

# Spain

## FRIENDSHIP, LIMITS, AND NAVIGATION

*Treaty signed at San Lorenzo el Real October 27, 1795*

*Senate advice and consent to ratification March 3, 1796*

*Ratified by the President of the United States March 7, 1796*

*Ratified by Spain April 25, 1796*

*Ratifications exchanged at Aranjuez April 25, 1796*

*Entered into force April 25, 1796*

*Proclaimed by the President of the United States August 2, 1796*

*Articles II, III, IV, and XXI and second clause of article XXII invalidated by treaty of February 22, 1819<sup>1</sup>*

*Terminated April 14, 1903, by treaty of July 3, 1902<sup>2</sup>*

8 Stat. 138; Treaty Series 325<sup>3</sup>

His Catholic Majesty and the United States of America desiring to consolidate on a permanent basis the Friendship and good correspondence which happily prevails between the two parties, have determined to establish by a convention several points, the settlement whereof will be productive of general advantage and reciprocal utility to both Nations.

With this intention his Catholic Majesty has appointed the most Excellent Lord, Don Manuel de Godoy, and Alvarez de Faria, Rios, Sanchez Zarzosa, Prince de la Paz, Duke de la Alcudia, Lord of the Soto de Roma and of the State of Albalá, Grandee of Spain of the first class, perpetual Regidor of the City of Santiago, Knight of the illustrious Order of the Golden Fleece, and Great Cross of the Royal and distinguished Spanish order of Charles the III. Commander of Valencia del Ventoso, Rivera, and Aceuchal in that of Santiago; Knight and Great Cross of the religious order of St. John; Counsellor of State; First Secretary of State and Despacho; Secretary to the Queen; Superintendent General of the Posts and High Ways; Protector of the Royal

<sup>1</sup> TS 327, *post*, p. 528.

<sup>2</sup> TS 422, *post*, p. 628.

<sup>3</sup> For a detailed study of this treaty, see 2 Miller 318.

Academy of the Noble Arts, and of the Royal Societies of natural history, Botany, Chemistry, and Astronomy: Gentleman of the King's Chamber in employment: Captain General of his Armies: Inspector and Major of the Royal Corps of Body Guards &<sup>a</sup> &<sup>a</sup> &<sup>a</sup> and the President of the United States, with the advice and consent of their Senate, has appointed Thomas Pinckney a Citizen of the United States, and their Envoy Extraordinary to his Catholic Majesty. And the said Plenipotentiaries have agreed upon and concluded the following Articles.

#### ART. I

There shall be a firm and inviolable Peace and sincere Friendship between His Catholic Majesty his successors and subjects, and the United States and their Citizens without exception of persons or places.

#### ART. II <sup>4</sup>

To prevent all disputes on the subject of the boundaries which separate the territories of the two High contracting Parties, it is hereby declared and agreed as follows: to wit: The Southern boundary of the United States which divides their territory from the Spanish Colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi at the Northernmost part of the thirty first degree of latitude North of the Equator, which from thence shall be drawn due East to the middle of the River Apalachicola or Catahouche, thence along the middle thereof to its junction with the Flint, thence straight to the head of St. Mary's River, and thence down the middle thereof to the Atlantic Ocean. And it is agreed that if there should be any troops, Garrisons or settlements of either Party in the territory of the other according to the above mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty or sooner if it be possible and that they shall be permitted to take with them all the goods and effects which they possess.

