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Basic Treaty of Friendship and Co-operation between Australia and Japan



Signed: Tokyo 16 June 1976

Entry into force: 21 August 1977

TREATY SERIES 1977

No. 19

Affirming the spirit of friendship and co-operation on which relations between the two countries are based, and wishing to place their relations on an even closer and more concrete basis,

Acknowledging the importance to each country of the wide-ranging relationship between them and the close and enduring connexion between the well-being of their peoples,

Wishing to enhance the valuable contribution to their relations made by the existing agreements between the two countries in various fields,

Resolved to provide wider opportunities for their governments and their peoples to work together in a spirit of understanding on matters of mutual interest in the political, economic, trade, commercial, social, cultural and other fields,

Convinced of the importance of strengthening and diversifying their relations on an equitable and mutually advantageous basis in a long-term perspective,

Recognising that co-operation between the two countries should have in view not only their own mutual benefit but also their common interest in the prosperity and welfare of other countries, including those in the Asian and Pacific region, of which they are part,

Convinced that the conclusion of a Treaty which formally embodies and further advances the friendship and co-operation between the governments and peoples of the two countries will facilitate the further development of their relations,

Have resolved to conclude a Basic Treaty of Friendship and Co-operation and for that purpose have appointed as their Plenipotentiaries:

Australia: John Malcolm Fraser, Prime Minister,

Japan: Takeo Miki, Prime Minister,

Who, having communicated to each other their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

1. The basis of relations between Australia and Japan shall be enduring peace and friendship between the two countries and their peoples.
2. The objective of the present Treaty shall be to extend and strengthen relations between the Contracting Parties, in particular by promoting understanding between the two countries and their peoples and by developing co-operation on matters of mutual interest.
3. The Contracting Parties, noting that the agreements existing between them are consistent with the objective expressed in paragraph 2 of this Article, may enter into further agreements between them, wherever necessary, on matters dealt with in the present Treaty or on other matters, including those not covered by the existing agreements.

ARTICLE II

The Contracting Parties, recognising the importance of peaceful and friendly relations among countries in the international community, shall co-operate with each other in accordance with the Principles of the Charter of the United Nations in maintaining and strengthening those relations.

ARTICLE III

1. The Contracting Parties shall endeavour to facilitate, strengthen and diversify mutual understanding and co-operation in such areas of mutual interest as the political, economic, labour relations, human rights, legal, scientific, technological, social, cultural, professional, sporting and environmental fields. To this end, the Contracting Parties shall encourage and promote in these fields, to the fullest extent practicable, appropriate study and research, exchange of information, knowledge and visits, and other suitable activities.

2. The Contracting Parties shall also develop mutual understanding and co-operation in those international organisations or which both Contracting Parties are members and which are concerned with any of the fields referred to in paragraph 1 of this Article.

3. The Contracting Parties shall collaborate closely with each other in developing the mutual understanding and co-operation referred to in paragraphs 1 and 2 of this Article. To this end, they shall hold consultations, whenever necessary, on matters in the fields referred to in paragraphs 1 and 2 of this Article, making use, where appropriate, of the means provided for in existing agreements or arrangements.

ARTICLE IV

The Contracting Parties recognise that the continuous expansion of international trade on an open, multilateral and non-discriminatory basis is of fundamental importance for the sound development of the world economy. They shall co-operate with each other to this end, in accordance with the objectives and principles of the General Agreement on Tariffs and Trade,¹ the Articles of Agreement of the International Monetary Fund,² the Convention on the Organisation for Economic Co-operation and Development³ and other relevant multilateral agreements to which both Contracting Parties are parties.

ARTICLE V

1. The Contracting Parties, recognising the importance of their relations in the economic, trade and commercial fields, shall co-operate in strengthening and developing those relations on the basis of mutual benefit and trust.

2. In respect of trade between the two countries, each Contracting Party, recognising a mutual interest in each being a stable and reliable supplier to and market for the other, shall promote the further strengthening and development of trade between the two countries on a fair and stable basis.

ARTICLE VI

The Contracting Parties recognising the importance to them of mineral resources, including energy resources, shall co-operate in the trade in and development of those resources in accordance with the provisions of Article V.

ARTICLE VII

The Contracting Parties, in accordance with the objectives and principles of international agreements to which both Contracting Parties are parties and also in accordance with the provisions of Article V, shall co-operate in the exchange of capital and technology in a mutually acceptable and beneficial manner.

