

TREATY (1) OF AMITY, COMMERCE AND NAVIGATION BETWEEN JAPAN AND THE REPUBLIC OF THE PHILIPPINES

The Government of Japan and the Government of the Republic of the Philippines,

Animated by the desire to maintain and strengthen the amicable relations existing between their respective countries, and

Desirous of facilitating and developing trade and commerce between the two countries on a mutually advantageous basis,

Have resolved to conclude a Treaty of Amity, Commerce and Navigation and for that purpose have appointed as their Plenipotentiaries,

The Government of Japan:

Morio Yukawa, Ambassador Extraordinary and Plenipotentiary to the Republic of the Philippines

Shigenobu Shima, Deputy Vice-Minister for Foreign Affairs

Nobuhiko Ushiba, Ambassador, Director of the Economic Affairs Bureau, Ministry of Foreign Affairs

The Government of the Republic of the Philippines:

J. B. Laurel, Jr., Former Speaker, House of Representatives

Lorenzo Sumulong, Chairman, Senate Committee on Foreign Relations

Ramon P. Mitra, Chairman, Committee on Foreign Affairs, House of Representatives

Rogelio de Ja Rosa, Member, Senate Committee on Foreign Relations

Antonio VY. Raquiza, Member, Committee on Foreign Affairs, House of Representatives

Manuel A. Adeva, Ambassador Extraordinary and Plenipotentiary to Japan

Perfecto E. Laguio, Undersecretary of Commerce and Industry

Caesar Z. Lanuza, Career Minister, Chief of Mission, Philippine Reparations Mission

Andres V. Castillo, Deputy Governor of the Central Bank

Enrique M. Garcia, Career Minister

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

(1) Came into force on 27 January 1974, i.e., one month after the date of the exchange of the instruments of ratification, which took place at Manila on 27 December 1973, in accordance with article IX (1) and (2).

Article I.

Nationals of either Party shall be accorded treatment no less favorable than that accorded to nationals of any third country with respect to all matters relating to their entry into, sojourn, travel and residence within, the territories of the other Party.

Article II.

1. Nationals and companies of either Party, within the territories of the other Party, shall be accorded treatment no less favorable than that accorded to nationals and companies of any third country with respect to all matters pertaining to the levying of taxes, access to the courts of justice and to administrative agencies, the making and performance of contracts, rights to property, participation in juridical entities, and generally the conduct of all kinds of business and professional activities.

2. Notwithstanding the provisions of paragraph 1 of the present Article, each Party reserves the right to accord special tax advantages on a basis of reciprocity or by virtue of agreements for the avoidance of double taxation or the mutual protection of revenue.

Article III. Nationals

1. Nationals and companies of either Party shall be accorded treatment no less favorable than that accorded to nationals and companies of any third country with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two Parties as well as between the territories of the other Party and of any third country

2. The provisions of paragraph 1 of the present Article do not preclude either Party from imposing such exchange restrictions as are consistent with the rights and obligations that it has or may have as a contracting party to the Articles of Agreement of the International Monetary Fund.

3. 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.

4. Notwithstanding the provisions of paragraph 3 of the present Article, either Party may apply restrictions or controls on the importation and exportation of goods that have effect equivalent to exchange restrictions which the said Party may at that time apply under the provisions of paragraph 2 of the present Article.

Article IV.

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to the application of internal taxes to exported goods, and with respect to all internal taxes or other internal charges of any kind imposed on or in connection with imported goods, and with respect to all laws, regulations and requirements affecting internal sale, offering for sale, purchase, distribution or use of imported goods, any advantage, favor, privilege or immunity which has been or may hereafter be granted by either Party to any product originating in or destined for any third country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of the other Party.

2. The provisions of paragraph 1 of the present Article shall not apply to special advantages accorded by either Party to products of its national fisheries.

Article V.

The two Parties undertake to cooperate for mutual benefit with a view to expanding trade and to strengthening economic relations between the two countries, and to furthering the interchange and use of scientific and technical knowledge, particularly in the interests of economic development and of the improvement of standards of living within their respective territories. Neither Party shall hamper the introduction into its territories of capital or technology of the other Party which will contribute to the sound and balanced development of its national economy on a self-sustaining basis.

Article VI.

1. 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.

