

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

Japan and the Republic of the Philippines,

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

Desirous of promoting the development of trade and commerce between the two countries on a mutually advantageous basis in accordance with their respective needs and objectives for economic development,

Have resolved to conclude a Treaty of Amity, Commerce and Navigation and Masayoshi Ohira, Prime Minister, and Sunao Sonoda, Minister for Foreign Affairs, for Japan, and Ferdinand E. Marcos, President, and Carlos P. Romulo, Minister of Foreign Affairs, for the Republic of the Philippines, having full powers and authority for that purpose, have agreed upon the following Articles:

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 of either Party, within the territories of the other Party, shall enjoy the most constant protection and security for their persons, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is taken into custody, the nearest competent consular officer of such other Party shall on the demand of such national be immediately notified and shall be permitted to visit and communicate with such national in accordance with the laws and regulations of the former Party. Such national shall, in accordance with the laws and regulations of the former Party: (a) receive reasonable and humane treatment; (b) be formally and immediately informed of the accusations against him; (c) be brought to trial as promptly as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonably necessary to his defense, including the services of competent counsel of his choice.

Article III.

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 courts of justice, in all degrees of jurisdiction, 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 IV.

Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party.

Article V.

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 | 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.

Article VI.

1. 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 from, or the exportation of the like product to, all third countries is similarly restricted or prohibited.
2. The Party imposing quantitative restrictions or prohibitions on the importation or exportation of an item of special interest to the other Party shall notify such other Party thereof as far in advance as may be practicable and, whenever possible, one month prior to the entry into effect of such restrictions or prohibitions.
3. Import restrictions or prohibitions that may be allowed under paragraph 1 of the present Article include those applied for the purpose of safeguarding external financial position and balance of payments as well as for the purpose of establishing domestic manufacturing industries and promoting their development, in conformity with the principles and conditions laid down in the provisions of the relevant international agreements.
4. Either Party may impose restrictions or prohibitions 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.
5. Notwithstanding the provisions of paragraph 1 of the present Article, either Party may impose restrictions or prohibitions on the importation or exportation of products that have effect equivalent to exchange restrictions which such Party may at that time apply under the provisions of paragraph 2 of Article V.

Article VII.

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.

Article VII.

The two Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises, may have harmful effects upon commerce between their respective territories. Accordingly, each Party agrees upon the request of the other Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects.

Article IX.

The two Parties shall cooperate with each other in their efforts to further expand and strengthen trade between the two countries on a fair and stable basis.

Article X.

The two Parties undertake to cooperate for mutual benefit with a view 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, subject to their respective laws and regulations. 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 XI.

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 such 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 any third country, to come with their passengers and cargoes to all ports, places and waters of the 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, including the availability of 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 merchant vessels to or from the territories of the other Party. Such goods and persons shall be accorded treatment no less favorable than that accorded to like goods and persons carried in merchant vessels of any third country with respect to all customs and other formalities.
4. Each Party may reserve to its own vessels the right to engage in the inland, coastwise and inter-island 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 sale, disposition or consumption; but goods not entered for domestic sale, disposition or 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 nearest competent consular officer of the country to which the vessel belongs of such occurrence.
6. The two Parties, recognizing that international shipping activities between the two countries play a significant role in the development of their economic, trade and commercial relations, shall promote mutual cooperation for the development of shipping between the two countries on a fair and mutually advantageous basis.
7. 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.
8. The term "merchant vessels", as used herein, does not include fishing boats, factory vessels, pleasure yachts and sporting boats.

Article XII.

The two Parties, recognizing the need to protect marine and other related resources against actual or threatened damage caused by the discharge of oil or other pollutant elements, shall cooperate to contain, control or minimize the effects of such discharge.

Article XIII.

The provisions of Article V, Article VI and Article VII shall not apply to

(a) tariff preferences or other advantages which the Republic of the Philippines may grant to other member countries of the Association of Southeast Asian Nations and to other developing countries under a trade expansion or economic cooperation scheme among developing countries, in conformity with the relevant international agreements;

{b) advantages similar to those generally accorded to adjacent countries in order to facilitate frontier traffic which are accorded by the Republic of the Philippines to its adjacent countries; and

(c) advantages accorded by either Party resulting from its association in a customs union or a free trade area, or an interim agreement leading to the formation of a customs union or a free trade area.

Article XIV.

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;

{e) trade in gold or silver;

(f) the protection of national treasures of artistic, historic or archaeological value;

(g) the conservation of fishery and other aquatic resources to maintain maximum sustainable yields and the protection of endangered aquatic species; and

(h) the fulfillment of obligations under any multilateral commodity agreement.

Article XV.

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 two 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 two Parties agree to settlement by some other pacific means.

Article XVI.

The Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines signed at Tokyo on December 9, 1960, shall expire upon the entering into force of the present Treaty.

Article XVII.

1. The present Treaty shall be ratified, and the instruments of ratification shall be exchanged at Tokyo 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.

