

AGREEMENT ON TRADE AND COMMERCIAL RELATIONS BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF PAPUA NEW GUINEA

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF PAPUA NEW GUINEA,

BEARING IN MIND the close trading and commercial relations existing between their two countries,

ACKNOWLEDGING their respective international rights and obligations,

DESIRING to maintain and strengthen trade and commercial relations between their two countries, and

HAVING RESOLVED to establish between their two countries a Free Trade Area with a view to the sustained development of their economies through expansion of trade and investment in accordance with their respective social and economic objectives,

HAVE AGREED as follows:

Article 1. Definitions

In this Agreement, unless the contrary intention appears:

"Australia" means the states and the mainland territories of Australia;

"free goods" means goods which when the subject of trade between the Member States are free of duties and other restrictive regulations of commerce pursuant to Article 3 of this Agreement;

"Member States" means Papua New Guinea and Australia or, as the context requires, the Government of Papua New Guinea and the Government of Australia;

"primary industry" means any industry producing, processing or marketing agricultural, livestock, fisheries or forestry products;

"the Area" means the Free Trade Area established under Article 3 of this Agreement.

Article 2. Objectives

The objectives of this Agreement are:

(a) to further the development of the Area through the expansion and diversification of trade between the Member States;

(b) to further the development and use of the resources of the Area in accordance with the respective social and economic objectives of the Member States;

(c) to further the development of the Area by the promotion of direct investment which is consistent with the foreign investment policies and priorities of the recipient Member States;

(d) to promote and facilitate commercial, industrial, administrative and technical cooperation between the Member States;
and

(e) to contribute to the harmonious development and expansion of world trade and to the progressive removal of barriers to it.

Article 3. Free Trade

1. A Free Trade Area is hereby established. The Area consists of Papua New Guinea and Australia.
2. Subject to the provisions of this Agreement, trade between the Member States shall be free of duties and other restrictive regulations of commerce.
3. This Article applies only to trade in goods which originate in a Member State.

Article 4. Rules of Origin of Goods

1. Goods shall be treated as originating in a Member State if those goods are:
 - (a) the unmanufactured raw products of that Member State, or
 - (b) manufactured goods in relation to which
 - (i) the process last performed in the manufacture was performed in that Member State, and
 - (ii) the expenditure
 - (A) on material that is of Member State origin,
 - (B) on labour, factory overheads and inner containers that are of Member State origin, or
 - (C) partly on such material and partly on such other items of factory cost, is not less than one-half of the factory or works costs at the time of exportation.
2. Notwithstanding the provisions of paragraph 1 of this Article, the Member States may agree to treat particular goods or classes of goods as originating in a Member State provided that, in the case of manufactured goods, the process last performed in the manufacture was performed in the territory of the exporting Member State.

Article 5. Excepted Goods

Notwithstanding the provisions of Article 3 of this Agreement,

- (a) the goods specified in Schedule A to this Agreement, when imported into Australia from Papua New Guinea, shall be subject to the rate of import duty specified from time to time in the Australian Customs Tariff as being applicable to Port New Guinea goods;
- (b) the goods specified in Schedule B to this Agreement, when imported into Australia from Papua New Guinea, shall be subject to the rate of import duty and to the other regulations, if any, specified in Schedule B as being applicable to those goods;
- (c) the goods specified in Schedule C to this Agreement, when imported into Papua New Guinea from Australia, shall be subject to the rate of import duty specified from time to time in the Papua New Guinea Customs Tariff as being applicable to Australian goods; and (d) the goods specified in Schedule D to this Agreement, when imported into Papua New Guinea from Australia, shall be subject to the rate of import duty and to the other Regulations, if any, specified in Schedule D as being applicable to those goods.

Article 6. Revenue Duties

Nothing in this Agreement shall preclude the imposition by either Member State of sales taxes or other revenue duties which are levied equally on both imports and domestic products.

