

No. 4703

**AUSTRALIA
and
FEDERATION OF MALAYA**

**Trade Agreement (with schedules, exchange of letters and
agreed minutes). Signed at Kuala Lumpur, on 26 August
1958**

Official text: English.

Registered by Australia on 9 March 1959.

**AUSTRALIE
et
FÉDÉRATION DE MALAISIE**

**Accord commercial (avec tableaux, échange de lettres et
procès-verbal approuvé). Signé à Kuala Lumpur, le
26 août 1958**

Texte officiel anglais.

Enregistré par l'Australie le 9 mars 1959.

No. 4703. TRADE AGREEMENT¹ BETWEEN THE COMMONWEALTH OF AUSTRALIA AND THE FEDERATION OF MALAYA. SIGNED AT KUALA LUMPUR, ON 26 AUGUST 1958

The Government of the Commonwealth of Australia (hereinafter referred to as the Australian Government) and the Government of the Federation of Malaya (hereinafter referred to as the Federation Government), having resolved to establish a new trading relationship between their two countries for the purpose of facilitating and extending their commercial relations, have agreed as follows :

Article I

1. In connection with duties, taxes and other charges relating to the importation or exportation of goods, or to imported or exported goods, each Government undertakes to accord the goods of the other country treatment no less favourable than that accorded goods originating in, or destined for, any other country.

2. The provisions of paragraph 1 of this Article shall not require either Government to extend preferences to the other to an extent inconsistent with the existing provisions of Article II (Revised) of the General Agreement on Tariffs and Trade.²

Article II

1. No prohibitions or restrictions, whether made effective through quotas, licences or other measures shall be applied by the Government of either country to the goods of the other country unless such prohibitions or restrictions are applied to goods from all other countries.

2. In all matters relating to the allocation of foreign exchange involving importation of goods, the Government of each country shall accord to the other country treatment no less favourable than it accords to any third country.

3. Notwithstanding the provisions of paragraphs 1 and 2 either Government may take such measures as may be necessary to safeguard its external financial position and balance of payments.

¹ Came into force on 26 August 1958, the date of signature, in accordance with article X. The instruments of ratification were exchanged at Kuala Lumpur on 11 December 1958.

² See footnote 1, p. 132 of this volume.

Article III

1. The Federation Government undertakes to apply to the Australian goods listed in Schedule A¹ rates of duty no higher than those specified in that Schedule.

2. The Australian Government undertakes to apply to the Federation goods listed in Schedule B² rates of duty no higher than those specified in that Schedule.

Article IV

1. The Federation Government undertakes to accord :

- (a) to the Australian goods listed in Schedule C² margins of preference not lower than those set out in that Schedule ; and
- (b) to other Australian goods, any margins of preference accorded to any other country, provided that the margins of preference are not inconsistent with the provisions of the General Agreement on Tariffs and Trade at the date of this agreement.

2. The Australian Government undertakes to accord :

- (a) to the Federation goods listed in Schedule D² margins of preference not lower than those set out in that Schedule ; and
- (b) to other Federation goods, any margins of preference accorded to any other country, provided that the margins of preference are not inconsistent with the provisions of the General Agreement on Tariffs and Trade at the date of this Agreement.

3. Each Government agrees to inform the other before reducing or eliminating margins of preference which are accorded at the date of this agreement to goods in which the other country has an active trade interest.

Article V

1. Notwithstanding the provisions of Article III should either Government wish to apply a rate of duty in excess of that provided for under the terms of that Article, and notwithstanding the provisions of Article IV should either Government wish to apply a margin of preference lower than that provided for under the terms of that Article, or should either Government wish to take any measure inconsistent with other obligations under the Agreement, it shall enter into consultations with the other Government for the purpose of seeking a mutually satisfactory adjustment.

¹ See p. 262 of this volume.

² See p. 264 of this volume.

2. It is agreed that consultations as provided for in the preceding paragraph shall commence within a period of thirty days after a request for consultations has been made.