ARTICLE VIII

1. Each Contracting Party shall accord to the nationals of the other Contracting Party fair and equitable treatment with respect to their entry into, sojourn or residence in, travel within and departure from its territory, provided that in no case shall such treatment be discriminatory between nationals of the other Contracting Party and nationals of any third country.

2. Each Contracting Party shall endeavour to simplify its procedures relating to

(a) the entry into its territory or nationals of the other Contracting Party;

(b) the departure from its territory of nationals of the other Contracting Party;

and

(c) the registration as aliens of nationals of the other Contracting Party.

ARTICLE IX

1. The nationals of one Contracting Party shall enjoy within the territory of the other Contracting Party constant and complete protection and security for their persons and property.

2. The nationals of one Contracting Party shall enjoy within the territory of the other Contracting Party access to courts of justice and tribunals in accordance with law.

3. Each Contracting Party shall accord within its territory to the nationals of the other Contracting Party fair and equitable treatment with respect to matters relating to their business and professional activities, provided that in no case shall such treatment be discriminatory between nationals of the other Contracting Party and nationals of any third country.

4. The property of nationals of one Contracting Party within the territory of the other Contracting Party shall not be compulsorily taken unless for a public purpose and unless prompt, adequate and effective compensation is paid. Without prejudice to the foregoing, with respect to all matters dealt with in this paragraph, the nationals of one Contracting Party shall be accorded within the territory of the other Contracting Party treatment which shall in no case be discriminatory between those nationals and nationals of any third country.

5. In paragraphs 1, 2, 3 and 4 of this Article, the term `nationals' shall include companies except where the context otherwise requires.

6. The companies of one Contracting Party which are controlled, directly or indirectly, or in which more than one half of the interests are owned, directly or indirectly, by nationals or companies of the other Contracting Party shall be accorded within the territory of the former Contracting Party, with respect to matters dealt with in paragraphs 1, 2, 3 and 4 of this Article, the treatment prescribed therein; provided that the requirement prescribed in paragraphs 3 and 4 shall be applied as between such companies and companies of the former Contracting Party which are controlled, directly or indirectly, or in which more than one half of the interests are owned, directly or indirectly, by nationals or companies of any third country.

ARTICLE X

The Contracting Parties, recognising that international shipping activities between the two countries play a significant role in the development of their economic, trade and commercial relations, and bearing in mind the objectives and principles of international agreements to which both Contracting Parties are parties, shall promote mutual co-operation for the development of shipping between the two countries on a fair and mutually advantageous basis.

ARTICLE XI

The Contracting Parties shall periodically review, at the ministerial level, the general operation of the present Treaty with a view to ensuring that the purposes of the present Treaty are being fully realised.

ARTICLE XII

Each Contracting Party may make representations to the other Contracting Party on matters arising out of or in connexion with the implementation of the present Treaty. Any such representations shall receive sympathetic consideration. Where appropriate the Contracting Parties shall consult together on such matters.

ARTICLE XIII

Nothing in the present Treaty shall affect the validity of agreements which are in force between the Contracting Parties at the date of signature of the present Treaty.

ARTICLE XIV

1. The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Canberra as soon as possible.⁴

2. The present Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.⁵ It shall remain in force until the expiry of twelve months from the date on which either Contracting Party gives to the other Contracting Party written notice of its intention to terminate the present Treaty.

IN WITNESS WHEREOF the abovenamed Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

DONE in duplicate, in the English and Japanese languages, each text being equally authentic, at Tokyo, this sixteenth day of June one thousand nine hundred and seventy six.

(Signed)

MALCOLM
for the Commonwealth of Australia

FRASER

(Signed)

TAKEO
for the Government of Japan

MIKI

1 Australian Treaty Series 1948 No. 21; (Cmd. 7258); United Nations Treaty Series 55 p. 187.

2 United Kingdom Treaty Series No. 21 or 1946 (Cmd 6885) United Nations Treaty Series 2 p. 39.

3 Australian Treaty Series 1971 No it; United Kingdom Treaty Series No. 21 of 1962 (Cmnd. 1646).

4 Instruments of ratification were exchanged on 21 July 1977.

5 The Treaty entered into force on 21 August 1977

Protocol

At the time of signing the Basic Treaty of Friendship and Co-operation between Australia and Japan (hereinafter referred to as "the treaty"), the undersigned Plenipotentiaries, duly authorised by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the Treaty:

