

No. 2201. TREATY OF COMMERCE¹ BETWEEN THE REPUBLIC OF INDIA AND THE ROYAL KINGDOM OF AFGHANISTAN. SIGNED AT KABUL, ON 4 APRIL 1950

The Republic of India and the Royal Kingdom of Afghanistan, being equally desirous of facilitating and furthering trade and commerce between their respective territories, have resolved to conclude a treaty for this purpose and have appointed as their plenipotentiaries :

The Republic of India :

HIS EXCELLENCY WING COMMANDER RUP CHAND,
Ambassador of the Republic of India in the Royal Court of Kabul;

The Royal Kingdom of Afghanistan :

HIS EXCELLENCY ABDUL MAJID KHAN,

President of the Second Group and Minister of National Economy of Afghanistan,

who, having communicated their full powers found in good and due form, have agreed as follows :

Article 1

The nationals of either contracting party shall have right to carry on commerce, industry, trade or insurance in the territory of the other, in conformity with the laws and regulations in force therein, on terms and conditions not less favourable than those accorded to the nationals of the most-favoured nation.

The provisions of this article shall not preclude the adoption of any measures taken by either contracting party in the interests of public safety and order, public health and morality.

Article 2

The nationals of either contracting party shall receive treatment not less favourable than that accorded to the nationals of the most-favoured nation in regard to the acquisition, possession, management, lease and disposal of all kinds of movable and immovable property, in conformity with the laws and regulations in force in the territory of the other.

¹ Came into force on 24 March 1952, two months after the exchange of the instruments of ratification which took place at Kabul on 24 January 1952, in accordance with article 18.

Article 3

The properties, of whatsoever description, of the nationals of either contracting party shall not be seized or confiscated except for reasons of public interest and only if real and just compensation is given to them for such expropriation.

Article 4

The nationals of either contracting party shall not in the territory of the other be subjected to any taxes, imposts or duties of any kind, direct or indirect, more onerous, in nature or amount, than those imposed on the nationals of the most-favoured nation.

Article 5

The resident nationals of either contracting party as cease to reside in the territory of the other may freely remove their personal belongings and household effects under the same conditions as accorded to the nationals of the most-favoured nation. As regards all other properties, tangible or intangible, they may do so or dispose of them, subject to the laws and regulations in force concerning the removal or disposal of such properties, in order to safeguard the due discharge of all debts and obligations incurred by them in the territory of the other.

Article 6

If a national of either contracting party dies leaving property in the territory of the other, and his legal heirs are unknown or unable or unwilling to represent themselves, the consular representatives of either party shall have the right to take possession of and administer such property of the deceased and in so doing to take all necessary steps to safeguard the property and supervise its disposal according to the laws governing the succession of such national in his territory; provided that for the due discharge of all obligations and debts incurred by the deceased in the territory of the other contracting party, or obligations imposed on his estate by law, such administration shall be subject to the orders of the courts of the other contracting party having jurisdiction to decide such obligations and debts.

Article 7

The nationals of either contracting party shall, in the territory of the other, have the same access to the courts and be entitled to the same equality before the law, as is accorded to the nationals of the other with respect to their persons and proprietary, contractual and other rights and interests.

Article 8

All commercial, industrial, trading, banking or insurance corporations, owned or controlled by the nationals of either contracting party, may be constituted or incorporated in the territory of the other, in conformity with its laws and regulations. Such corporation shall be recognised as legal person in the courts of the contracting parties and may sue or be sued in the courts, as such. For all other purposes including the right of constitution or incorporation, they shall be accorded most-favoured-nation treatment.

Article 9

All commercial, industrial, trading, banking or insurance corporations constituted or incorporated in the territory of one contracting party, and owned or controlled by the nationals of that party, shall similarly be deemed legal persons and may sue and be sued as such in the courts of the other in accordance with the laws and regulations in force in its territory, and shall enjoy most-favoured-nation treatment in the territory of the other.

Article 10

There shall be freedom of transit through the territory of either contracting party via the routes mutually agreed upon by them as most convenient for traffic in transit to or from the territory of either contracting party. Either contracting party may require that traffic in transit through its territory be entered at its proper customs office. Subject to the clauses provided by customs laws and regulations, such traffic coming from or going to the territory of either contracting party shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

Goods (including baggage) shall be deemed to be in transit across the territory of a contracting party when the passage across such territory with or without transshipment, warehousing, breaking bulk or change in the mode of transport is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. "Traffic in transit" in this article means traffic of this nature.