3. In any such consultations the initiating Government will, as far as practicable, offer substantially equivalent concessions or undertakings in place of the concession or undertaking proposed to be withdrawn. In the event that agreement cannot be reached within a period of ninety days after the commencement of consultations the initiating Government shall nevertheless be free to withdraw the concession or undertaking.

4. If a concession or undertaking is withdrawn by one Government in accordance with paragraph 3, the other Government shall be free to withdraw substantially equivalent concessions or undertakings as may be agreed, or if it considers that the withdrawal will seriously impair the balance of the Agreement, to terminate the Agreement at sixty days' notice.

Article VI

1. The Australian Government undertakes that natural rubber and latex shall be accorded tariff and import treatment no less favourable than that accorded in respect of synthetic rubber and synthetic rubber emulsions (latices). This undertaking shall not be held to apply to synthetic rubber for purposes for which there is no technically acceptable type of natural rubber.

2. The Australian Government, noting that the Federation supplies the major portion of Australia's requirements of natural rubber, latex and tin and that these products have traditionally been the Federation's most important exports to Australia, recognises that exports of rubber and tin from the Federation to Australia may be materially injured by the competition of dumped or subsidised exports of natural or synthetic rubber or of tin from third countries.

3. If after consultation, it is established that dumped or subsidised exports of one or more of these products have injured or threaten to injure Federation exports to the Australian market, the Australian Government will on request and as promptly as possible consistent with its international obligations impose anti-dumping or countervailing duties or take alternative remedial measures in order to ensure that exports from the Federation of the product or products concerned shall have access to the Australian market on a basis of fair commercial trade.

4. If the Federation Government considers that the remedial action taken by the Australian Government under paragraph 3 of this Article is not effective, the Federation Government may call for a re-negotiation of the Agreement.

Article VII

1. It is the expectation of the two Governments that sales on commercial terms of Australian wheat flour and wheat to the Federation will be at least 80,000 long tons of flour and 14,000 long tons of wheat each year.

In the event of sales on commercial terms of Australian wheat flour and Australian wheat having in any one calendar year fallen below 80,000 tons of wheat flour or 14,000 tons of wheat, or if it appears probable that in any one calendar year sales will fall below 80,000 or 14,000 tons respectively as a result of competition of dumped or subsidised exports of wheat flour or wheat from third countries, the Federation Government will on request consult with the Australian Government.

3. If after consultation it is established that sales have fallen or are likely to fall below the specified minimum quantities as a result of injury or threatened injury from dumped or subsidised exports, the Federation Government will as promptly as possible consistent with its international obligations impose anti-dumping or countervailing duties or take alternative remedial measures in order to ensure that Australian exporters shall have the opportunity to supply the specified minimum quantities on commercial terms.

4. If the Australian Government considers that the remedial action taken by the Federation Government under paragraph 3 of this Article is not effective, the Australian Government may call for a re-negotiation of the Agreement.

Article VIII

Each Government undertakes, in respect of purchases by the Government or on its behalf, to accord the other country treatment not less favourable than that accorded any other country.

Article IX

The two Governments recognise that there are other matters including their import, export and marketing policies, surplus disposal transactions, restrictive business practices, and shipping, not otherwise dealt with in this agreement which may have a material effect on the level of trade and commerce between Australia and the Federation. The two Governments agree to consult together about any such matter at the request of either.

Article X

1. This Agreement shall enter into force on the date of signature and shall be subject to the exchange of instruments of ratification.

2. The two Governments shall consult together from time to time at the request of either Government, and at intervals of not more than two years, for the purpose of reviewing the operation of the Agreement, or any Article thereof.

3. Subject to the provisions of this Agreement relating to renegotiation or termination, the Agreement shall remain in force for a period of three years from the date of signature and unless notice of termination has been given six months before the expiry of that period, shall remain in force thereafter until the expiry of six months from the date on which notice of termination is given by either Government.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the Agreement.

