

No. 3356

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**UNITED STATES OF AMERICA  
and  
PHILIPPINES**

**Exchange of notes (with annex) constituting an agreement  
relating to entry rights of traders and investors.  
Washington, 6 September 1955**

*Official text: English.*

*Registered by the United States of America on 8 May 1956.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
PHILIPPINES**

**Échange de notes (avec annexe) constituant un accord  
relatif au droit d'entrée des négociants et des détenteurs  
de capitaux. Washington, 6 septembre 1955**

*Texte officiel anglais.*

*Enregistré par les États-Unis d'Amérique le 8 mai 1956.*

No. 3356. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND THE PHILIPPINES RELATING TO ENTRY RIGHTS OF TRADERS AND INVESTORS. WASHINGTON, 6 SEPTEMBER 1955

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I

*The Special Representative of the President of the United States of America to the Special and Personal Envoy of the President of the Philippines*

September 6, 1955

Excellency :

I have the honor to refer to the conversations which have recently taken place between representatives of the Governments of the United States of America and the Republic of the Philippines regarding the desirability of establishing a stable and enduring basis, grounded in reciprocity, for the entry of nationals of either country into the territories of the other for purposes of trade, investment and related activities, and for their sojourn therein, and acting, on the part of the United States, pursuant to and subject to the provisions of Public Law 419, 83d Congress of the United States of America.

My understanding of the agreement reached as a result of these conversations is as follows :

1. Persons coming within any of the following categories shall be permitted to enter the territories of either country as nonimmigrants :

- (a) Nationals of either country who seek to enter the territories of the other country solely to carry on substantial trade principally between the territories of the two countries.
- (b) Nationals of either country who seek to enter the territories of the other country solely to develop and direct the operations of enterprises in which they have invested, or are actively in the process of investing, a substantial amount of capital.
- (c) Spouses and unmarried minor children of persons referred to in sub-paragraphs (a) and (b), if accompanying or following to join such nationals.

2. Persons who enter either country in accordance with the provisions of paragraph 1 shall be permitted to remain therein during such period as they maintain the status in which they were admitted.

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<sup>1</sup> Came into force on 6 September 1955 by the exchange of the said notes.

3. The provisions of paragraphs 1 and 2 shall be subject to the right of either Government to exclude or expel particular individuals, on any of the grounds specified in the immigration laws, for the purpose of protecting public order, health, morals and safety.

4. The word "substantial" as used herein with reference to trade or investment shall not be interpreted to discourage particular types of investment or necessarily to exclude small traders or investors. The criteria for determining eligibility for treaty investors and treaty traders status have been influenced by considerations of preventing abuse or evasion of the two countries' immigration laws, including quota restrictions. What constitutes a substantial investment is a relative matter and is not determined alone by size of investment.

5. The territories to which this agreement shall apply with respect to the United States are the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands.

6. The present agreement shall remain in force until July 3, 1974, and thereafter until terminated as provided herein. Either Government may, by giving one year's written notice to the other Government, terminate this agreement at the end of the initial period, July 3, 1974, or at any time thereafter.

There are annexed hereto certain regulations and an explanatory note which set forth the principles presently applied by my Government in the enforcement of those provisions of the United States immigration laws equivalent to the provisions set forth above. I request to be informed whether your Government considers these as providing appropriate guidance to both Governments in the application of the present agreement with respect to the subjects to which they relate and, if so, that your Government will apply comparable regulations and interpretations in the enforcement of the provisions set forth above.

Upon receipt of a note from you indicating that the foregoing is acceptable to the Government of the Republic of the Philippines, the Government of the United States of America will consider this note and your reply as constituting an agreement between the two Governments on this subject, the agreement to enter into force on the date of your note in reply.

Accept, Excellency, the assurances of my highest consideration.

James M. LANGLEY  
Special Representative of the President  
of the United States of America

Enclosure :  
Annex.

