceaux.

FAIT en double exemplaire, en langues anglaise et française, les deux textes étant également authentiques, à Luxembourg, le vingt-trois février mil neuf soixante-deux.

Pour les Etats-Unis d'Amérique,

JAMES W. WINE [SEAL]

Pour le Grand-Duché de Luxembourg,

E. SCHAUS. [SEAL]

WHEREAS the States of the United States of America by their Senators on September 19, 1962, two-thirds of the Senators present in the latter Party, did advise and consent to the said treaty and protocol;

WHEREAS the said treaty and protocol were ratified by the President of the United States of America November 9, 1962, in pursuance of the said advice and consent of the States of the latter Party, and were ratified by the Grand Duchy of Luxembourg January 20, 1963; k

WHEREAS the activities in the instrument of ratification of the aid treaty and protocol were duly exchanged at Washington on February 2, 1963;

AND WHEREAS it is provided in Article XIX of the aid treaty that the treaty shall not enter into force on the first day of exchange of instruments of ratification and in the aid protocol that the provisions of all but one shall be binding on the parties;

NOW, THEREFORE be it known that I, John F. Kennedy, President of the United States of America, do hereby proclaim and make public the aid treaty and protocol, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith, on and after March 2, 1963, on the part of the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have caused my hand and the seal of the United States of America to be affixed.

DONE at the city of Washington this first day of March in the year of our Lord one thousand nine hundred and sixty-three and of the Independence of the United States of America the one hundred and eighty-ninth.

JOHN F. KENNEDY [SEAL]

By the President:

DEAN RUSK

Secretary of State

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