4. If, at any time during the validity of the present Treaty, either Party proposes to the other Party amendments to the present Treaty, the two Parties shall enter into immediate consultation.

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

Done at Manila, this tenth day of May, one thousand nine hundred and seventy- nine, in duplicate, in the Japanese, Pilipino and English languages. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

Masayoshi Ohira

Sunao Sonoda

For the Republic of the Philippines:

Ferdinand E. Marcos

Carlos P. Romulo

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 have further agreed on the following provisions, which shall be considered integral parts of the Treaty:

1. With reference to the provisions of Article I of the Treaty, it is understood that the term "residence" does not include permanent residence and that all matters relating to the permission for permanent residence shall be outside the scope of the Treaty.
2. With reference to the provisions of Article I of the Treaty, 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 paragraph 1 of Article III of the Treaty, 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. With reference to the provisions of paragraph 1 of Article II] and the provisions of Article X of the Treaty, 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 the admission of investments, the organization of companies, the establishment and maintenance of branches, agencies and other offices.
6. 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.
7. Except with respect to access to courts of justice, in all degrees of jurisdiction, 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. With reference to the provisions of Article IV of the Treaty, investments of nationals and companies of either Party in the territories of the other Party shall not be subject to expropriation, or nationalization or any deprivation of use tantamount thereto, except for public use or in the public interest, or in the interest of national welfare or national defense and upon payment of just compensation without undue delay.
9. Nothing in the Treaty shall affect the rights and obligations that either Party has or may have as a contracting party to the General Agreement on Tariffs and Trade or the Articles of Agreement of the International Monetary Fund or any multilateral agreement amendatory or supplementary thereto, so long as the two Parties are contracting parties to the relevant agreement or agreements. In case either of the two Parties has ceased to be contracting party to any of such agreements, the two Parties shall immediately consult with each other with a view to determining whether, in the light of circumstances then prevailing, any adjustment may be necessary with respect to the provisions of the Treaty relating to trade, exchange or customs.
10. With reference to the provisions of paragraph 3 of Article VI and paragraph (a) of Article XIII of the Treaty, it is understood that the term "relevant international agreements" means the General Agreement on Tariffs and Trade and any multilateral agreement amendatory or supplementary thereto.

11. For the purpose of the provisions of Article VIJ of the Treaty, the following items shall be deemed to be products originating in the territories of either Party:

(a) fish and other natural produce of the sea taken by vessels of such Party; and

(b) products produced or manufactured at sea in vessels of such Party from fish and other natural produce of the sea.

Nothing herein contained shall be construed so as to grant nationals and companies of either Party any right or privilege to utilize and exploit the fishery and other aquatic resources under the fisheries jurisdiction of the other Party, or to operate in connection therewith factory vessels within such jurisdiction.

12. With reference to the provisions of paragraphs 2 and 3 of Article XII of the Treaty, the two Parties shall observe internationally applied shipping practices in the treatment of foreign vessels.

13. The mutual cooperation for the development of shipping envisaged in the provisions of paragraph 6 of Article XII of the Treaty includes cooperation for a fair and mutually advantageous participation by the shipping of the two countries in the carriage of cargoes between them.

14. With reference to the provisions of Article XII of the Treaty, in the event of discharge of oil or other pollutant elements caused by a vessel of either Party that damages or threatens to damage the environment of the other Party, the former Party shall upon request of the latter Party take all possible measures, within its capability and in accordance with its laws and regulations, to assist the latter Party in containing, controlling or minimizing the effects of such discharge.

15. Advantages referred to in the provisions of paragraph (8) of Article XIII of the Treaty are those accorded by the Republic of the Philippines to the Republic of Indonesia and to Malaysia.

16. 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 here- after be accorded by Japan exclusively to persons who originated in the territories to which all right, title and claim were renounced by Japan in accordance with the pro- visions of Article 2 of the Treaty of Peace with Japan signed at the city of San Fran- cisco on September 8, 1951.'

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

Dong at Manila, this tenth day of May, one thousand nine hundred and seventy- nine, in duplicate, in the Japanese, Pilipino and English languages. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

MASAYOSHI OHIRA

Sunac Sonopa

For the Republic of the Philippines:

FERDINAND E. Marcos

Carlos P. ROMULO

EXCHANGES OF NOTES

la Manila, May 10, 1979

Excellency,

I have the honor to refer to the Treaty of Amity, Commerce and Navigation be- tween Japan and the Republic of the Philippines signed today, in the course of the negotiations of which the Government of Japan recognized the efforts of the member countries of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") for promoting peace and prosperity in Southeast Asia through strength- ening cooperation in ASEAN, particularly in the economic field through the exchanges of special preferences or advantages exclusively among its members and to confirm, on behalf of the Government of Japan, the following understanding reached between the representatives of the two Governments:

