

AGREEMENT ON COMMERCE BETWEEN JAPAN AND THE REPUBLIC OF PERU

SIGNED AT TOKYO, ON 15 MAY 1961 (1)

The Government of Japan and the Government of the Republic of Peru, desiring to strengthen the bonds of peace and friendship traditionally existing between the two countries, to intensify and develop the trade relations between them, and to promote investments and other forms of mutually beneficial economic co-operation with a view to raising their peoples' levels of living, have resolved to conclude an Agreement on Commerce regulating, on fair and equitable terms, the trade relations between the two countries; and have for that purpose appointed as their plenipotentiaries:

The Government of Japan:

His Excellency Mr. Zentaro Kosaka, Minister for Foreign Affairs;

The Government of the Republic of Peru:

His Excellency Mr. Federico Hilbck Seminario, Ambassador Extraordinary and Plenipotentiary on Special Mission;

Who, having exchanged their full powers, found in good and due form, have agreed upon the following articles:

(1) Came into force on 18 December 1961 by the exchange of the instruments of ratification which took place at Lima, in accordance with Article IX (1)

Article I.

With respect to customs duties and charges of any kind imposed on or in connexion 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 the rules and formalities in connexion 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 connexion 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, favour, privilege or immunity which has been or may hereafter be granted by either Contracting 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 territory of the other Party.

Article II.

1. Nationals and companies of either Party shall be accorded treatment no less favourable 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 this article shall 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. (1)

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 territory 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 this article, either Party may impose 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 this article.

(1) United Nations, Treaty Series, Vol. 2, p. 40; Vol. 19, p. 280; Vol. 141, p. 355; Vol. 199, p. 308; Vol. 260, p. 432; Vol. 287, p. 260; Vol. 303, p. 284; Vol. 316, p. 269; Vol. 406, p. 282, and Vol. 426, p. 334.

Article III.

1. Nationals of either Party shall be permitted to enter, sojourn in and travel in the territory of the other Party, in accordance with the laws and administrative regulations of the other Party in force on the subject, and shall receive in every respect treatment no less favourable than that accorded to nationals of any third country.

2. Nationals and companies of either Party shall be accorded, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of any third country with respect to all matters relating to the levying of taxes, access to the courts, rights to property, participation in legal entities, and generally the conduct of all kinds of business and commercial and economic activities.

3. Nationals and companies of either Party shall be accorded, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of the said other Party with respect to the acquisition and maintenance of patents for invention and with respect to rights in trade marks, trade names, trade labels and industrial property of every kind.

4. Notwithstanding the provisions of paragraph 2, 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 for the prevention of fiscal evasion.

Article IV.

Property of nationals and companies of either Party shall not be expropriated or used within the territory of the other Party except for a public purpose and subject to fair compensation in accordance with the constitutional and legal provisions of the other Party. In all matters relating to this article, nationals and companies of either Party shall receive, within the territory of the other Party, treatment no less favourable than that accorded to nationals and companies of the said Party or of any third country.

Article V.

Contracts entered into between nationals or companies of one Party and nationals or companies of the other Party, that provide for the settlement of disputes by arbitration, shall not be deemed unenforceable in the territory of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territory or that the nationality of one or more of the arbitrators is not that of such other Party. An award duly rendered pursuant to any such contracts, which is final and enforceable under the laws of the place where it is rendered, shall not be deemed invalid or denied effective means of enforcement within the territory of either Party merely on the grounds that the place where such award is rendered is outside such territory or that the nationality of one or more of the arbitrators is not that of such Party.

Article VI.

1. The provisions of articles I and II of this Agreement shall not apply to such special advantages as are or may be accorded by the Parties:

(a) to products of their national fisheries;

(b) to adjacent countries in order to facilitate their frontier traffic;

(c) to the members of a customs union or free-trade area of which either Party is or may become a member, within the General Agreement on Tariffs and Trade. (1)

2. Furthermore the provisions of articles I and II shall not apply to the advantages which Peru accords to Chile and to the Argentine Republic or which it may accord to such countries within the limits of the General Agreement on Tariffs and Trade.

(1) See footnote 1, p. 322 of this volume.

Article VII.

1. Nothing in this Agreement 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 to the Articles of Agreement of the International Monetary Fund or to any multilateral agreement amending or supplementing the same, provided that both Parties are contracting parties to the relevant agreement or agreements. It is understood further that, in the event that either Party ceases to be a contracting party to any of the said agreements, the two Parties must immediately consult together in order to determine whether, in view of the circumstances then prevailing, any adjustment may be necessary with respect to the provisions of this Agreement concerning trade, exchange or customs duties.

2. This Agreement shall not preclude the application of measures:

(a) regulating the importation or exportation of gold and silver;

(b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof, or to materials that are the source of fissionable materials;

(c) regulating the production of or traffic in arms, ammunition or implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;

(d) necessary to fulfil the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests;

(e) imposed for the protection of national treasures of artistic, historic or archaeological value; and

(f) relating to the protection of public health and the protection of animals and plants against diseases, harmful insects and parasites.