#### ART. III <sup>4</sup>

In order to carry the preceding Article into effect one Commissioner and one Surveyor shall be appointed by each of the contracting Parties who shall meet at the Natchez on the left side of the River Mississippi before the expiration of six months from the ratification of this convention, and they shall proceed to run and mark this boundary according to the stipulations of the said Article. They shall make Plats and keep journals of their proceedings which shall be considered as part of this convention, and shall have the same force as if they were inserted therein. And if on any account it should be found necessary that the said Commissioners and Surveyors should be accompanied by Guards, they shall be furnished in equal proportions by the Com-

<sup>4</sup> Invalidated by treaty of Feb. 22, 1819 (TS 327, *post*, p. 533).

manding Officer of his Majesty's troops in the two Floridas, and the Commanding Officer of the troops of the United States in their Southwestern territory, who shall act by common consent and amicably, as well with respect to this point as to the furnishing of provisions and instruments and making every other arrangement which may be necessary or useful for the execution of this article.

ART. IV <sup>5</sup>

It is likewise agreed that the Western boundary of the United States which separates them from the Spanish Colony of Louisiana, is in the middle of the channel or bed of the River Mississippi from the Northern boundary of the said States to the completion of the thirty first degree of latitude North of the Equator; and his Catholic Majesty has likewise agreed that the navigation of the said River in its whole breadth from its source to the Ocean shall be free only to his Subjects, and the Citizens of the United States, unless he should extend this privilege to the Subjects of other Powers by special convention.

ART. V

The two High contracting Parties shall by all the means in their power maintain peace and harmony among the several Indian Nations who inhabit the country adjacent to the lines and Rivers which by the preceding Articles form the boundaries of the two Floridas; and the better to obtain this effect both Parties oblige themselves expressly to restrain by force all hostilities on the part of the Indian Nations living within their boundaries: so that Spain will not suffer her Indians to attack the Citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last mentioned Indians to commence hostilities against the Subjects of his Catholic Majesty, or his Indians in any manner whatever.

And whereas several treaties of Friendship exist between the two contracting Parties and the said Nations of Indians, it is hereby agreed that in future no treaty of alliance or other whatever (except treaties of Peace) shall be made by either Party with the Indians living within the boundary of the other; but both Parties will endeavour to make the advantages of the Indian trade common and mutually beneficial to their respective Subjects and Citizens observing in all things the most complete reciprocity: so that both Parties may obtain the advantages arising from a good understanding with the said Nations, without being subject to the expence which they have hitherto occasioned.

ART. VI

Each Party shall endeavour by all means in their power to protect and defend all Vessels and other effects belonging to the Citizens or Subjects of the other, which shall be within the extent of their jurisdiction by sea or by land, and shall use all their efforts to recover and cause to be restored to the

<sup>5</sup> Invalidated by treaty of Feb. 22, 1819 (TS 327, *post*, p. 533).

right owners their Vessels and effects which may have been taken from them within the extent of their said jurisdiction whether they are at war or not with the Power whose Subjects have taken possession of the said effects.

#### ART. VII

And it is agreed that the Subjects or Citizens of each of the contracting Parties, their Vessels, or effects shall not be liable to any embargo or detention on the part of the other for any military expedition or other public or private purpose whatever; and in all cases of seizure, detention, or arrest for debts contracted or offences committed by any Citizen or Subject of the one Party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases. The Citizens and Subjects of both Parties shall be allowed to employ such Advocates, Solicitors, Notaries, Agents, and Factors, as they may judge proper in all their affairs and in all their trials at law in which they may be concerned before the tribunals of the other Party, and such Agents shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

#### ART. VIII

In case the Subjects and inhabitants of either Party with their shipping whether public and of war or private and of merchants be forced through stress of weather, pursuit of Pirates, or Enemies, or any other urgent necessity for seeking of shelter and harbor to retreat and enter into any of the Rivers, Bays, Roads, or Ports belonging to the other Party, they shall be received and treated with all humanity, and enjoy all favor, protection and help, and they shall be permitted to refresh and provide themselves at reasonable rates with victuals and all things needful for the sustenance of their persons or reparation of their Ships, and prosecution of their voyage; and they shall no ways be hindered from returning out of the said Ports, or Roads, but may remove and depart when and whither they please without any let or hindrance.