Article 7. Most Favoured Nation Treatment

1. Each Member State shall accord to the other Member State treatment no less favourable than that accorded to any third country in respect of all matters concerning:
 - (a) customs duties and charges of any kind imposed on, or in connexion with, the importation or exportation of any goods, or imposed on the international transfer of payments for imports or exports;
 - (b) the method of levying such duties and charges;
 - (c) the rules and formalities connected with the importation or exportation of goods;

- (d) all internal taxes or other internal charges of any kind imposed on, or in connexion with, imported goods;
 - (e) all laws, regulations and requirements affecting internal sale, offering for sale, purchase, distribution or use of imported goods within its territory;
 - (f) restrictions or prohibitions on the importation or exportation of any goods;
 - (g) the allocation of foreign exchange; and
 - (h) the administration of foreign exchange restrictions affecting transactions involving the importation or exportation of any goods.
2. The provisions of paragraph 1 of this Article shall not apply to:

- (a) advantages accorded by either Member State to adjacent countries to facilitate frontier traffic;
- (b) tariff preferences or other advantages granted by either Member State consequent on the membership of that Member State in another free trade area or a customs union, or on an interim agreement leading to the formation of another free trade area or a customs union;
- (c) tariff preferences accorded by either Member State to a third country in view of that country's status as a developing country; or
- (d) such measures as either Member State may take pursuant to a multilateral international commodity agreement or arrangement.

Article 8. Other Exceptions

Provided that such measures are not used as a means of arbitrary or unjustifiable discrimination, or as a disguised restriction on trade between the Member States, nothing in this Agreement shall prevent the adoption or enforcement by a Member State of measures:

- (a) necessary for the protection of its essential security interests;
- (b) necessary to protect public morals;
- (c) necessary for the prevention of disorder or crime;
- (d) imposed for the protection of its national treasures of artistic, historical, anthropological, palaeontological, archaeological or other cultural or scientific value;
- (e) necessary to reserve for approved purposes the use of Royal Arms or national, state, provincial and territorial arms, flags, crests and seals;
- (f) necessary to protect human, animal or plant life or health;
- (g) necessary to protect its indigenous flora and fauna;
- (h) undertaken in pursuance of its rights and obligations under a multilateral international commodity agreement or arrangement;
- (i) necessary to prevent or relieve shortages of foodstuffs or other essential goods;
- (j) related to the conservation of limited natural resources;
- (k) necessary to protect industrial property rights or copyright, or to prevent unfair, deceptive or misleading practices;
- (l) necessary to secure compliance with laws and regulations relating to customs enforcement, or to tax avoidance or evasion, or to the classification, grading or marketing of goods, or to the operation of recognised commodity marketing boards;
- (m) relating to products of prison labour;
- (n) relating to trade in gold or silver; or
- (o) necessary to safeguard its external financial position and balance of payments.

Article 9. Suspension of Obligations: Protection of Threatened or Developing Industries

1. If in the opinion of a Member State (in this Article called "the importing Member State") goods are, as a result of the operation of Article 3 of this Agreement, being imported into it from the other Member State in such quantities or under such conditions as to cause or threaten serious injury to an industry in the importing Member State producing like or directly competitive goods, or to retard materially the establishment of an industry in the importing Member State to produce like or directly competitive goods, the importing Member State may request the other Member State to consult with it on measures to reduce or prevent such injury or retardation.

2. If a mutually acceptable solution is not reached within sixty days of the date of the request referred to in paragraph 1 of this Article, the importing Member State may, after giving notice to the other Member State, suspend to such extent and for as long as necessary the application to the goods concerned of the provisions of Article 3 of this Agreement.

Article 10. Suspension of Obligations: Protection of Papua New Guinea Primary Industry

1. In order to protect an existing primary industry or to foster the development of a new primary industry, the Government of Papua New Guinea may suspend its obligations under Article 3 of this Agreement in respect of the products of a like or directly competitive industry.

2. Unless critical circumstances prevail in which delay would cause damage which would be difficult to repair, the Government of Papua New Guinea shall give sixty days notice to the Australian Government prior to taking action under paragraph 1 of this Article.

3. As soon as practicable after the need arises to take action under paragraph 1 of this Article, the Papua New Guinea Government shall enter into consultations with the Australian Government with a view to finding a mutually satisfactory solution to the problem.

