

No. 6868

**UNITED STATES OF AMERICA
and
LUXEMBOURG**

**Treaty of Friendship, Establishment and Navigation (with
Protocol). Signed at Luxembourg, on 23 February 1962**

Official texts : English and French.

Registered by the United States of America on 12 August 1963.

**ÉTATS-UNIS D'AMÉRIQUE
et
LUXEMBOURG**

**Traité d'amitié, d'établissement et de navigation (avec
Protocole). Signé à Luxembourg, le 23 février 1962**

Textes officiels anglais et français.

Enregistré par les États-Unis d'Amérique le 12 août 1963.

No. 6868. TREATY¹ OF FRIENDSHIP, ESTABLISHMENT AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND DUCHY OF LUXEMBOURG. SIGNED AT LUXEMBOURG, ON 23 FEBRUARY 1962

The President of the United States of America and Her Royal Highness the Grand Duchess of Luxembourg

desirous of strengthening the bonds of peace and friendship traditionally existing between their two countries and of encouraging closer economic and cultural relations between the two peoples, and being cognizant of the contributions which may be made toward these ends by arrangements specifying mutually accorded rights and privileges and promoting mutually advantageous commercial intercourse and investments,

have resolved to conclude a Treaty of Friendship, Establishment and Navigation, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America :

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

Her Royal Highness the Grand Duchess of Luxembourg :

His Excellency Mr. Eugène Schaus, Minister of Foreign Affairs,

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

Article I

Each Contracting Party shall at all times accord equitable treatment and effective protection to the persons, property, enterprises, rights and interests of nationals and companies of the other Party.

Article II

1. Nationals of either Contracting Party shall, subject to the laws relating to the entry, sojourn and establishment of aliens, be permitted to enter the territories of the other Party, to travel therein freely, and to reside and establish themselves at

¹ Came into force on 28 March 1963, one month after the day of exchange of instruments of ratification which took place at Washington on 28 February 1963, in accordance with the provisions of article XIX.

places of their choice. Nationals of either Party shall in particular 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 engaging in related commercial activities ; or
- b) for the purpose of developing and directing the operations of an enterprise in which they have invested, or are actively in the process of investing, a substantial amount of capital.

2. Nationals of either Party and nationals of third countries en route to or from the territories of such Party shall, subject to the reservation on 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 requirements that entail unnecessary delays and impediments. They shall be subject, however, to regulations with respect to their baggage that are applicable to aliens generally in order to prevent abuse of the transit privilege.

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

4. Nationals of either Party shall be permitted, within the territories of the other Party, to gather information material for dissemination to 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 other persons inside and 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 either Party to apply measures that are necessary to maintain public order and protect the public health, morals and safety.

Article III

1. Nationals of either Contracting Party within the territories of the other Party shall be accorded full legal and judicial protection for their persons, rights 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 this end they shall in particular have 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 degrees of jurisdiction and shall have 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. It is understood, moreover, that the right of such access shall be enjoyed without any requirement of registration or domestication :

- a) in the case of Luxembourg companies not engaged in activities in the territories of the United States of America ; and
- b) in the case of United States companies not established in the territories of the Grand Duchy of Luxembourg.

4. If a national of either Party is taken into custody within the territories of the other Party, the nearest consular representative of his country shall on the demand of such national be immediately notified and shall have the right to visit and communicate 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 ;
- b) be formally and immediately informed of the charges against him ; and
- c) be brought to trial as rapidly as is consistent with the proper preparation of his defense, for which he shall enjoy all reasonable means, including the services of competent counsel.

5. The dwellings, offices, warehouses, factories and other premises of nationals 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 law and in execution of law. Official searches and examinations of such premises and their contents, when necessary, shall be made according to law and with careful regard for the convenience of the occupants and the conduct of business.

6. Contracts entered into between nationals and companies of either Party and nationals and companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. No award duly rendered pursuant to any such contract, and final and enforceable under the laws of the place where rendered, shall be deemed invalid and denied effective means of enforcement by the authorities of either Party merely on the grounds that the place where such award was rendered is outside the territories of such Party or that the nationality of one or more of the arbitrators is not that of such Party.

Article IV

1. Property that nationals and companies of either Contracting Party own within the territories of the other Party shall enjoy constant security therein through full legal and judicial protection.

2. Neither Party shall take unreasonable or discriminatory measures that would impair the acquired rights and interests within its territories of nationals 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. Nationals and companies or¹ either Party shall not be expropriated of their property within the territories of the other Party except for public benefit and with the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken. Furthermore, adequate provision shall have been made not later than the time of taking for the determination and payment thereof.

4. Nationals and companies of either Party shall in no case be accorded, within the territories of the other Party, less than national treatment 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 nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national treatment in all matters relating to the taking of privately owned enterprises into public ownership and to the placing of such enterprises under public control.

Article V

1. Nationals and companies of either Contracting Party shall be accorded, within the territories of the other Party, national treatment with respect to obtaining and maintaining patents of invention, and with respect to rights in trade marks, trade names, trade labels and industrial property of all 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 interest of increasing productivity and improving standards of living within their respective territories.

Article VI

1. Nationals and companies of either Contracting Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for gain (business activities) within the territories of the

¹ According to information provided by the United States of America this should read "of".

other Party, whether directly or by agent or through the medium of any form of lawful juridical entity. Accordingly, such nationals 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 ; and
- c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall in all that relates to the conduct of the 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 involving fiduciary or depository 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 as against 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 essentially 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 aforesaid activities. Nothing in the present Treaty shall be deemed to grant or to imply any 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 publicly 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 advantages given 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 practically 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, attorneys, agents and other specialists of their choice.

