

United States of America and Republic of Viet-Nam Treaty of amity and economic relations

TREATY (1) OF AMITY AND ECONOMIC RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF VIET-NAM. SIGNED AT SAIGON, ON 3 APRIL 1961

The United States of America and the Republic of Viet-Nam, desirous of promoting friendly relations between their peoples and of encouraging mutually beneficial trade and closer economic intercourse generally, have resolved to conclude a Treaty of Amity and Economic Relations, and have appointed as their Plenipotentiaries:

The President of the United States of America:

Mr. Elbridge Durbrow, Ambassador Extraordinary and Plenipotentiary of the United States of America at Saigon; and

The President of the Republic of Viet-Nam:

Mr. Vu Van Mau, Secretary of State for Foreign Affairs;

Who, having communicated to each other their full powers found to be in due form, agree as follows:

(1) Came into force on 30 November 1961, one month after the day of the exchange of the instruments of ratification which took place at Saigon on 31 October 1961, in accordance with article XV.

Article I.

1. Nationals of either Party shall, subject to the laws relating to the entry and sojourn of aliens, be permitted to enter the territories of the other Party, to travel therein freely, and to reside at places of their choice. Nationals of either Party shall in particular be permitted to enter the territories of the other Party and to remain therein for the purpose of: (a) carrying on trade between the territories of the two Parties and engaging in related commercial activities; or (b) developing and directing the operations of an enterprise in which they have invested or are actively in process of investing a substantial amount of capital. Each Party reserves the right to exclude or expel aliens on grounds relating to public order, morals, health and safety.

2. Nationals of either Party shall receive the most constant protection and security within the territories of the other Party, in no case less than that required by international law. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of this country shall be immediately notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed ample facilities to defend himself, and given a prompt and impartial disposition of his case.

3. Nationals of either Party within the territories of the other Party shall, either individually or through associations, and so long as their activities are not contrary to public order, safety or morals: (a) enjoy freedom of conscience and the right to hold religious services and engage in religious activities generally;

(b) be permitted to engage in philanthropic, educational and scientific activities;

(c) have the right to gather and transmit information for dissemination to the public abroad; and (d) be permitted to communicate with other persons inside and outside such territories by mail, telegraph or other means open to the general public.

Article II.

1. Companies constituted under the applicable laws and regulations of either Party shall be deemed companies thereof and

shall have their juridical status recognized within the territories of the other Party. As used in the present treaty, "companies" means:

(a) As concerns the United States of America, corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit;

(b) As concerns the Republic of Viet-Nam, societies de personnes, sociitis de capi-taux, and, in general, other societies, associations, companies, foundations, legal entities or juridical persons, whether or not with limited liability and whether or not for pecuniary profit.

2. Nationals and companies of either Party shall have free access to the courts of justice and administrative agencies within the territories of the other Party, in all degrees of jurisdiction, both in defense and in pursuit of their rights. Such access shall be allowed upon terms no less favorable than those applicable to nationals and companies of such other Party or of any third country, including the terms applicable to requirements for deposit of security. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.

3. 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 or denied effective means of enforcement within the territories of either Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such Party.

Article III.

1. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that establish a pecuniary compensation or other benefit or service, on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in Paragraph 1 of the present Article, nationals of either Party within the territories of the other Party shall be accorded national treatment in the application of laws and regulations establishing compulsory systems of social security, under which benefits are paid without an individual test of financial need in the following cases: (a) sickness, including temporary disability for work, and maternity; (b) invalidity, or occupational disability; (c) death of father, spouse, or any other person liable for maintenance; (d) unemployment.

Article IV.

1. Each Party shall at all times accord fair and equitable treatment to nationals and companies of the other Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawfull contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

2. Property of nationals and companies of either Party, including direct or indirect interests in property, shall receive the most constant protection and security within the territories of the other Party. Such property shall not be taken except for a public purpose, nor shall it be taken without the payment of just compensation. Such compensation shall be in an effectively realizable form and without unnecessary delay, and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

3. 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 entry or molestation without just cause. Official searches and examinations of such premises and their contents shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

Article V.

1. Enterprises which are or may hereafter be established or acquired by nationals and companies of either Party within the

territories of the other Party and which are owned or controlled by such nationals and companies, whether in the form of individual proprietorships, direct branches or companies constituted under the laws of such other Party, shall be permitted freely to conduct their activities therein upon terms no less favorable than like enterprises owned or controlled by nationals and companies of such other Party or of any third country.

2. Nationals and companies of either Party shall enjoy the right to continued control and management of their enterprises within the territories of the other Party; shall be permitted to engage accountants and other technical experts, executive personnel, attorneys, agents and other specialized employees of their choice, regardless of nationality; and shall be permitted without discrimination to do all things normally found necessary and proper to the effective conduct of enterprises engaged in like activities.

3. Laws regarding qualifications for the practice of a profession shall not prevent nationals and companies of either Party from engaging accountants and other technical experts for making examinations, audits and technical investigations for internal purposes in connection with the planning and operation of their enterprises within the territories of the other Party.

Article VI.

1. Nationals and companies of either Party shall be accorded national treatment, within the territories of the other Party with respect to: (a) leasing real property needed for their residence or for the conduct of activities pursuant to the present Treaty; (b) purchasing and otherwise acquiring personal property of all kinds, subject to any limitations on acquisition of shares in enterprises that may be imposed consistently with Article V; and (r) disposing of property of all kinds by sale, testament or otherwise. The rights set forth in (a) above shall be subject to compliance with the formalities prescribed in the legislation of such other Party, provided that such formalities shall not impair the substance of such rights.