DONE at Kuala Lumpur in duplicate, the 26th day of August, 1958.

For the Government of the Commonwealth of Australia :
J. MCEWEN

For the Government of the Federation of Malaya :
TAN SIEW SIN

SCHEDULE A

Federation Tariff Item	Description of Goods	Rate of Duty
36 (c)	Zinc and zinc alloy sheets— <i>ad valorem</i>	10 per cent.
72	Cheese— <i>ad valorem</i>	7½ per cent.
Unspecified	Wheat flour	Free
Unspecified	Wheat	Free
Unspecified	Bran and pollard	Free
Unspecified	Zinc and zinc alloy—bars, wire, tubes, castings, forgings and other profile shapes	Free
Unspecified	Tallow edible	Free
Unspecified	Tallow inedible	Free

SCHEDULE B

Australian Tariff Item	Description of Goods	Rate of Duty
291 (H) (3)	Timber, undressed, n.e.i., viz. : Other—In sizes less than 7 inches × 2½ inches (or its equivalent)—	
(b)	Other per 100 super ft.	12s.
Ex 331 (A) and (D)	Natural rubber not processed or processed to a lesser extent than the state of preformed shapes, viz. : Latex— As prescribed by Departmental By-laws Other—on the rubber content per lb. Other than latex— As prescribed by Departmental By-laws Other per lb.	Free 2d. Free 2d.
331 (c)	Compounded rubber	Not to exceed duty on raw natural rubber by more than ½d. per lb.
Unspecified	Tin ores and concentrates	Free
Unspecified	Tin blocks, ingots and pigs	Free

SCHEDULE C

Federation Tariff Item	Description of Goods	Margin of Preference
Ex 3 (b)	Accumulator parts including separators	15 per cent. <i>ad val.</i>
Ex 6 (b)	Canned apricots, peaches and pears	15 per cent. <i>ad val.</i>
17 (b)	Butter, tinned	4 cents per lb.
17 (c)	Butter, frozen	4 cents per lb.
Ex 31 (b)	Tanned hides and tanned skins and leather not provided for in 31 (a)	10 per cent. <i>ad val.</i>
37	Milk (including cream) condensed, desiccated or preserved	4.00 dollars per 100 lb. net

SCHEDULE D

Australian Tariff Item	Description of Goods	Margin of Preference
291 (H)	Timber, undressed, n.e.i., viz. : Other—	
(2)	In sizes of 7 inches × 2½ inches (or its equivalent) and upwards and less than 12 inches × 6 inches (or its equivalent)	1s. per 100 super. feet
(3)	In sizes less than 7 inches × 2½ inches (or its equivalent)	1s. per 100 super. feet

EXCHANGE OF LETTERS

I

The Hon. Mr. Tan Siew Sin, J.P.
Minister of Commerce and Industry
Federation of Malaya

Kuala Lumpur, 26th August, 1958

Dear Mr. Tan,

With reference to the Trade Agreement between the Federation of Malaya and the Commonwealth of Australia, initialled today,¹ I wish to inform you that the provisions of this agreement shall not apply to any of the external territories administered by the Government of the Commonwealth of Australia, nor to any advantages which are accorded or which may be accorded hereafter between the external territories and the metropolitan territory of Australia.

I should be grateful if you would confirm the foregoing understanding on behalf of the Federation Government.

Yours sincerely,

J. McEWEN
Minister for trade, Commonwealth of Australia

II

The Rt. Hon. J. McEwen, M.P.
Minister for Trade
Commonwealth of Australia

Kuala Lumpur, 26th August, 1958

Dear Mr. McEwen,

I acknowledge receipt of your letter of 26th August, 1958, in which you informed me that the provisions of the Trade Agreement between the Commonwealth of Australia and the Federation of Malaya shall not apply to any of the external territories administered by the Government of the Commonwealth of Australia nor to any advantages which are accorded or which may be accorded hereafter between the external territories and the metropolitan territory of Australia.