Article 11. Suspension of Obligations: Deflection of Trade

1. If the importation into a Member State (in this Article called "the importing Member State") of free goods from the other Member State

(a) causes or threatens serious injury to an industry in the importing Member State producing like or directly competitive goods because -

(i) the duties or taxes levied by the other Member State on raw materials or intermediate products imported from outside the Area and used in the production of those goods are significantly lower than the duties or taxes levied by the importing Member State on imports of similar raw materials or intermediate products imported from outside the Area, or

(ii) the prices of raw materials or intermediate products used in the production of those goods are unduly low by reason of dumping into the Area or subsidisation, or

(iii) drawback, exemption or remission of import duties is allowed by the other Member State on raw materials or intermediate products imported from outside the Area and used in the production of those goods, and

(b) the other Member State is deriving advantage from the circumstances, the importing Member State, if it considers that action is necessary to offset that advantage, may request consultations with the other Member State on the situation which has developed. Such consultations shall be as full as circumstances permit, and the importing Member State shall consider any measures taken or proposed by the other Member State to offset the advantage.

2. If a mutually acceptable solution is not reached within sixty days of the date of the request referred to in paragraph 1 of this Article, the importing Member State may, after giving notice to the other Member State, suspend to such extent and for as long as necessary the application to the goods concerned of the provisions of Article 3 of this Agreement.

Article 12. Suspension of Obligations: Exceptional Circumstances

Member States may agree to the suspension of any obligation under this Agreement on the ground that there exist exceptional or emergency circumstances creating severe difficulties for one or both Member States.

Article 13. Suspension of Obligations: Dumped or Subsidised Imports

1. If in the opinion of a Member State goods being imported into it from the other Member State are being dumped or are being subsidised by the other Member State so as to cause or threaten material injury to an industry producing like or directly competitive goods or to materially retard the establishment of an industry to produce like or directly competitive goods, it may request the other Member State to consult with it on measures to reduce or prevent such injury or retardation.

2. If a mutually acceptable solution is not reached within sixty days of the date of the request referred to in paragraph 1 of this Article, the importing Member State may, after giving notice to the other Member State, suspend the application of Article 3 of this Agreement to the extent necessary to enable it to levy dumping or countervailing duties on the goods concerned.

Article 14. Investment

1. The Member States, bearing in mind that Australian investment in Papua New Guinea and the conditions attaching to that investment will have a bearing on the long term trade and commercial relationship between the Member States, will consult, when necessary and practicable, on the most appropriate ways in which future Australian direct investment, particularly by way of joint venture, can contribute to the social and economic development of Papua New Guinea in accordance with its foreign investment policies and priorities.

2. The Papua New Guinea Government will draw to the attention of the Australian Government those specific fields of development in which it would particularly welcome Australian investment. The Australian Government will endeavour to interest and encourage Australian enterprises to participate in those specific fields except where such investment would not be in the interests of both countries.

3. In relation to a proposed investment in Papua New Guinea which might result in the export of free goods to Australia, the Member States recognise the need for prior consultations on any matter which might affect the export to Australia of those goods. It shall be a matter for the Papua New Guinea Government to determine whether or not such consultations should take place.

4. Papua New Guinea will accord to Australian investment, in accordance with Papua New Guinea laws and related policies, treatment no less favourable than that accorded to the investment of any third country.

Article 15. Industry Co-operation

In order to further the objectives of this Agreement, the Member States shall, as appropriate, use their best endeavours to encourage co-operation between, and coordination of activities of, their respective firms and industries. To this end, the Member States shall exchange information and consult together on developments in industry within the Area, and may agree on, and implement, if consistent with their international obligations, special measures beneficial to the trade and development of a Member State.

Article 16. Technical Co-operation

In order to further the objectives of this Agreement, the Member States shall encourage and facilitate the interchange of applied scientific and technical knowledge between their respective countries.

Article 17. Administrative Co-operation

To promote the effective and harmonious application of the provisions of this Agreement, the Member States shall take steps to facilitate administrative co-operation and to reduce, as far as practicable, formalities affecting trade within the Area.

