Treaty of Amity and Economic Relations between the United States of America and the Togolese Republic

Togo Amity and Economic Relations Treaty

Treaty signed at Lom February 8, 1966;

Ratification advised by the Senate of the United States of America

September 28, 1966;

Ratified by the President of the United States of America

October 6, 1966;

Ratified by Togo August 25, 1966;

Ratifications exchanged at Washington January 5, 1967;

Proclaimed by the President of the United States of America January 11, 1967;

Entered into force February 5, 1967.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of amity and economic relations between the United States of America and the Togolese Republic was signed by their respective plenipotentiaries at Lom on February 8, 1966, the original of which treaty, in the English and French languages, is word for word as follows

The United States of America and the Togol 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. William Witman, II, Ambassador Extraordinary and Plenipotentiary of the

United States of America, and

The President of the Republic of Togo:

Mr. Georges Apedo-Amah, Minister of Foreign Affairs,

who, having communicated to each other their full powers found to be in due form,

have agreed as follows:

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

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.

2. 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 commercial activities incidental and proper to the carrying on of such trade; 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.

3. Each Party reserves the right to exclude or expel nationals of the other Party on grounds relating to public order, morals, health and safety.

Article II.

1. 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 his 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.

2. 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; and (c) have the right to gather and transmit information for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside such territories.

Article III.

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 corporations, partnerships, companies and other associations, 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 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 lawful 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 prompt payment of just compensation. Such compensation shall be in an effectively realizable form 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. Nationals and companies of either Party shall be accorded national treatment with respect to establishing, as well as with respect to acquiring interests in, enterprises of all types for engaging in commercial, industrial, financial and other business activities within the territories of the other Party. Each Party reserves the right to limit the extent to which aliens may establish or acquire interests in enterprises engaged within its territories in communications, air or water transport, trust functions, banking involving depository functions, or the exploitation of land or other natural resources, provided that it shall accord to nationals and companies of the other Party treatment no less favorable in this connection than that accorded nationals and companies of any third country. The provisions of this paragraph do not extend to professions which, because they involve the performance of functions in a public capacity or in the interests of public health and safety, are state-licensed and reserved by law to nationals of the country.

2. 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 of such other Party or of any other country.

3. 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 other things necessary or incidental to the effective conduct of their affairs.

4. 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 (c) disposing of property of all kinds by sale, testament or otherwise.

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 nonprofit 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 on the basis of reciprocity, or pursuant to agreements for the avoidance of double taxation, or the mutual protection of revenue; (b) apply special provisions in

connection with exemptions of a personal nature; (c) extend advantages to its nationals and residents in connection with joint returns by husband and wife; and (d) treat companies engaged in trade or other gainful pursuit within its territories as if such companies were not so engaged in determining the tax payable with respect to that portion of their income not effectively connected with such trade or pursuit.

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.

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 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 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.

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 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 noncommercial 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 nondiscriminatory 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 adjacent countries in order to facilitate frontier traffic; or (b) by virtue of a customs union or free trade area of which it, after informing the other Party of its plans, may become a member. Each Party, moreover, reserves rights and obligations it may have under the General Agreement on Tariffs and Trade, and special advantages it may accord pursuant thereto.

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; and (d) allow appeals to be taken from rulings of the customs authorities.

2. Nationals 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 the other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and in 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 treatment as favorable as that granted to any third state 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; amid (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.

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 by-products 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 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; or (f) regarding its national fisheries and the landing of the products thereof.

2. The present Treaty does not accord any right 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 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.

4. The provisions of Article I, paragraph 2(b), 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 Washington 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 five 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 five-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipoteirtiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and French languages, both equally authentic, at LomИ this eighth day of February one thousand nine hundred sixty-six.

For the United States of America:

WILLIAM WITMAN II [SEAL]

For the Republic of Togo:

G APEDO-AMAH [SEAL]

WHEREAS the Senate of the United States of America by its resolution of September 28, 1966, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the treaty;

WHEREAS the treaty was duly ratified by the President of the United States of America on October 6, 1966, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the Togolese Republic on August 25, 1966;

WHEREAS the respective instruments of ratification of the treaty were duly exchanged at Washington on January 5, 1967;

AND WHEREAS it is provided in Article XV of the treaty that the treaty will enter into force one month after the day of exchange of instruments of ratification;

Now, THEREFORE, be it known that I, Lyndon B. Johnson, President of the United States of America, do hereby proclaim and make public the said treaty to the end that the same, and every article and clause thereof, shall be observed and fulfilled

with good faith on and after February 5, 1967, by 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 hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this eleventh day of January in the year of our Lord one thousand nine hundred sixty-seven and of the Independence of the United States of America the one hundred ninety-first.

LYNDON B. JOHNSON [SEAL]

By the President:

DEAN RUSK

Secretary of State

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