Article VIII.

The Government of each Party shall accord sympathetic consideration to representations made by the Government of the other Party with respect to the operation of this Agreement and shall afford the Government of the other Party adequate opportunity for consultation.

Article IX.

1. This Agreement shall be ratified in accordance with the constitutional procedure of each Party and shall enter into force on the date of the exchange of the instruments of ratification, which shall take place at Lima as soon as possible.

2. The term of this Agreement shall be three years; it shall be extended automatically for equal periods unless the Government of either Party gives the Government of the other Party, not later than ninety days before the date of expiry of the current term, notice in writing of its intention to terminate the Agreement.

In witness whereof the plenipotentiaries of the Parties sign this Agreement.

Done in duplicate in the Japanese and Spanish languages, both copies being equally authentic, at Tokyo, this fifteenth day of May one thousand nine hundred and sixty-one.

For Japan:

Zentaro Kosaka

For the Republic of Peru: F. Hilbck

PROTOCOL

At the time of signing the Agreement on Commerce between Japan and the Republic of Peru (1) (hereinafter referred to as "the Agreement"), the undersigned plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the Agreement:

1. The term " companies " as used in the Agreement means corporations, partnerships, companies and other associations engaging in commercial, industrial, financial and other gainful activities.
2. Immigrants shall remain outside the scope of the provisions of article III, paragraph 1.
3. With reference to article III, paragraph 1, neither Party shall be entitled to claim the benefits of such advantages in matters concerning passports and visas as the other Party accords or may hereafter accord to nationals of any third country by virtue of special agreements on a basis of reciprocity.
4. The provisions of article III, paragraph 1, shall not apply to the following advantages accorded by Peru:
 - (a) those based on treaties with adjacent countries, Spain and the Argentine Republic;
 - (b) those based on its obligations as a member of any system of regional integration to which it belongs or may belong; and
 - (c) those which may be required in an emergency.
5. With reference to article III, paragraph 2, either Party may require that treatment with respect to the enjoyment of rights in immovable property shall be subject to reciprocity.
6. Nothing in the Agreement shall be construed as granting any right or imposing any obligation in respect of copyright.
7. The provisions of article IV shall apply to property which is expropriated or used in the territory of either Party and in which nationals and companies of the other Party have interests.
8. Nothing in the Agreement shall be construed as entitling the Republic of Peru to claim the benefit of those rights and privileges which are or may hereafter be accorded by Japan to: (a) persons who originate 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 8 September 1951⁽¹⁾ or (b) the indigenous 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 plenipotentiaries of the Parties sign this Protocol.

Done in duplicate in the Japanese and Spanish languages, both copies being equally authentic, at Tokyo, this fifteenth day of May one thousand nine hundred and sixty-one.

For Japan:

Zentaro Kosaka

For the Republic of Peru: F. Hilbck

(1) See p. 30 of this volume.

(1) United Nations, Treaty Series, Vol. 136, p. 45; Vol. 163, p. 385; Vol. 184, p. 358; Vol. 199, p. 344; Vol. 243, p. 326, and Vol. 260, p. 450.

EXCHANGE OF NOTES

I

Tokyo, 15 May 1961

Your Excellency,

With reference to the Agreement on Commerce between Japan and the Republic of Peru signed today (1), I have the honour to confirm, on behalf of my Government, our common understanding that negotiations will be continued for the purpose of entering as soon as possible into an agreement on navigation, supplementary to the aforesaid Agreement. I have further the honour to request you to be so good as to confirm on behalf of your Government the common understanding stated above.

I have the honour to be, etc.

Zentaro Kosaka

His Excellency Mr. Federico Hilbck Seminario

Ambassador Extraordinary and Plenipotentiary of the Republic of Peru on Special Mission

II

Tokyo 15 May 1961

Your Excellency,

I have the honour to acknowledge receipt of your note of today's date, which reads as follows:

[See note I]

I have further the honour to confirm on behalf of my Government the common understanding stated above.

I have the honour to be, etc.

F. Hilbck

His Excellency Mr. Zentaro Kosaka Minister for Foreign Affairs of Japan

(1) See p. 30 of this volume.

III

Tokyo 15 May 1961

Your Excellency,

With reference to the Agreement on Commerce between the Republic of Peru and Japan signed today, I have the honour to inform you that any Japanese national whose professional qualifications have been confirmed by the competent authorities of my country may practise his profession in Peru, save in those cases where Peruvian nationality is required for such practice.

I have the honour to be, etc.

F. Hilbck

His Excellency Mr. Zentaro Kosaka Minister for Foreign Affairs of Japan

IV Tokyo 15 May 1961

Your Excellency,

I have the honour to acknowledge receipt of your note of today's date concerning the practice of professions in Peru by Japanese nationals. I

I have the honour to be, etc.

Zentaro Kosaka

His Excellency Mr. Federico Hilbck Seminario

Ambassador Extraordinary and Plenipotentiary of the Republic of Peru on Special Mission