#### ART. IX

All Ships and merchandize of what nature soever which shall be rescued out of the hands of any Pirates or Robbers on the high seas shall be brought into some Port of either State and shall be delivered to the custody of the Officers of that Port in order to be taken care of and restored entire to the true proprietor as soon as due and sufficient proof shall be made concerning the property there of.

#### ART. X

When any Vessel of either Party shall be wrecked, foundered, or otherwise damaged on the coasts or within the dominion of the other, their respec-

tive Subjects or Citizens shall receive as well for themselves as for their Vessels and effects the same assistance which would be due to the inhabitants of the Country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case: and if the operations of repair should require that the whole or any part of the cargo be unladen they shall pay no duties, charges, or fees on the part which they shall relade and carry away.

#### ART. XI

The Citizens and Subjects of each Party shall have power to dispose of their personal goods within the jurisdiction of the other by testament, donation, or otherwise; and their representatives being Subjects or Citizens of the other Party shall succeed to their said personal goods, whether by testament or ab intestato and they may take possession thereof either by themselves or others acting for them, and dispose of the same at their will paying such dues only as the inhabitants of the Country wherein the said goods are shall be subject to pay in like cases, and in case of the absence of the representatives, such care shall be taken of the said goods as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong the same shall be decided finally by the laws and Judges of the Land wherein the said goods are. And where on the death of any person holding real estate within the territories of the one Party, such real estate would by the laws of the Land descend on a Citizen or Subject of the other were he not disqualified by being an alien, such subject shall be allowed a reasonable time to sell the same and to withdraw the proceeds without molestation, and exempt from all rights of detraction on the part of the Government of the respective states.

#### ART. XII

The merchant Ships of either of the Parties which shall be making into a Port belonging to the enemy of the other Party and concerning whose voyage and the species of goods on board her there shall be just grounds of suspicion shall be obliged to exhibit as well upon the high seas as in the Ports and havens not only her passports but likewise certificates expressly showing that her goods are not of the number of those which have been prohibited as contraband.

#### ART. XIII

For the better promoting of commerce on both sides, it is agreed that if a war shall break out between the said two Nations one year after the proclamation of war shall be allowed to the merchants in the Cities and Towns

where they shall live for collecting and transporting their goods and merchandizes, and if any thing be taken from them, or any injury be done them within that term by either Party, or the People or Subjects of either, full satisfaction shall be made for the same by the Government.

#### ART. XIV

No subject of his Catholic Majesty shall apply for or take any commission or letters of marque for arming any Ship or Ships to act as Privateers against the said United States or against the Citizens, People, or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any Prince or State with which the said United States shall be at war.

Nor shall any Citizen, Subject, or Inhabitant of the said United States apply for or take any commission or letters of marque for arming any Ship or Ships to act as Privateers against the subjects of his Catholic Majesty or the property of any of them from any Prince or State with which the said King shall be at war. And if any person of either Nation shall take such commissions or letters of marque he shall be punished as a Pirate.

#### ART. XV<sup>6</sup>

It shall be lawful for all and singular the Subjects of his Catholic Majesty, and the Citizens People, and inhabitants of the said United States to sail with their Ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon from any Port to the Places of those who now are or hereafter shall be at enmity with his Catholic Majesty or the United States. It shall be likewise lawful for the Subjects and inhabitants aforesaid to sail with the Ships and merchandizes aforementioned, and to trade with the same liberty and security from the Places, Ports, and Havens of those who are Enemies of both or either Party without any opposition or disturbance whatsoever, not only directly from the Places of the Enemy aforementioned to neutral Places but also from one Place belonging to an Enemy to another Place belonging to an Enemy, whether they be under the jurisdiction of the same Prince or under several, and it is hereby stipulated that Free Ships shall also give freedom to goods, and that every thing shall be deemed free and exempt which shall be found on board the Ships belonging to the Subjects of either of the contracting Parties although the whole lading or any part thereof should appertain to the Enemies of either; contraband goods being always excepted. It is also agreed that the same liberty be extended to persons who are on board a free Ship, so that, although they be Enemies to either Party they shall not be made

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<sup>6</sup> For an understanding regarding art. XV, see treaty of Feb. 22, 1819 (TS 327), *post*, p. 533.