2. Merchant vessels of either Party shall have liberty, on equal terms with merchant vessels of the other Party and of any third country, to come with their passengers and cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels shall in all respects be accorded treatment no less favorable than that accorded to like vessels of any third country within the ports, places and waters of such other Party, and shall be accorded treatment no less favorable than that accorded to like vessels of such other Party with respect to technical facilities of all kinds, such as

the allocation of berths, the use of loading and unloading facilities, pilotage services and supply of fuel, lubricating oils, water and food.

3. Merchant vessels of either Party shall be accorded treatment no less favorable than that accorded to like vessels of any third country with respect to the right to carry all goods and persons that may be carried by vessels to or from the territories of the other Party; and such goods and persons shall be accorded treatment no less favorable than that accorded to like goods and persons carried in merchant 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.

4. Each Party may reserve to its own vessels the right to engage in the coasting trade. Merchant vessels of either Party may, nevertheless, proceed from one port to another within the territories of the other Party, either for the purpose of landing the whole or part of their passengers or cargoes brought from abroad, or of taking on board the whole or part of their passengers or cargoes for a foreign destination, always complying with the laws and regulations of such other Party.

5. (1) In case of shipwreck, damage at sea or forced putting in, either Party shall extend to vessels of the other Party the same assistance and protection and the same exemptions as are in like cases accorded to its own vessels. Goods salvaged from such vessels shall be exempt from all customs duties, unless the goods are entered for domestic consumption; but goods not entered for domestic consumption may be subject to measures for the protection of the revenue pending their exit from the country.

(2) If a vessel of either Party has stranded or has been wrecked on the coasts of the other Party, the appropriate authorities of such other Party shall notify the occurrence to the nearest competent consular officer of the country to which the vessel belongs.

6. The certificates concerning tonnage measurement of vessels issued by the competent authorities of either Party shall be recognized by the competent authorities of the other Party as equivalent to the certificates issued by the latter.

Article VII.

The provisions of the present Treaty shall not be interpreted as precluding either Party from adopting or executing measures relating to:

- (a) the public security or national defense or the maintenance of international peace and security;
- (b) fissionable materials or the materials from which they are derived;
- (c) traffic in arms, ammunition and implements of war and such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
- (d) the protection of public morals, and of human, animal or plant life or health; and
- (e) trade in gold or silver.

Article VIII.

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 IX.

1. The present Treaty shall be ratified, and the instruments of ratification shall be exchanged at Manila as soon as possible.

2. The present Treaty shall enter into force one month after the day of the exchange of the instruments of ratification. It shall remain in force for three years and shall continue in force thereafter until terminated as provided for in paragraph 3 of the present Article.

3. Either Party may, by giving a six-month written notice to the other Party, terminate the present Treaty at the end of the initial three-year period or at any time thereafter.

Article X.

The present Treaty shall be in the Japanese, Filipino and English languages. In case of any divergence of interpretation, the English text shall prevail.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed thereunto their seals.

Done in duplicate at Tokyo, this ninth day of the twelfth month in the thirty-fifth year of Showa, corresponding to the ninth day of December in the fifteenth year of the Independence of the Republic of the Philippines and to the ninth day of December, one thousand nine hundred and sixty.

For Japan:

M. YUKAWA

S. SHIMA

N. USHIBA

For the Republic of the Philippines:

J. B. LAURE, Jr.

ROGELIO DE LA ROSA

ANTONIO V. RAQUIZA

MANUEL A. ADEVA

PERFECTO E. LAGUIO

CAESAR Z. LANUZA

ANDRÉS V. CASTILLO

ENRIQUE M. GARCIA

PROTOCOL

At the time of signing the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines (hereinafter referred to as "the Treaty"), the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the Treaty:

1. It is understood that all matters relating to the permission for permanent residence shall be outside the scope of the Treaty.
2. With reference to Article I, it is understood that neither Party shall be entitled to claim the benefit of those advantages relating to matters concerning passports and visas which the other Party has accorded or may hereafter accord to nationals of any third country by virtue of special agreements on a basis of reciprocity.
3. As used in the Treaty, the term "companies" means corporations, partnerships, companies and other associations engaging in business activities for gain.
4. With reference to the provisions of Article II, paragraph 1, relative to the grant of treatment no less favorable than that accorded to any third country, either Party may require that such treatment shall be dependent on reciprocity with respect to the enjoyment of rights on immovable property and of the right to practice the professions.
5. Nothing in the Treaty shall be construed so as to grant any right or impose any obligation in respect of copyright and industrial property right.