His Excellency Carlos P. Rómulo  
Special and Personal Envoy of the President of the Philippines

## ANNEX

*Section 41.71 (b), Title 22, United States Code of Federal Regulations*

(b) An alien applying for a visa as a nonimmigrant treaty trader under the provisions of section 101 (a) (15) (E) (i) of the Act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that :

- (1) He is proceeding to the United States solely for the purpose of carrying on substantial trade principally between the United States and the foreign state of which he is a national, under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and such foreign state. In this connection, bank statements, invoices, and correspondence from persons or organizations with whom or with which he has, and will have, commercial relations, may be required ;
- (2) He intends in good faith, and will be able, to depart from the United States upon the termination of his status ; and that
- (3) If he is employed or to be employed, his employer shall be a foreign person or organization and he shall be engaged in duties of a supervisory or executive character, or if he is, or is to be, employed in a minor capacity, he has special qualifications which make his services essential to the efficient operations of the employer. An alien employed solely in a manual capacity shall not be entitled to classification as a treaty trader.

*Section 41.76 (b), Title 22, United States Code of Federal Regulations*

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (E) (ii) of the Act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that :

- (1) He seeks to enter the United States solely for the purpose of developing and directing the operations of an enterprise in the United States : (i) In which he has invested, or is actively in the process of investing, a substantial amount of capital ; or (ii) in which his employer has invested, or is actively in the process of investing, a substantial amount of capital : *Provided*, That such employer is a foreign person or organization of the same nationality as the applicant and that the applicant is employed by such person or organization in a responsible capacity ; or
- (2) He seeks to enter the United States as the spouse or child of an alien described in subparagraph (1) of this paragraph ; and
- (3) He is not applying for a nonimmigrant visa in an effort to evade the quota or other restrictions which are applicable to immigrants ;
- (4) He intends in good faith, and will be able, to depart from the United States upon the termination of his status ; and
- (5) The enterprise is one which actually exists or is in active process of formation, and is not a fictitious paper operation.

*Explanatory Note to Section 41.71 (b) (3)*

A foreign organization within the meaning of this Section is an organization which possesses the nationality of the alien desiring to qualify as a "treaty trader". The fact that an organization is incorporated under the laws of a State of the United States does not necessarily determine that it is not a foreign organization. The nationality of such a corporation may be determined for visa purposes by the nationality of those persons who own the principal amount (i.e., 51 percent or more of the stock of that corporation).

## II

*The Special and Personal Envoy of the President of the Philippines to the Special Representative of the President of the United States of America*

EMBASSY OF THE PHILIPPINES

WASHINGTON

September 6, 1955

Excellency :

I have the honor to acknowledge the receipt of your note of today's date regarding the recent negotiations between representatives of the Government of the Republic of the Philippines, acting pursuant to and subject to the provisions of Republic Act No. 1393 of the Republic of the Philippines, and representatives of the Government of the United States of America, acting pursuant to and subject to the provisions of Public Law 419, 83rd Congress, of the United States of America, for the conclusion of an agreement, based on reciprocity, for the entry of nationals of either country into the territories of the other for purposes of trade, investment and related activities, and for their sojourn therein.

The terms of the agreement which has been reached as a result of these negotiations, as expressed in your note, are as follows :

[See note I]

In addition, there are annexed to your note certain regulations, with an explanatory note, setting forth principles applied by the Government of the United States in the enforcement of the United States immigration laws equivalent to the provisions of the agreement. You request to be informed whether the Government of the Republic of the Philippines will apply comparable regulations and interpretations in implementing the terms of the agreement. I wish to inform you that my Government considers the regulations and explanatory note annexed to your note as furnishing appropriate guidance in carrying out the agreement and that my Government will apply comparable regulations and interpretations.

The agreement set forth above is acceptable to my Government and, in accordance with the statement made in the last paragraph of your note under reference, the Government of the Republic of the Philippines considers your note and this reply as constituting an agreement between our two Governments, which enters into force as of today.

Accept, Excellency, the assurances of my highest consideration.

Carlos P. RÓMULO  
Special and Personal Envoy  
of the President of the Philippines

His Excellency James M. Langley  
Special Representative of the President  
of the United States of America