Article 18. Promotion of Trade

1. For the purpose of promoting trade between the Member States, each Member State shall, within its competence and subject to its laws, encourage and facilitate:

(a) the interchange of commercial and technical representatives, groups and delegations; and

(b) the holding of, and participation in, trade fairs, trade exhibitions and other promotion activities in the fields of trade and technology in its territory by enterprises and organisations from the other Member State.

2. In particular, each Member State shall exempt from import duties and other taxes, and from any other prohibitions and restrictions (other than those provided for under Article 8 of this Agreement) articles for display or for use in connexion with fairs, exhibitions or similar events, as well as samples of goods for advertising purposes imported on a temporary basis from the other Member State. Articles and samples so exempted shall not be disposed of otherwise than by re-exportation, except with the prior approval of the competent authorities of the importing Member State and on payment of any applicable import duties and taxes.

Article 19. Commercial Commodity Contracts

To advance the objectives of this Agreement, the Member States

(a) shall encourage and, where practicable, facilitate the negotiation of commercial contracts between appropriate organisations or enterprises of their two countries; and

(b) declare their support in principle for the conclusion of long term commercial contracts relating to the supply and purchase of goods, and shall encourage the relevant organisations or enterprises of their two countries to explore the scope for such commercial contracts and, where appropriate, to conclude such contracts. It is acknowledged that the organisations or enterprises referred to in this Article might be either governments or private bodies.

Article 20. Scarce Commodities

If a Member State has difficulty in obtaining supplies of essential commodities from the other Member State or from third countries, the other Member State, on request, shall enter into consultations on the matter.

Article 21. Payments

All commercial payments between the Member States shall be made through the banks of the two countries authorised to buy and sell foreign currency, and in any mutually acceptable freely convertible currency, in accordance with the foreign exchange regulations in force in the two countries and with general customary practice.

Article 22. Consultation and Review

1. There shall be periodic consultations between the Member States for the purpose of reviewing the operation of this Agreement. The first such consultations shall take place not later than one year after the date of entry into force of this Agreement, and thereafter shall be held annually or at the request of either Member State. In such consultations a Member State may raise any matters related to the implementation of this Agreement or bearing on trade or commercial relations between the Member States.

2. Should either Member State consider that an obligation under this Agreement has not been fulfilled, or that any benefit conferred upon it by this Agreement is being or might be frustrated, or that any case of special difficulty has arisen, or that a change in circumstances necessitates or might necessitate a variation in the terms of this Agreement, the other Member State shall, on request, enter into consultations as soon as practicable with a view to reaching a mutually satisfactory solution.

3. This Agreement may be amended by the Member States at any time in accordance with their respective constitutional requirements. The Schedules to this Agreement may be varied at any time by mutual consent of the relevant authorities of each Member State.

Article 23. Association with the Agreement

1. The Member States may agree to the association of any other State with this Agreement.

2. The terms of such association shall be negotiated between the Member States and the other State.

Article 24. Entry Into Force and Duration

1. This Agreement shall come into force on the date on which the Member States exchange notes notifying each other that their respective constitutional and other requirements necessary to give effect to the Agreement have been complied with.

2. A Member State may terminate this Agreement by giving notice to that effect to the other Member State. If that other

Member State so requests, consultations shall take place between the Member States as soon as practicable. The notice of termination shall take effect on the one hundred and eightieth day after the day on which it was given unless earlier withdrawn.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement.

DONE in two originals at Port Moresby this 6th day of November, One thousand nine hundred and seventy-six.

FOR THE GOVERNMENT OF AUSTRALIA:

[Signed:]

JOHN HOWARD

FOR THE GOVERNMENT OF PAPUA NEW GUINEA:

[Signed:]

MAORI KIKI

V. Letter from the minister for business and consumer affairs of australia to the minister for foreign affairs and trade of papua new guinea

Minister for Business and Consumer Affairs

Parliament House

Canberra 2600

6 November 1976

Sir Maori Kiki, KBE, MP

Minister for Foreign Affairs and Trade

House of Parliament

Port Moresby

PAPUA NEW GUINEA

My dear Minister

In relation to paragraph 2 of Article 14 of the Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea signed today, I wish to place on record the following forms of investment encouragement which the Government of Australia may provide in appropriate circumstances to Australian enterprises wishing to invest directly in Papua New Guinea.