In respect of any advantage other than tariff preferences or other advantages set forth in paragraph (a) of Article XIII of the said Treaty which the Republic of the Philippines may grant exclusively to the other member countries of ASEAN, the Governments of Japan and of the Republic of the Philippines shall, in the spirit of cooperation between Japan and ASEAN, consult each other upon the request of either Government, whenever there arises any problem related to the application of

the said Treaty.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Sunao Sonopa

Minister for Foreign Affairs of Japan

His Excellency Mr. Carlos P. Romulo

Minister of Foreign Affairs of the Philippines

Ila Manila, May 10, 1979

Excellency,

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

[See note Ia]

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

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Carlos P. Romulo Minister of Foreign Affairs

His Excellency Mr. Sunao Sonoda

Minister for Foreign Affairs of Japan

Ib Manila, May 10, 1979

Excellency,

I have the honor to refer to the Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan signed today and to confirm, on behalf of the Government of the Republic of the Philippines, the following understanding reached between the representatives of the two Governments:

1. The Government of Japan takes note of the efforts of the Government of the Republic of the Philippines to achieve a substantial increase in its foreign exchange earnings, the diversification of its exports, and the acceleration of the rate of growth of the trade between the two countries, taking into account the development needs of the Republic of the Philippines.
2. The Government of Japan will assist the Government of the Republic of the Philippines in these efforts, and, for this purpose, will endeavour to take appropriate measures to facilitate and enhance market access of exports to Japan of non-traditional products as well as traditional products of the Republic of the Philippines. In this connection, the Government of the Republic of the Philippines, whenever it considers it appropriate, may transmit an indicative list of its products of special interest, to the Government of Japan.
3. Inter alia, the two Governments will:
 - (a) promote exchange of economic missions to explore all possible measures to increase exports of Philippine products to Japan; and
 - (b) continue to encourage close contact between business communities of the two countries at various business fora, recognizing that the furtherance of mutual understanding between them is most important for further development of trade relations between the two countries.
4. Whenever there arises any problem hindering sound development of trade relations between the two countries, the two Governments will consult each other as soon as possible, at an appropriate level, with a view to eliminating such problem.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Carlos P. ROMULO Minister of Foreign Affairs

His Excellency Mr. Sunao Sonoda

Minister for Foreign Affairs of Japan

Ilb Manila, May 10, 1979

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 confirm, on behalf of the Government of Japan, the understanding set forth in Your Excellency's Note. I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Sunao SONODA

Minister for Foreign Affairs of Japan

His Excellency Mr. Carlos P. Romulo

Minister of Foreign Affairs of the Philippines

Ic Manila, May 10, 1979

Excellency,

I have the honor to refer to the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines signed today and to confirm, on behalf of the Government of Japan, the following understanding reached between the representatives of the two Governments:

1. The two Governments agree to enter into negotiations for the conclusion of an investment protection agreement, which has been proposed by the Government of Japan, at the earliest practicable time with a view to further strengthening the relations between the two countries.
2. The Government of the Republic of the Philippines takes note of the positions taken on the question of investments by the Government of Japan, to which the Government of Japan attaches importance, in the course of the negotiations of the said Treaty.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of Your Excellency's Government.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

SUNAO SONODA

Minister for Foreign Affairs of Japan

His Excellency Mr. Carlos P. Romulo

Minister of Foreign Affairs of the Philippines

Ilc Manila, May 10, 1979

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 confirm, on behalf of the Government of the Republic of the Philippines, the understanding set forth in Your Excellency's Note.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Carlos P. ROMULO Minister of Foreign Affairs

His Excellency Mr. Sunao Sonoda

Minister for Foreign Affairs of Japan

Id Manila, May 10, 1979

Excellency,

I have the honor to refer to the Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan signed today and to confirm, on behalf of the Government of the Republic of the Philippines, the following understanding reached between the representatives of the two Governments:

1. (1) In connection with paragraph 2 of Article VI of the said Treaty, when either of the two Governments imposes restrictions or prohibitions other than quantitative restrictions or prohibitions, on the importation or exportation of an item of special interest to the other country, the Government imposing such restrictions or prohibitions will endeavour to communicate through diplomatic channels, as far in advance of implementation of such restrictions or prohibitions as may be practicable, information related to such restrictions or prohibitions to the other Government.

(2) Either of the two Governments, when it considers it appropriate, may communicate to the other Government its items of special interest.

2. It is understood that the provisions of paragraph 12 of the Protocol to the said Treaty shall not be construed so as to preclude either Government from taking Measures necessary to cope with serious economic contingencies.

I should be grateful if Your Excellency would confirm the foregoing understanding on behalf of Your Excellency's Government.

i avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Carlos P. Romulo Minister of Foreign Affairs

His Excellency Mr. Sunao Sonoda

Minister for Foreign Affairs of Japan

Id

Manila, May 10, 1979

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, on behalf of the Government of Japan, the understanding set forth in Your Excellency's Note.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.

Sunao Sonoda

Minister for Foreign Affairs of Japan

His Excellency Mr. Carlos P. Romulo

Minister of Foreign Affairs of the Philippines