
PROTOCOL TO THE TREATY OF FRIENDSHIP, COMMERCE,
AND NAVIGATION WITH DENMARK

OCTOBER 15, 2007.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 108–8]

The Committee on Foreign Relations to which was referred the Protocol to the Treaty of Friendship, Commerce, and Navigation Between the United States and Denmark of October 1, 1951, signed at Copenhagen on May 2, 2001 (Treaty Doc. 108–8), having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof.

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I. PURPOSE

The Protocol to the Treaty of Friendship, Commerce, and Navigation with Denmark would provide a legal basis for issuing treaty-investor (E-2) visas to Danish investors who wish to enter the United States “for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital” on a reciprocal basis. U.S. investors are already eligible for Danish visas that offer comparable benefits to those that would be accorded nationals of Denmark pursuant to an E-2 visa. With this Protocol, Danish investors would be eligible for E-2 visas.

II. BACKGROUND AND SUMMARY

The Protocol to the Treaty of Friendship, Commerce, and Navigation (FCN) with Denmark consists of three articles. Article I, the

only substantive article, provides that nationals of either country shall be permitted, “subject to the laws relating to the entry and sojourn of aliens, to enter the territories of the other Party and to remain therein for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital.” This is a standard provision that can be found in a number of FCN treaties to which the United States is a party and is a precondition to the issuance of an E-2 visa pursuant to section 101(a)(15)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(E)(ii), which permits the issuance of an E-2 visa only to a non-immigrant who is “. . . entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national . . . solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital.”

The Protocol will facilitate Danish investment in the United States and will further cement a strong and growing economic and political relationship between the two countries. According to Department of Commerce statistics, Danish direct investment in the United States calculated on a historical-cost basis totaled over seven billion dollars in 2006 and U.S. investments in Denmark accounted for eleven percent of the total foreign direct investment in that country in 2005, making the United States the second-largest source of foreign investment in Denmark. Moreover, Denmark is a close ally of the United States. Denmark has worked with the United States in a variety of international fora, including NATO, the European Union, and the United Nations; has forces deployed in Iraq, Afghanistan, and Kosovo; is active in peacekeeping and stabilization operations; and is one of the largest per capita donors of foreign aid.

III. ENTRY INTO FORCE

In accordance with Article III, the Protocol will enter into force upon an exchange of instruments of ratification, and shall remain in force so long as the underlying Treaty of Friendship, Commerce, and Navigation Between the United States and Denmark of October 1, 1951 remains in force.

IV. IMPLEMENTING LEGISLATION

No further implementing legislation is required for the Protocol. Current law, specifically section 101(a)(15)(E)(ii) of the Immigration and Nationality Act, suffices to implement the Protocol.

V. COMMITTEE ACTION

The committee held a public hearing on the Protocol on July 17, 2007 (a hearing print of this session will be forthcoming). Testimony was received from Mr. Wesley S. Scholz, Director of the Office of Investment Affairs, Department of State. On September 11, 2007, the committee considered the Protocol, and ordered it favorably reported by voice vote, with a quorum present and without objection.

VI. RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),
The Senate advises and consents to the ratification of the Protocol between the United States of America and the Kingdom of Denmark to the Treaty of Friendship, Commerce, and Navigation of October 1, 1951, signed at Copenhagen on May 2, 2001 (Treaty Doc. 108–8).