6. It is confirmed that property of nationals and companies of either Party, as well as property in which such nationals and companies have direct or indirect interests, shall not be taken within the territories of the other Party except for a public purpose, nor shall such property be taken without just compensation.

7. Except with respect to access to the courts of justice and to administrative agencies, the provisions of the Treaty shall not be interpreted as precluding either Party from denying the advantages of the Treaty to any company of the other Party in the ownership or direction of which nationals of any third country or countries have directly or indirectly the controlling interest.

8. The provisions of Article III, paragraph 3, shall not preclude either Party from imposing restrictions or prohibitions on customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided that such restrictions or prohibitions do not arbitrarily discriminate against the commerce of the other Party.

9. The Governments of the two Parties expect that the expansion of mutual trade will be achieved without serious injury being caused or threatened to their domestic producers. If, nevertheless, there is reasonable evidence that any manufactured goods of either Party are being imported into the territories of the other Party under such conditions as to cause or threaten serious injury to its domestic producers of like or directly competitive manufactured goods, the Government of the exporting Party shall, at the request of the Government of the importing Party, enter into consultation, and, upon such consultation, the Government of the exporting Party shall adopt adequate measures within its power to prevent or remedy the injury,

10. (1) Nothing in the Treaty shall be construed so as to entitle Japan to claim the benefit of those rights and privileges which are or may hereafter be accorded by the Republic of the Philippines exclusively to:

(a) nationals and companies of the United States of America with respect to their carrying on, within the territories of the Republic of the Philippines, business activities such as the operation of public utilities and the disposition, exploitation, development and utilization of natural resources, or

(b) products of the United States of America with respect to customs duties and charges, by virtue of the Agreement between the Republic of the Philippines and the United States of America concerning Trade and Related Matters, signed at Manila on July 4, 1946, and revised at Washington on September 6, 1955, or any other agreement, treaty or convention between the two countries.

(2) Nothing in the Treaty shall be construed so as to entitle the Republic of the Philippines to claim the benefit of those rights and privileges which are or may hereafter be accorded by Japan exclusively to: (a) persons who originated in the territories to which all right, title and claim were renounced by Japan in accordance with the provisions of Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, or (b) the native inhabitants and vessels of, and trade with, any area set forth in Article 3 of the said Treaty of Peace, so long as the situation set forth in the second sentence of the said Article continues with respect to the administration, legislation and jurisdiction over such area.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Protocol and have affixed thereunto their seals.

Done in duplicate, in the Japanese, Filipino and English languages, at Tokyo, this ninth day of the twelfth month in the thirty-fifth year of Showa, corresponding to the ninth day of December in the fifteenth year of the Independence of the Republic of the Philippines and to the ninth day of December, one thousand nine hundred and sixty. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

M. YUKAWA

S. SHIMA

N. USHIBA

For the Republic of the Philippines:

J. B. LAUREL, Jr.

ROGELIO DE LA ROSA

ANTONIO V. RAQUIZA

MANUEL A. ADEVA

PERFECTO E. LAGUIO

CAESAR Z. LANUZA

ANDRES V. CASTILLO

ENRIQUE M. GARCIA

AGREED MINUTES

The Plenipotentiaries of Japan and of the Republic of the Philippines wish to record the following understanding which they have reached during the negotiations for the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines (hereinafter referred to as "the Treaty") signed today:

1. It is confirmed that nationals and companies of either Party are entitled, under Article II, paragraph i, of the Treaty, to treatment no less favorable than that accorded to nationals and companies of any third country with respect to the organization of companies and the establishment and maintenance of branches, agencies and other offices.
2. It is understood that the provisions of Article III, paragraph 1, of the Treaty do not preclude either Party from adopting and enforcing relevant laws and regulations which shall be applicable to all foreign nationals and companies alike.
3. With reference to Article IJ, paragraph 3, it is confirmed that import restrictions or prohibitions that may be applied thereunder include those applied, for the purpose of protecting domestic producers, to any manufactured goods as such, without reference to source.
4. With reference to Article V of the Treaty, it is understood that the competent authorities of each Party shall, in accordance with the principle of non-discrimination, determine whether or not the introduction of any capital or technology into its territories will contribute to the sound and balanced development of its national economy on a self-sustaining basis.
5. It is confirmed that the term "merchant vessels" as used in the Treaty does not include fishing boats, pleasure yachts and sporting boats.

For Japan: M. YUKAWA

For the Republic of the Philippines: J. B. LAUREL

Tokyo, December 9, 1960.