The following list describes measures which are currently part of the policy of the Government of Australia on the encouragement of direct investment by Australian enterprises in developing countries and may be subject to variation from time to time.

The Government of Australia will inter alia:

- (1) provide investment insurance cover through the Australian Export Finance Insurance Corporation;
- (2) disseminate information to potential Australian investors concerning investment opportunities in Papua New Guinea;
- (3) assist investors through facilities of the Trade Commissioner Service.

If the foregoing is acceptable to your Government, I propose that this letter together with your confirmatory reply should constitute the understandings of our two Governments in the matter.

Yours sincerely

[Signed:]

JOHN HOWARD

VI. Letter from the minister for foreign affairs and trade of papua new guinea to the minister for business and consumer affairs of australia

Minister for Foreign Affairs and Trade

Papua New Guinea

Central Government Offices

Waigani

6 November 1976

The Hon J W Howard MP

Minister for Business and Consumer Affairs

Parliament House

CANBERRA ACT 2600

My dear Minister

I acknowledge receipt of your letter of today's date regarding the interpretation of paragraph 2 of Article 14 of the Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea signed today.

The text of that letter reads as follows:

[Here follows text as printed under V.]

I wish to confirm that the Government of Papua New Guinea shares the understanding set out in your letter and that your letter, together with this reply, will constitute the understandings of our two Governments in the matter.

Yours sincerely

[Signed:]

MAORI KIKI

VII. Letter from the minister for foreign affairs and trade of papua new guinea to the minister for business and consumer affairs of australia

Minister for Foreign Affairs and Trade

Papua New Guinea

Central Government Offices

Waigani

6 November 1976

The Hon J W Howard MP

Minister for Business and Consumer Affairs

Parliament House

CANBERRA

My dear Minister

I wish to place on record the understanding of the Government of Papua New Guinea with regard to paragraph 4 of Article 14 of the Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea signed today.

It is the understanding of the Government of Papua New Guinea that the assurance given in that paragraph will be interpreted in the light of the approved policies of the Government on foreign investment, the relevant elements of which are:

(1) Papua New Guinea, as part of its development strategy, proposes to treat each investment proposal on its merits, within the context of the overall development strategy and policy guidelines. The evaluation of proposals on a case-by-case basis is necessary, even for projects in the same business activity, as they may differ in such respects as size, employment, local content or location. This is particularly important where it may be necessary to limit the number of projects because of, say, market size.

(2) the terms and conditions, of any incentives attached to a project, may vary from that of another project in the same business activity because of the above factors. More favourable treatment, possibly in the form of incentives, may be offered to a project on the basis of some established need, such as decentralization. Such differentiation is on the basis of the characteristics of the project itself, rather than on any element of nationality.

(3) Also, where new investment in a specific industry is being promoted alongside existing investments in the same industry, it may be determined that additional benefits should be offered to encourage new investment. The same benefits would not be offered to the existing enterprise, although the owners of the existing enterprise would not necessarily be barred from competing for the right to participate in the new project and to enjoy the special benefits being offered in respect of that new project. In offering such incentives Papua New Guinea would be mindful of the desirability of avoiding serious damage to existing industries.

If the foregoing is acceptable to your Government, I propose that this letter together with your confirmatory reply should constitute the understandings of our two Governments in the matter.

Yours sincerely

[Signed:]

MAORI KIKI

VIII. Letter from the minister for business and consumer affairs of australia to the minister for foreign affairs and trade of papua new guinea

Minister for Business and Consumer Affairs

Parliament House

Canberra 2600

6 November 1976

Sir Maori Kiki, KBE, MP

Minister for Foreign Affairs and Trade

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Port Moresby

PAPUA NEW GUINEA

My dear Minister

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The text of that letter reads as follows:

[Here follows text as printed under VII.]

I wish to confirm that the Government of Australia shares the understandings set out in your letter and that your letter together with this reply will constitute the understandings of our two Governments in the matter.

Yours sincerely

[Signed:]

JOHN HOWARD