Article 11

Each contracting party shall accord to goods which have been in transit through any third country treatment no less favourable than that which would have been accorded to such goods had they been transported from the territory

of one party to their destination in the territory of the other without going through such third country, provided that the customs authorities of either contracting party are satisfied that such goods have not undergone any sorting, separating, mixing, bottling, repacking or any process of manufacture or any process whereby the value of the goods is altered in the countries of transit. Each contracting party shall, however, be free to maintain its requirements of direct consignment in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to either contracting party's prescribed method of valuation for customs purposes.

Article 12

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 relating to the clearance of goods through the customs, any advantage, favour, privilege or immunity granted by either contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territory of either contracting party.

Article 13

All charges and regulations imposed by either contracting party on traffic in transit to or from either country shall be reasonable, having regard to the conditions of the traffic.

As regards goods imported into the territory of either contracting party from the other, the charges imposed for transportation within the territory of the other will be reasonable having regard to all relevant circumstances. For this purpose, the parties agree on request to consult with each other to see if the charges require modification subject to the above conditions.

Article 14

The contracting parties agree to make arrangements regarding "certificates of origin" in their mutual trade, which shall, as near as circumstances allow, be the same as those usually arranged between different countries.

Article 15

The contracting parties agree that with respect to exchange of specific commodities of one contracting party against specific commodities of the other

party they may enter into trade agreements with each other. To facilitate such agreements they may also agree to enter into arrangements for methods of payment for such arrangements or for surplus goods so exchanged and delivered.

Article 16

The contracting parties agree that the provisions of this Treaty with respect to "most-favoured-nation treatment" shall not be deemed to be contravened by the grant or continuance of (a) advantages accorded or to be accorded by either of the contracting parties to contiguous countries, (b) advantages resulting from any customs unions or free-trade area to which either of the contracting parties is or may become a party, (c) preferences or advantages accorded by either contracting party to any country, existing on the date of this or in replacement of such preferences or advantages, or (d) advantages accorded or to be accorded by virtue of a multilateral economic agreement designed to liberalise international commerce.

Article 17

The contracting parties agree that all disputes arising out of the application or the interpretation of the Treaty shall be settled by peaceful means and in the first instance by negotiations through the ordinary diplomatic channels, within a reasonable time.

Article 18

This Treaty shall be subject to ratification. When ratified, ratifications shall be exchanged as soon as possible at Kabul as may be mutually convenient and agreed on. This Treaty shall come into force two months after the date of the exchange of ratifications and shall remain in force for a period of three years from that date. It shall terminate at the end of this period if either contracting party shall notify the other party of its intention not to continue the Treaty at least six months before the date of expiry. If no such notice is given, the Treaty shall continue in force for another period of two years. After the expiry of these two years, the Treaty can be terminated at any time by either contracting party giving notice to the other party, at least six months before the date on which it wishes to terminate the Treaty.

This treaty is drawn up in two languages, English and Persian. Both texts shall be regarded as equally authentic and valid.

IN FAITH WHEREOF the respective plenipotentiaries have signed the present Treaty.

For the Republic of India :
[SEAL]

FINAL PROTOCOL

On proceeding to sign the Treaty of Commerce between the Republic of India and the Royal Kingdom of Afghanistan the undersigned plenipotentiaries have agreed on the following declarations and reservations on the meaning of certain terms used in the Treaty and certain matters not specifically covered by the Treaty.

1. In order to enable such nationals to exercise the right as to commerce, etc., granted to them, it is understood that they shall have the right of entry into, residence and travel in the territory of the other party in conformity with the laws and regulations in force therein. The treatment accorded to them in these matters shall, nevertheless, not be less favourable than that accorded to the nationals of the most-favoured nation.

2. The nationals of either contracting party shall be exempt, in peace or war, from all military services whatsoever, or other obligatory services of the like nature and from all obligations or payments imposed in lieu of such services, provided, however, that in the case of natural catastrophes such services, of a civil nature, as are imposed on the nationals of either contracting party may also be imposed on the resident nationals of the other to the same extent and under the same conditions.

3. The assembly of vehicles and mobile machinery arriving in a knocked-down condition, or the disassembly (or the disassembly and subsequent reassembly) of bulky articles, shall not be held to render the passage of such goods outside the scope of "traffic in transit" in Article 10 provided that any such operation is undertaken solely for convenience of transport.

4. Such transshipment, warehousing, breaking bulk or change in the mode of transport as is done solely for convenience of transport shall not be deemed to contravene the provisions of Article 11 with respect to repacking.

5. If the negotiations referred to in Article 17 fail, the parties shall endeavour to arrive at a settlement by such means as may be mutually agreed upon in any particular case before resorting to the Court of International Justice.

6. This protocol shall form an integral part of the Treaty and shall be considered as approved and sanctioned by the contracting parties without any special ratification by the sole fact of the exchange of ratifications of the Treaty to which it appertains. It has been drawn up in two languages, English and Persian, both texts being equally authentic and valid on the day.