AGREED MINUTES CONCERNING THE TRADE BETWEEN JAPAN AND THE REPUBLIC OF THE PHILIPPINES

During the negotiations between the representatives of the Government of Japan (hereinafter referred to as "the Japanese Government") and the Government of the Republic of the Philippines (hereinafter referred to as "the Philippine Government") leading to the signing of the Treaty of Amity, Commerce and Navigation between the two countries (hereinafter referred to as "the Treaty"), the Japanese Government and the Philippine Government have reached, in connection with the implementation of the Treaty, the following understanding which will be carried out within their constitutional authority:

1. Both Governments take note of the high level of trade between Japan and the Republic of the Philippines in recent years through normal market channels and on commercial terms. It is the expectation of both Governments that such level of trade will not only be maintained but also expanded in the future.

2. Subject to the provisions of Article III, paragraph 4, of the Treaty and of Protocol 10 (2):

(1) The Japanese Government undertakes to accord to the Republic of the Philippines the opportunity of competing for the total foreign exchange allocation for molasses, muscovado sugar, centrifugal sugar, leaf tobacco, cigars, bananas and pineapples.

(2) The Japanese Government undertakes, subject to Japan's overall trade and foreign exchange policy, to retain on the Automatic Approval List any products in the exportation to Japan of which the Republic of the Philippines has a substantial interest.

3. In considering the obstacles and uncertainties in international commodity trade which confront primary exporting countries and the effects of these difficulties upon their economic stability, both Governments agree that there is an urgent

need to find means of producing a greater degree of stability and predictability in international trade in primary products. Both Governments will, therefore, give sympathetic consideration to international action designed to improve the conditions of international trade in primary products of direct interest to either country,

For Japan: M. YUKAWA

For the Republic of the Philippines: J.B. LAURE, Jr.

Tokyo, December 9, 1960.

EXCHANGES OF NOTES

Ia

Tokyo, December 9, 1960

Excellency,

On the occasion of signing the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, I have the honor to refer to the provisions of Article I of the Treaty, under which nationals of either Party are to be accorded treatment no less favorable than that accorded to nationals of any third country with respect to all matters relating to their entry into, sojourn, travel and residence within, the territories of the other Party.

It being practically impossible to set forth the above-mentioned treatment in concrete terms, I wish to inform Your Excellency of the understanding of my Government with respect to the application of the said provisions that nationals of either Party will be entitled to the treatment set forth in the Annex to this Note, with respect to their entry into and sojourn within the territories of the other Party. In the event that applicable laws and regulations of either Party are revised in any manner, the two Governments will make appropriate amendments, if necessary, to the Annex to this Note.

I have further the honor to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Government.

Accept, Excellency, the assurances of my highest consideration.

M. YUKAWA Ambassador of Japan to the Republic of the Philippines

His Excellency Mr. J. B. Laurel, Jr. Chairman, Philippine Panel

ANNEX

A. Temporary visitors of either Party entering for business purpose[s] shall be allowed, whenever possible, the following periods of stay within the territories of the other Party:

(1) An initial period of six months from the date of entry;

(2) An additional period of six months, so long as the applicant for such additional period maintains the status under which he stayed during the first period.

B. Nationals of either Party entering the territories of the other Party (a) solely to carry on trade principally between the territories of the two Parties or (b) solely to develop and direct 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, and their spouses and their unmarried children who have not attained their majority, shall be allowed an initial three-year period of stay within the territories of the other Party, applications for stay beyond such initial period being given as favorable a consideration as possible.

IIa

Tokyo, December 9, 1960

Excellency,

I have the honor to acknowledge receipt of Your Excellency's Note of today's date which read as follows:

[See note Ia]

The Annex to the Note reproduced above is hereto attached.

I have further the honor to confirm the understanding stated in Your Excellency's Note on behalf of the Government of the Republic of the Philippines.

Accept, Excellency, the assurances of my highest consideration.

J. B. Laure, Jr. Chairman Philippine Panel

His Excellency Mr. Morio Yukawa Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines

Ib

Tokyo, December 9, 1960

Excellency,

On the occasion of signing the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, I have the honor to propose that the Agreement between our two Governments concerning trade relations, which is embodied in an Exchange of Notes dated January 7, 1958, be terminated on the date of the entry into force of the said Treaty, notwithstanding the provisions of paragraph 4 of the said Agreement,

I have further the honor to request Your Excellency to be good enough to accept the foregoing proposal on behalf of Your Government.