Prisoners or taken out of that free Ship unless they are Soldiers and in actual service of the Enemies.

#### ART. XVI

This liberty of navigation and commerce shall extend to all kinds of merchandizes excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods shall be comprehended arms, great guns, bombs, with the fusees, and other things belonging to them, cannon ball, gun powder, match, pikes, swords, lances, speards, halberds, mortars, petards, granades, salpetre, muskets, musket ball, bucklers, helmets, breast plates, coats of mail, and the like kind of arms proper for arming soldiers, musket rests, belts, horses with their furniture and all other warlike instruments whatever. These merchandizes which follow shall not be reckoned among contraband or prohibited goods; that is to say, all sorts of cloths and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever, all kinds of wearing aparel together with all species whereof they are used to be made, gold and silver as well coined as uncoined, tin, iron, latton, copper, brass, coals, as also wheat, barley, oats, and any other kind of corn and pulse: tobacco and likewise all manner of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salts, and in general all provisions which serve for the sustenance of life. Furthermore all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloths, anchors, and any parts of anchors, also ships masts, planks, wood of all kind, and all other things proper either for building or repairing ships, and all other goods whatever which have not been worked into the form of any instrument prepared for war by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use: all which shall be wholly reckoned among free goods, as likewise all other merchandizes and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods: so that they may be transported and carried in the freest manner by the subjects of both parties, even to Places belonging to an Enemy, such towns or Places being only excepted as are at that time besieged, blocked up, or invested. And except the cases in which any Ship of war or Squadron shall in consequence of storms or other accidents at sea be under the necessity of taking the cargo of any trading Vessel or Vessels, in which case they may stop the said Vessel or Vessels and furnish themselves with necessaries, giving a receipt in order that the Power to whom the said ship of war belongs may pay for the articles so taken according to the price thereof at the Port to which they may appear to have been destined by the Ship's papers: and the two contracting Parties engage that the Vessels shall not be detained longer than may be absolutely necessary for their said Ships to supply themselves with necessaries: that they will immediately pay

the value of the receipts: and indemnify the proprietor for all losses which he may have sustained in consequence of such transaction.

#### ART. XVII

To the end that all manner of dissensions and quarrels may be avoided and prevented on one side and the other, it is agreed that in case either of the Parties hereto should be engaged in a war, the ships and Vessels belonging to the Subjects or People of the other Party must be furnished with sea letters or passports expressing the name, property, and bulk of the Ship, as also the name and place of habitation of the master or commander of the said Ship, that it may appear thereby that the Ship really and truly belongs to the Subjects of one of the Parties; which passport shall be made out and granted according to the form<sup>7</sup> annexed to this Treaty. They shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year. It is likewise agreed that such ships being laden, are to be provided not only with passports as above mentioned but also with certificates containing the several particulars of the cargo, the place whence the ship sailed, that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the Officers of the place whence the ship sailed in the accustomed form; and if any one shall think it fit or adviseable to express in the said certificates the person to whom the goods on board belong he may freely do so: without which requisites they may be sent to one of the Ports of the other contracting Party and adjudged by the competent tribunal according to what is above set forth, that all the circumstances of this omission having been well examined, they shall be adjudged to be legal prizes, unless they shall give legal satisfaction of their property by testimony entirely equivalent.

