

AGREEMENT ON COMMERCE (1) BETWEEN JAPAN AND THE FEDERATION OF MALAYA. SIGNED AT KUALA LUMPUR, ON 10 MAY 1960

The Government of Japan and the Government of the Federation of Malaya, desiring to strengthen and develop the commercial relations existing between Japan and the Federation of Malaya, have resolved to conclude an agreement which will regulate the commercial relations between Japan and the Federation of Malaya and have agreed as follows:

Article I.

1. Each Party shall accord to the other Party unconditional most-favoured-nation treatment in all matters 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 the rules and formalities connected with importation or exportation, and with respect to all internal taxes or other internal charges of any kind imposed on or in connection with imported or exported goods, and with respect to all laws, regulations and requirements affecting internal sale, offering for sale, purchase, distribution or use of imported goods within the territory of such Party.
2. Accordingly, products of either Party imported into the territory of the other Party shall not be subject, in regard to the matters referred to in paragraph 1 of this Article, to any duties, taxes or charges higher, or to any rules or formalities more burdensome, than those to which the like products of any third country are or may hereafter be subject.
3. Similarly, products exported from the territory of either Party and consigned to the territory of the other Party shall not be subject, in regard to the matters referred to in paragraph 1 of this Article, to any duties, taxes, or charges higher, or to any rules or formalities more burdensome, than those to which the like products when consigned to the territory of any third country are or may hereafter be subject.
4. Any advantage, favour, privilege or immunity which has been or may hereafter be granted by either Party in regard to the matters referred to in paragraph 1 of this Article to any product originating in any third country or consigned to the territory of any third country shall be accorded immediately and unconditionally to the like product originating in or consigned to the territory of the other Party.
5. The provisions relating to customs duties and charges in paragraph 1 of this Article shall not entitle Japan to claim the benefit of preferences or advantages accorded by the Federation of Malaya exclusively to products of Commonwealth countries, the Republic of Ireland and the Union of Burma.

(1) Came into force on 16 August 1960, the date of the exchange of the instruments of ratification at Tokyo, in accordance with article XX.

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 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. (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 apply restrictions or controls on the importation and exportation of goods that have effect equivalent to exchange restrictions which such 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, and Vol. 316, p. 269.
No. 5506

Article III.

1. Nationals of either Party shall be permitted to enter, sojourn, travel or reside in the territory of the other Party, provided that the enjoyment of the above rights shall be subject to the laws and legislative and administrative regulations of such other Party which are generally applicable to all foreigners alike.

2. Nationals and companies of either Party, within the territory of the other Party, shall be accorded 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 juridical entities, and generally the conduct of all kinds of business and professional activities.

Notwithstanding the above provisions, 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 not be taken within the territory of the other Party except in accordance with law and in an equitable manner, nor shall it be taken without prompt, adequate and effective compensation. In all the matters dealt with in 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 any third country.

Article V.

The two Parties undertake to co-operate for mutual benefits with a view to expanding trade and to strengthening economic relations between the two Parties, 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.

Article VI.

1. Each Party undertakes that if it establishes or maintains a state enterprise or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the present Agreement for governmental measures affecting imports or exports by private traders. To this end, having due regard to the other provisions of the present Agreement, such enterprise shall make any purchases or sales solely in accordance with commercial considerations including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford to the enterprises of the other Party adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for re-sale or use in the production of goods for sale. With respect to such imports, each Party shall accord to the trade of the other Party fair and equitable treatment.

Article VII.

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 favourable than that accorded to like vessels of such other Party and of any third country within the ports, places and waters of such other Party.

3. Merchant vessels of either Party shall be accorded treatment no less favourable than that accorded to like vessels of the other Party and 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 territory of such other Party; and such goods and persons shall be accorded treatment no less favourable 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. The provisions of the preceding paragraphs shall not apply to coasting trade. Merchant vessels of either Party may, nevertheless, proceed from one port to another within the territory 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.

5. 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.

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 VIII.

Nothing in the present 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 (1) or the Articles of Agreement of the International Monetary Fund or any multilateral agreement amendatory or supplementary thereto, so long as both Parties are contracting parties to the relevant agreement or agreements.

(1) See footnote 1, p. 286 of this volume.
No. 5506

Article IX.

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

- (a) the public security or national defence or the maintenance of international peace and security;
- (b) traffic in arms, ammunition and implements of war;
- (c) the protection of public health and the protection of animals and vegetables against diseases, harmful insects and parasites; and
- (d) trade in gold or silver.

Article X.

1. The Government of each Party shall accord sympathetic consideration to representations made by the Government of the other Party in respect of any matter arising from or in connection with the operation of the present Agreement and shall afford to the Government of the other Party adequate opportunity for consultation.

2. Consultation shall in any event be held at intervals of every two years on the operation of the present Agreement.

Article XI.

1. The present Agreement shall be ratified and shall enter into force on the date of the exchange of instruments of ratification which shall take place as soon as possible at Tokyo.

2. The present Agreement shall remain in force for a period of three years from its entry into force and shall continue in force thereafter provided that it shall be terminated on the date of expiry of the above-mentioned three year period or thereafter if the Government of either Party has previously given to the other at least six months' written notice of its intention to terminate the present Agreement.

In witness whereof the representatives of the two Governments, duly authorised for the purpose, have signed the present Agreement.

Done in duplicate at Kuala Lumpur, this tenth day of May, one thousand nine hundred and sixty.

For the Government of Japan: Kaoru Hayashi

For the Government of the Federation of Malaya: M. K. Johari

At the time of signing the Agreement on Commerce (1) between Japan and the Federation of Malaya, the undersigned representatives, duly authorised by their respective Governments, have agreed on the following provisions, which shall be considered integral parts of the aforesaid Agreement:

1. As used in the present Agreement, the term "companies" means corporations, partnerships, companies and other associations, engaging in commercial, industrial, financial and other business activities for gain.

2. The provisions of paragraph 1 of Article II are not concerned with rules regarding currencies as such and therefore do not preclude differential treatment of different currencies. They are only concerned with the rights of nationals and companies under whatever foreign exchange regulations may be in force and are only designed to preclude discriminations against nationals and companies on a nationality basis in the application of the foreign exchange regulations.

3. Nothing in paragraph 1 of Article III shall be construed so as to entitle Japan to claim the benefit of those rights or privileges which are or may hereafter be accorded by the Federation of Malaya to persons who are (a) citizens of or resident in Singapore, or (b) citizens of Commonwealth countries.

It is further understood that nationals of either Party shall not be entitled to claim the benefit of those rights or privileges which are or may hereafter be accorded by the other Party to persons who are nationals or citizens of any third country with which' such other Party has concluded or may hereafter conclude bilateral agreements relating to matters concerning passports and visas on a basis of reciprocity.

(1) See p. 294 of this volume.

4. With reference to paragraph 2 of Article III, either Party may require that the treatment with respect to the enjoyment of rights on immovable property shall be dependent on reciprocity.

5. Nothing in the present Agreement shall be construed so as to grant any right or impose any obligation in respect of copyright and industrial property right.

6. The provisions of Article IV shall apply to the property taken in the territory of either Party in which nationals and companies of the other Party have direct or indirect interests.

7. Nothing in the present Agreement shall be construed so as to entitle the Federation of Malaya to claim the benefit of those rights and privileges which are or may hereafter be accorded by Japan 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, (1) 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.

Done in duplicate at Kuala Lumpur, this tenth day of May, one thousand nine hundred and sixty.

For the Government of Japan:

Kaoru Hayashi

For the Government of the Federation of Malaya: M. K. Johari

(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.
No. 5506