1. Nothing in the Treaty shall

(a) entitle either Contracting Party to claim the benefit of any treatment, preference or privilege

(i) that the other Contracting Party has accorded or may hereafter accord to any developing country or to its nationals or companies by virtue of special agreements or arrangements with that developing country for the purpose of economic development or technical assistance;

(ii) in the nature of special tax advantages that the other Contracting Party has accorded or may hereafter accord on a basis of reciprocity or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion; or

(iii) relating to passports or visas which the other Contracting Party has accorded or may hereafter accord to nationals of any third country by virtue of special agreements or arrangements;

(b) entitle Australia to claim the benefit of any treatment, preference or privilege which is or may hereafter 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 provisions of Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco on 8 September 1951; or

(c) entitle Japan to claim the benefit of any treatment, preference or privilege which is or may hereafter be accorded by Australia

(i) to any country or to its nationals or companies, where that treatment, preference or privilege originates from that country's membership of the Commonwealth of Nations;

(ii) to Ireland or to its nationals or companies;

(iii) to Papua New Guinea or to its nationals or companies;

(iv) to any non-metropolitan area for the international relations of which Australia is responsible at the date of signature of the Treaty, or to its residents or companies; or

(v) to any third country or to its nationals who are migrants to Australia, by virtue of a special agreement on migration between Australia and that country, with respect to matters relating to the entry into Australia for residence of such migrants or matters incidental to such entry.

2. Nothing in the Treaty shall affect the rights and obligations that either Contracting Party has or may hereafter have as a party to the General Agreement on Tariffs and Trade the Articles of Agreement of the International Monetary Fund the Convention on the Organisation for Economic Co-operation and Development or any multilateral agreement amending or supplementing them, or other relevant multilateral agreements to which both Contracting Parties are parties.

3. For the purposes of the Treaty, the term "companies"

(a) in relation to a Contracting Party means legal persons incorporated pursuant to the laws in force in the territory of that Contracting Party; and

(b) in relation to any third country means legal persons incorporated pursuant to the laws in force in the territory of that country.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Protocol and have affixed thereto their seals.

DONE in duplicate, in the English and Japanese languages, each text being equally authentic, at Tokyo, this sixteenth day of June one thousand nine hundred and seventy-six.

(Signed)

MALCOLM
for the Commonwealth of Australia

FRASER

(Signed)

TAKEO
for the Government of Japan

MIKI

6 Australian Treaty Series 1952 No. 1, United Kingdom Treaty Series No 33 of 1952 (Cmd. 8601), United Nations Treaty Series 136 p. 45.

(Note from the Prime Minister of Australia to the Prime Minister of Japan)

Exchange of notes relating to the non-metropolitan areas of Australia

(Note No. 1)

Tokyo, 16 June 1976

Excellency,

I have the honour to refer to the Basic Treaty of Friendship and Co-operation between Australia and Japan signed today.

It is the understanding of the Government of Australia that, as regards Australia, the Treaty will apply only to the metropolitan area of Australia and not to any of the non-metropolitan areas for the international relations of which Australia is responsible. I should be grateful if Your Excellency would confirm on behalf of Your Excellency's Government that the foregoing is also the understanding of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed)
Plenipotentiary of Australia

MALCOLM

FRASER

His
Mr
Plenipotentiary of Japan

Takeo

Excellency
Miki

(Note from the Prime Minister of Japan to the Prime Minister of Australia)

(Note No. 2)

Tokyo, 16 June 1976

Excellency,

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

(As in No. 1)

I have further the honour to confirm on behalf of my Government that the foregoing is also the understanding of the Government of Japan.

I have the honour to renew to Your Excellency the assurance of my highest consideration.

(Signed) TAKEO MIKI

Plenipotentiary of Japan

His Excellency

Mr John Malcolm Fraser

Plenipotentiary of Australia

(Note from the Prime Minister of Australia to the Prime Minister of Japan)

Exchange of notes relating to Article VIII

(Note No. 3)

Tokyo, 16 June 1976

Excellency,

I have the honour to refer to Article VIII of the Basic Treaty of Friendship and Co-operation between Australia and Japan signed today and to confirm, on behalf of the Government of Australia, the following understanding reached between the representatives of the two Governments:

1. Each Government shall permit, in accordance with the relevant laws and regulations, nationals of the other country entering its territory temporarily for business purposes to stay therein initially for a period of one hundred and eighty days.