2. Nationals and companies of either Party shall be permitted to engage the services of accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of the other Party, for the sole purpose of making examinations, audits and technical investigations and rendering reports in the private interest of such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.

Article IX

1. Nationals and companies of either Contracting Party shall be accorded within the territories of the other Party :

- a) national treatment with respect to leasing land, buildings and other real property appropriate to the conduct of activities in which they are permitted to engage

pursuant to article VI and for residential purposes, and with respect to occupying and using such property ; and

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

2. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to acquiring, by purchase, lease, or otherwise, and with respect to owning and possessing, personal property of all kinds, both tangible and intangible. However, either Party may impose restrictions on alien ownership of materials dangerous from the standpoint of public safety and alien ownership of interests in enterprises carrying on particular types of activity, but only to the extent that this can be done without impairing the rights and privileges secured by article VI or by other provisions of the present Treaty.

3. Nationals and companies of either Party shall be accorded national treatment within the territories of the other Party with respect to acquiring property of all kinds by testate or intestate succession or through judicial process. Should they because of their alienage be ineligible to continue to own any such property, they shall be allowed a period of at least five years in which to dispose of it.

4. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

Article X

1. Nationals of either Contracting Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by nationals and companies of such other Party in like situation.

2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present article.

3. Nationals and companies of either Party covered by paragraph 2 of the present article shall not be subject, within the territories of the other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals and companies of any third country.

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

5. The provisions of the present article shall not obligate either Party to extend to nationals and companies of the other Party tax advantages accorded to nationals and companies of any third country on the basis of reciprocity or by virtue of agreements for the avoidance of double taxation. Furthermore, each Party reserves the right to apply special provisions in extending advantages to its nationals and residents in connection with joint tax returns by husband and wife and in allowing to residents of contiguous countries exemptions of a personal nature in connection with income and inheritance taxes.

Article XI

1. Nationals and companies of either Contracting Party shall be accorded by the other Party the same treatment as nationals and companies of such other Party in like situations, with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two Parties as well as between the territories of such other Party and of any third country. This treatment shall be not less favorable than that accorded to nationals and companies of any third country in like situations.

2. Neither Party shall impose exchange restrictions as defined in paragraph 5 of the present article except to the extent necessary to maintain or restore adequacy to its monetary reserves, particularly in relation to its external commercial and finan-

cial requirements. It is understood that the provisions of the present article do not alter the obligations either Party may have to the International Monetary Fund or preclude imposition by either Party of particular restrictions whenever the Fund specifically so authorizes or requests.

3. If either Party imposes exchange restrictions in accordance with paragraph 2 of the present article, it shall not fail, after making whatever provision may be necessary to assure the availability of foreign exchange for essential goods and services, to make provision to the fullest extent practicable in light of the level of the monetary reserves and its balance-of-payments, for the withdrawal in the currency of the other Party, of :

- a) the compensation referred to in article IV, paragraph 3,
- b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise,
- c) amounts for amortization of loans, depreciation of direct investments, and, to the extent feasible, capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in force, the rate applicable to such withdrawal shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either Party in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade and other interests of the nationals and companies of the other Party, nor to the competitive position thereof.

5. The term "exchange restrictions" as used in the present article includes all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or financial instruments between the territories of the two Parties.

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

Article XII

Commercial travelers representing nationals and companies of either Contracting Party engaged in business within the territories thereof shall be accorded within the territories of the other Party treatment no less favorable than that accorded to commercial travelers representing nationals and companies of such other Party with

respect to the exercise of their functions. As concerns the temporary importation of samples the persons referred to above shall be accorded most-favored-nation treatment.

Article XIII

1. 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 XIV

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

- a) regulating the 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 byproducts 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 XV

1. 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 XVI

1. 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 the Pacific Islands.

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

Article XVII

1. Each Contracting Party shall accord 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 settlement by some other pacific means.

Article XVIII

The present Treaty shall terminate the Declaration between the Grand Duchy of Luxembourg and the United States of America for the Effective Protection of Trade-marks signed at Luxembourg December 23, 1904 and at The Hague December 27, 1904.¹

Article XIX

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

2. The present Treaty shall enter into force one month after 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.

IN 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 Navigation² between the United States of America and the Grand Duchy of Luxembourg the undersigned Plenipotentiaries, duly authorized, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Treaty.

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

¹ De Martens, *Nouveau Recueil général de traités, deuxième série*, tome XXXII, p. 373.

² See p. 4 of this volume.

2. With reference to the provisions of article III, paragraph 2, each Party agrees that, within its territories, the nationals of the other Party shall be entitled to free legal aid on the same conditions as its own nationals.

3. The provisions of article IV, paragraph 3, providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

4. The provisions of article VI, paragraph 1, shall not be construed to affect the right of the Luxembourg authorities to require that aliens may not be allowed to exercise gainful activities in Luxembourg unless the appropriate authorizations for access to and exercise of such activities have been granted. However, in keeping with the terms of that paragraph, the regulations governing access to and exercise of such activities shall be applied in a liberal fashion.

5. The provisions of article VI, paragraph 1, shall not extend to professions which, because they involve even occasionally participation in the exercise of public authority or relate to the public health and safety, are statelicensed or reserved by law to nationals of the country.

6. The provisions of article VI, paragraph 1, shall not extend to the activity of peddlers and itinerant artisans in the exercise of their occupations as such.

7. It is understood that the provisions of article VIII, paragraph 1, do not contravene the national legislation relating to the exercise of the professions of lawyer, attorney or solicitor.

8. The treatment provided in article XI, paragraph 1, is designed only to preclude discriminations on the ground of nationality but does not, for instance, preclude different treatment based upon residence requirements.

9. The provisions of article XIII, paragraph 2, shall not apply to postal services.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this protocol 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

[SEAL]