2. Nationals and companies of either Party shall be accorded within the territories of the other Party effective protection in the exclusive use of inventions, trade marks and trade names, upon compliance with the applicable laws and regulations, if any, respecting registration and other formalities.

Article VII.

1. Nationals and companies of either Party shall not be subject to the payment of taxes, fees or charges within the territories of the other Party, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country. In the case of nationals of either Party residing within the territories of the other Party, and of companies of either Party engaged in trade or other gainful pursuit or in non-profit activities therein, such taxes, fees, charges and requirements shall not be more burdensome than those borne by nationals and companies of such other Party.

2. Each Party, however, reserves the right to: (a) extend specific tax advantages only on the basis of reciprocity, or pursuant to agreements for the avoidance of double taxation or the mutual protection of revenue; and (b) apply special provisions in extending advantages to its nationals and residents in connection with joint returns by husband and wife, and as to the exemptions of a personal nature allowed to non-residents in connection with income and inheritance taxes.

3. Companies of either Party shall not be subject, within the territories of the other Party, to taxes upon any income, transactions or capital not attributable to the operations and investment thereof within such territories.

4. The foregoing provisions shall not prevent the levying, in appropriate cases, of fees relating to the accomplishment of police and other formalities, if these fees are also levied on other foreigners. The rates for such fees shall not exceed those charged the nationals of any other country.

Article VIII.

1. Neither Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically requested or approved by the Fund.

2. If either Party applies exchange restrictions, it shall promptly make reasonable provision, taking into account its foreign exchange reserves and the extent of disequilibrium in its balance of payments, for the withdrawal, in foreign exchange in the currency of the other Party, of: (a) the compensation referred to in Article IV, paragraph 2, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments and 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 withdrawals 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.

3. Either Party applying exchange restrictions shall in general administer them in a manner not to influence disadvantageously the competitive position of the commerce, transport or investment of capital of the other Party in comparison with the commerce, transport or investments of any third country.

Article IX.

1. Each Party shall accord to products of the other Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of, or destined for exportation to, any third country, in all matters relating to: (a) customs duties, as well as any other charges, regulations and formalities levied upon or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the exportation of any product to the territories of the other Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest:

(a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and

(b) If it makes allotments to any third country, it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.

4. Either Party may impose prohibitions or restrictions on sanitary or other customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other Party.

5. Either Party may adopt measures necessary to assure the utilization of accumulated inconvertible currencies or to deal with a stringency of foreign exchange. However, such measures shall deviate no more than necessary from a policy designed to promote the maximum development of non-discriminatory international trade and to expedite the attainment of a balance-of-payments position which will obviate the necessity of such measures.

6. Each Party reserves the right to accord special advantages: (a) to products of its national fisheries, (b) to adjacent countries in order to facilitate frontier traffic, or (c) by virtue of a customs union or free trade area of which either Party, after consultation with the other Party, may become a member. Each Party, moreover, reserves rights and obligations it may have under the General Agreement on Tariffs and Trade, (1) and special advantages it may accord pursuant thereto.

(1) See footnote 1, p. 324 of this volume.

Article X.

1. In the administration of its customs regulations and procedures, each Party shall: (a) promptly publish all requirements of general application affecting importation and exportation; (b) apply such requirements in a uniform, impartial and reasonable manner; (c) refrain, as a general practice, from enforcing new or more burdensome requirements until after public notice thereof; (d) allow appeals to be taken from rulings of the customs authorities; and (e) not impose greater than nominal penalties for infractions resulting from clerical errors or from mistakes made in good faith.

2. National and companies of either Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other Party, or of any third country, with respect to all matters relating to importation and exportation.

3. Neither Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either Party.

Article XI.

1. Between the territories of the two Parties there shall be freedom of commerce and navigation.
2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.
3. Vessels of either Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other Party; but each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.
4. 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.
5. Vessels of either Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other Party, and shall receive friendly treatment and assistance.
6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraphs 2 and 5 of the present Article, include fishing vessels or vessels of war.

Article XII.

1. Each Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.
2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of concessions and other government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.
3. The Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, 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 XIII.

1. The present Treaty shall not preclude the application of measures:
 - (a) regulating the importation or exportation of gold or silver;
 - (b) relating to fissionable materials, the radioactive byproducts thereof, or the sources thereof;
 - (c) 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;
 - (d) 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;

(e) 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 of justice and to administrative tribunals and agencies.

2. The present Treaty does not accord any rights to engage in political activities.

3. The most-favored-nation provisions of the present Treaty relating to the treatment of goods shall not extend to advantages accorded by the United States of America or its Territories and possessions, irrespective of any future change in their political status, to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone, nor to advantages which the Republic of Viet-Nam may accord to third countries pursuant to agreements heretofore concluded with them. Each Party agrees that before applying any new preferential rates of duty affecting articles of substantial trading interest to the other Party, it will inform the other Party of its plans and afford it an opportunity for consultation.

4. The provisions of Article I, paragraph 1 (6), 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.

Article XIV.

1. Each 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 XV.

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

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either 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 Vietnamese languages, both equally authentic, at Saigon this third day of April, one thousand nine hundred sixty-one.

For the United States of America: Elbridge Durbrow [seal]

For the Republic of Viet-Nam: Vu Van Mau [seal]