#### ART. XVIII

If the Ships of the said subjects, People or inhabitants of either of the Parties shall be met with either sailing along the Coasts on the high Seas by any Ship of war of the other or by any Privateer, the said Ship of war or Privateer for the avoiding of any disorder shall remain out of cannon shot, and may send their boats aboard the merchant Ship which they shall so meet with, and may enter her to number of two or three men only to whom the master or Commander of such ship or vessel shall exhibit his passports concerning the property of the ship made out according to the form inserted in this present Treaty: and the ship when she shall have shewed such passports shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or give her chace in any manner or firce her to quit her intended course.

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<sup>7</sup> No form of passport is annexed to the treaty.

## ART. XIX

Consuls shall be reciprocally established with the privileges and powers which those of the most favoured Nations enjoy in the Ports where their consuls reside, or are permitted to be.

## ART. XX

It is also agreed that the inhabitants of the territories of each Party shall respectively have free access to the Courts of Justice of the other, and they shall be permitted to prosecute suits for the recovery of their properties, the payment of their debts, and for obtaining satisfaction for the damages which they may have sustained, whether the persons whom they may sue be subjects or Citizens of the Country in which they may be found, or any other persons whatsoever who may have taken refuge therein; and the proceedings and sentences of the said Court shall be the same as if the contending parties had been subjects or Citizens of the said Country.

ART. XXI <sup>8</sup>

In order to terminate all differences on account of the losses sustained by the Citizens of the United States in consequence of their vessels and cargoes having been taken by the Subjects of his Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of Commissioners to be appointed in the following manner. His Catholic Majesty shall name one Commissioner, and the President of the United States by and with the advice and consent of their Senate shall appoint another, and the said two Commissioners shall agree on the choice of a third, or if they cannot agree so they shall each propose one person, and of the two names so proposed one shall be drawn by lot in the presence of the two original Commissioners, and the person whose name shall be so drawn shall be the third Commissioner, and the three Commissioners so appointed shall be sworn impartially to examine and decide the claims in question according to the merits of the several cases, and to justice, equity, and the laws of Nations. The said Commissioners shall meet and sit at Philadelphia and in the case of the death, sickness, or necessary absence of any such commissioner his place shall be supplied in the same manner as he was first appointed, and the new Commissioner shall take the same oaths, and do the same duties. They shall receive all complaints and applications, authorized by this article during eighteen months from the day on which they shall assemble. They shall have power to examine all such persons as come before them on oath or affirmation touching the complaints in question, and also to receive in evidence all written testimony authenticated in such manner as they shall think proper to require or admit. The award of the said Commissioners or any two of them shall be

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<sup>8</sup> Art. XXI invalidated by treaty of Feb. 22, 1819 (TS 327, *post*, p. 533).

final and conclusive both as to the justice of the claim and the amount of the sum to be paid to the claimants; and his Catholic Majesty undertakes to cause the same to be paid in specie without deduction, at such times and Places and under such conditions as shall be awarded by the said Commissioners.

ART. XXII

The two high contracting Parties hoping that the good correspondence and friendship which happily reigns between them will be further increased by this Treaty, and that it will contribute to augment their prosperity and opulence, will in future give to their mutual commerce all the extension and favor which the advantage of both Countries may require; and in consequence of the stipulations contained in the IV. article his Catholic Majesty will permit the Citizens of the United States for the space of three years from this time to deposit their merchandize and effects in the Port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores, and his Majesty promises either to continue this permission if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment.\*

ART. XXIII

The present Treaty shall not be in force until ratified by the Contracting Parties, and the ratifications shall be exchanged in six months from this time, or sooner if possible.

In Witness whereof We the underwritten Plenipotentiaries of His Catholic Majesty and of the United States of America have signed this present Treaty of Friendship, Limits and Navigation and have thereunto affixed our seals respectively.

Done at San Lorenzo el Real this seven and twenty day of October one thousand seven hundred and ninety five.

THOMAS PINCKNEY	[SEAL]
EL PRINCIPE DE LA PAZ	[SEAL]

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\* Second clause of art. XXII invalidated by treaty of Feb. 22, 1819 (TS 327, *post*, p. 533).