Accept, Excellency, the renewed assurances of my highest consideration.

M. YUKAWA Ambassador of Japan to the Republic of the Philippines

His Excellency Mr. J. B. Laurel, Jr. Chairman, Philippine Panel

IIb

Tokyo, December 9, 1960

Excellency, I have the honor to acknowledge receipt of Your Excellency's Note of today's date which reads as follows:

[See note Ib]

I have further the honor to accept the proposal stated in Your Excellency's Note on behalf of the Government of the Republic of the Philippines. Accept, Excellency, the renewed assurances of my highest consideration.

J. B. Laure, Jr. Chairman Philippine Panel

His Excellency Mr. Morio Yukawa Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines

Ic

Tokyo, December 9, 1960

Excellency,

On the occasion of signing the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, I have the honor to propose that the Provisional Agreement between our two Governments concerning the entry of nationals of either country into the territory of the other and their sojourn therein, which is embodied in an Exchange of Notes dated July 24, 1958, be terminated on the date of the entry into force of the said Treaty.

I have further the honor to request Your Excellency to be good enough to accept the foregoing proposal on behalf of Your Government.

Accept, Excellency, the renewed assurances of my highest consideration.

M. YUKAWA Ambassador of Japan to the Republic of the Philippines

His Excellency Mr. J. B. Laurel, Jr. Chairman, Philippine Panel

IIc

Tokyo, December 9, 1960

Excellency,

I have the honor to acknowledge receipt of Your Excellency's Note of today's date which reads as follows:

[See note Ic]

I have further the honor to accept the proposal stated in Your Excellency's Note on behalf of the Government of the Republic of the Philippines.

Accept, Excellency, the renewed assurances of my highest consideration.

J. B. Lauret, Jr. Chairman Philippine Panel

His Excellency Mr. Morio Yukawa Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines

Id

Tokyo, December 9, 1960

Excellency,

On the occasion of signing the Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan, I have the honor to inform Your Excellency of the understanding of the Government of the Republic of the Philippines that our two Governments have agreed to enter into negotiations for the conclusion of a Civil Air Transport Agreement which has been proposed by my Government and a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been proposed by Your Government, at the earliest practicable date after the signing of the Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan.

I have further the honor to request Your Excellency to be good enough to confirm the foregoing understanding on behalf of Your Government.

Accept, Excellency, the renewed assurances of my highest consideration.

J.B. Laure, Jr. Chairman Philippine Panel

His Excellency Mr. Morio Yukawa Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines

IId

Tokyo, December 9, 1960

Excellency,

I have the honor to acknowledge receipt of Your Excellency's Note of today's date which reads as follows:

[See note Id]

I have further the honor to confirm the understanding stated in Your Excellency's Note on behalf of my Government. Accept, Excellency, the renewed assurances of my highest consideration,

M. YUKAWA Ambassador of Japan to the Republic of the Philippines

His Excellency Mr. J. B. Laurel, Jr. Chairman, Philippine Panel

Ie

Tokyo, December 9, 1960

Excellency,

On the occasion of signing the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, I have the honor to invite Your Excellency's attention to the fact that crewmen of Japanese vessels are not permitted to land at Philippine ports without a consular visa being affixed on the crewlist.

I wish to inform Your Excellency in this regard that crewmen of Philippine vessels calling at Japanese ports are granted shore passes without any visa requirements, and also to inquire, under instructions from my Government, if it is agreeable to the Government of the Republic of the Philippines to waive visa requirements with respect to the landing of crewmen of

Japanese vessels calling at Philippine ports.

Accept, Excellency, the renewed assurances of my highest consideration.

M. YUKAWA Ambassador of Japan to the Republic of the Philippines

His Excellency Mr. J. B. Laurel, Jr. Chairman, Philippine Panel

Ile

Tokyo, December 9, 1960

Excellency,

I have the honor to acknowledge receipt of Your Excellency's Note dated December 9, 1960, concerning visa requirements with respect to the landing of crewmen of Japanese vessels.

In reply, I wish to inform Your Excellency that the Government of the Republic of the Philippines is willing to waive visa requirements with respect to the landing of crewmen of Japanese vessels calling at Philippine ports, and will take necessary steps to give effect to such waiver as soon as possible.

Accept, Excellency, the renewed assurances of my highest consideration.

J. B. Laurel, Jr. Chairman Philippine Panel

His Excellency Mr. Morio Yukawa

Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines