

TESTIMONY OF WESLEY S. SCHOLZ
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DEPARTMENT OF STATE
BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS
JULY 17, 2007

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

Mr. Chairman, thank you for the opportunity to testify before the Foreign Relations Committee as the Administration seeks advice and consent of the Senate to ratification of the Protocol to our Treaty of Friendship, Commerce, and Navigation (FCN) with Denmark. The Protocol will establish the legal basis by which the United States may issue treaty-investor visas – also known as “E-2” visas – to qualified nationals of Denmark under the FCN treaty. United States investors interested in investing in Denmark are already eligible for Danish visas that offer comparable benefits to those that would be accorded nationals of Denmark interested in investing in the United States under E-2 visa status.

The United States has a long-standing policy of openness to foreign investment. As President Bush stated on May 10, “A free and open international investment regime is vital for a stable and growing economy, both here at home and throughout the world.” Foreign investment in the United States strengthens our economy, improves productivity, provides good jobs, and spurs healthy competition. Americans have prospered as foreign companies have put their money to work here. Foreign companies in the U.S. employed more than 5 million U.S. workers in 2005, providing 4.5 percent of all private sector employment in the United States. Visas for investors facilitate investment in the United States.

The United States and Denmark have a strong and growing economic relationship. According to Department of Commerce statistics, Danish direct investment in the United States on a historical cost basis totaled over \$7 billion at the end of 2006, and U.S. direct investment in Denmark amounted to about \$5.8 billion. U.S. investments in Denmark accounted for 11 percent of total foreign direct investment stock in that country in 2005, making the United States the second-largest source of foreign investment in Denmark. Approximately 375 U.S. companies have subsidiaries in Denmark, of which several are regional headquarters. Economic sectors that are host to major U.S. direct investment in Denmark include telecommunications, information technology, biotechnology, oil exploration, financial services, and facility services.

The Protocol will facilitate Danish investment in the United States by making Danish investors, who invest substantial capital in the United States, eligible for consideration to receive treaty-investor visas under the Immigration and Nationality Act (INA). The relevant provision of the INA, section 101(a)(15)(E)(ii), permits issuance of an E-2 visa only to a nonimmigrant 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 operation 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 principal substantive article of the Protocol provides that “[n]ationals of either Contracting Party 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.”

Although most U.S. FCN treaties contain a provision qualifying the treaty partner’s nationals for E-2 visas, the U.S.-Denmark FCN treaty does not. The Protocol is intended to overcome this deficiency. The Protocol reflects language found in the INA and other U.S. FCN treaties - including more than a dozen modern FCN treaties - and investment treaties generally. European countries whose nationals are already eligible for E-2 visas include, for example, the United Kingdom, Germany, France, Italy, the Netherlands, Belgium, Norway, and Sweden.

Denmark is a close ally and our relations with Denmark are excellent. Despite its small geographic size and population of only 5.4 million people, Denmark plays a significant role in the international community and is an effective friend and ally within NATO, the EU, and the UN. It is engaged fully in world events, while maintaining a strong Atlantic perspective. With forces deployed in Iraq, Afghanistan and Kosovo, Denmark is active in peacekeeping and stabilization operations and is also one of the largest per capita donors of foreign aid. Regionally, Denmark serves as a vital gateway to the other Nordic and Baltic States and Copenhagen is a key regional transportation hub. The United States is Denmark's largest non-EU trading partner. American-made aircraft, machinery, computers, and other products comprise about 6 percent of Denmark's total imports.

In conclusion, the Administration wishes to thank the Committee for its consideration of the Protocol and we urge you to report it favorably to the full Senate for action. I would be happy to answer any questions you may have.

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