2. Each Government intends to treat nationals of the other country entering its territory for the following purposes and their spouses and their unmarried minor children as favourably as possible within the scope of the relevant laws and regulations, when determining their period of stayæ

(a) for the purpose of carrying on trade between the two countries or engaging in related commercial activities;

(b) for the purpose or developing or directing the operations of an enterprise; or

(c) for other purposes recognised by the laws and regulations relating to the entry and sojourn of aliens.

3. Each Government intends, in the application of the relevant laws and regulations not to take discriminatory measures when the nationals of the other country referred to in paragraphs 1 and 2 above file applications for the renewal of the period of stay

under their current authorised status, and to give to such applications as favourable consideration as possible.

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 renew to Your Excellency the assurance of my highest consideration.

(Signed) MALCOLM FRASER

Plenipotentiary of Australia

His Excellency

Mr Takeo Miki

Plenipotentiary of Japan

(Note from the Prime Minister of Japan to the Prime Minister of Australia)

(Note No. 4)

Tokyo, 16 June 1976

Excellency,

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

(As in No. 3)

I have further the honour to confirm on behalf of my Government the understanding set forth in Your Excellency's Note.

I have the honour to renew to Your Excellency the assurance of my highest consideration.

(Signed)
Plenipotentiary of Japan

TAKEO

MIKI

His
Mr John
Plenipotentiary of Australia

Malcolm

Excellency
Fraser

Agreed Minutes

In connexion with the Basic Treaty of Friendship and Co-operation between Australia and Japan (hereinafter referred to as 'the Treaty') signed today and the instruments related thereto, the Plenipotentiaries of Australia and of Japan hereby record the following understandings:

1. It is confirmed that the treatment prescribed in the provisions of paragraph I of Article VIII and paragraph 3 of Article IX of the Treaty will in effect be treatment which is no less favourable than that accorded to nationals of any third country, it being understood that these provisions in no way require either country to accord to nationals of the other country treatment which has been accorded to nationals of any third country under policies which are then no longer operative.
2. The term 'property' used in Article IX of the Treaty includes rights and interests therein.
3. The term 'matters relating to business and professional activities' used in paragraph 3 of Article IX of the Treaty comprises the levying of taxes, fees or charges of any kind, study and research, the making and performance of contracts, rights to property, participation in companies, investment activities and generally the conduct of all types of commercial, industrial, financial and other business activities as well as professional activities.
4. The provisions of Article IX of the Treaty will not be construed so as to affect in any way the right of either country to make provision in its legislation for the seizure or forfeiture of property for suspected breaches or breaches of its laws and to apply such legislation.
5. It is understood that the reference to Papua New Guinea in paragraph I of the Protocol to the Treaty is made in view of the now existing state of relations between Australia and Papua New Guinea and that in future the Governments of Australia and Japan will consult each other with a view to examining whether the treatment accorded by Australia to Papua New Guinea should fall within the scope of the provisions of the Treaty.
6. The terms 'the relevant laws and regulations' and 'the laws and regulations' used in the Exchange of Notes relating to Article VIII of the Treaty include administrative procedures.
7. It is noted that the Treaty recognises the importance of trade matters between the two countries and that arrangements between Australia and Japan regarding specific treatment to be accorded by the two countries are prescribed in other agreements, specifically related to trade, to which they are parties.

8. If either country claims, on the basis of provisions of the Treaty, the benefit of any treatment accorded or which may be accorded under any multilateral agreement to which it is not a party, the Governments of the two countries will consult together as to whether the benefit claimed falls within the scope of the provisions of the Treaty, taking into account the relevant circumstances, including the character of the multilateral agreement in question.

Tokyo, 16 June 1976

(Initiated) M.F. (Initiated) T.M.

Record of discussion

In connexion with the Basic Treaty of Friendship and Co-operation between Australia and Japan signed today, the Plenipotentiaries of Australia and of Japan wish to record the following:

The representative of the Government of Australia stated, with particular reference to Articles VI, VII and IX of the Treaty, that it was Australia's position that the aspirations of each country in relation to the ownership and control of its resources and industries and to the rational and efficient development of its mineral and energy resources were to be taken into account by the two Governments.

In response, the representative of the Government of Japan stated that he noted the statement of the representative of the Government of Australia.

Tokyo, 16 June 1976

(Initialed) M.F.

(Initialed) T.M.