I have pleasure on behalf of the Federation Government on confirming the understanding contained in your letter.

Yours sincerely,

TAN SIEW SIN
Minister of Commerce and Industry
Federation of Malaya

¹ See p. 254 of this volume.

III

The Right Honourable J. McEwen, M.P.
Minister for Trade
Commonwealth of Australia

Kuala Lumpur, 26th August, 1958

Dear Mr. McEwen,

During our discussions you enquired about the legislative powers of the Federation Government to impose Customs duties and in particular whether those powers can cover anti-dumping and countervailing duties.

The existing legislation empowers the Yang di-Pertuan Agong under section 10 of the Customs Ordinance, 1952, to impose duties. There is no limitation on the manner in which these duties may be imposed and they can operate as anti-dumping or countervailing duties. Duties imposed under section 10 must be specifically approved at the next meeting of the Legislative Council.

I should draw your attention to section 143 of the Customs Ordinance, 1952, which provides that in Penang duties may be imposed only in respect of intoxicating liquor, tobacco and petroleum. Except in the case of these three commodities, duties imposed as anti-dumping or countervailing duties and margins of preference can only be applied in the Principal Customs Area of the Federation. Duties are effective in respect of goods moved from Penang to the Principal Customs Area.

It is the intention of the Federation Government, if it considers it necessary, to introduce further legislation specifically designed to enable the imposition of duties which are consistent with the provisions of Article VI of the General Agreement on Tariffs and Trade.

I understand that under the Customs Tariff (Industries Preservation) Act 1921-1957 the Australian Government has the necessary powers to impose anti-dumping and countervailing duties.

Yours sincerely,

TAN SIEW SIN
Minister of Commerce and Industry
Federation of Malaya

IV

The Honourable Mr. Tan Siew Sin, J.P.
Minister of Commerce and Industry
Federation of Malaya

Kuala Lumpur, 26th August, 1958

Dear Mr. Tan,

I acknowledge with thanks your letter of 26th August, 1958, wherein you have informed me that the Federation Government has power to impose anti-dumping and countervailing duties, subject to subsequent ratification of the action by the Legislature, and that it is the intention of the Federation Government, if it considers it necessary, to introduce further legislation specifically designed to enable the imposition of duties which are consistent with the provisions of Article VI of the General Agreement on Tariffs and Trade.

I note your reference to the provisions of Section 143 of the Customs Ordinance, 1952, in relation to Penang.

I confirm that your understanding that the Australian Government has the necessary legislative power to impose anti-dumping and countervailing duties is correct.

Yours sincerely,

J. McEWEN
Minister for Trade, Commonwealth of Australia

AGREED MINUTES

Preamble

1. In the preamble to this Agreement reference is made to the establishment of a new trading relationship between the two countries.

Accordingly the two Governments agree that with the entry into force of this Agreement the provisions of the United Kingdom and Australia Trade Agreement, 1932, no longer have applications as between the Federation and Australia.

Article III

1. In addition to the Tariff Concessions listed in the Schedules to the Agreement, the Australian Government agreed to exempt from primage duties hand wrought silverware covered by Items 106 (D) (1), 106 (E) (1), 106 (F) (1) and 197 (A) of the Australian Customs Tariff.

2. The Australian Government noted the Federation's interest in expanding exports of handwoven piece goods. The Australian Delegation explained the position concerning rates of duty on various types of piece goods in the Australian Customs Tariff. The Federation Delegation noted that, in most of the tariff items of potential interest to the Federation, the rates of duty under the Australian Tariff presented no serious barrier to the development of trade.

3. With regard to the duty on natural rubber and latex *ex* Tariff Items 331 (A) and (D) of the Australian Customs Tariff, it was agreed that natural rubber and latex would be admissible free of duty under by-laws subject to the satisfactory disposal of the Papua-New Guinea rubber crop.

Article IV

An "active trade interest" will be deemed to exist when there is evidence that commercial transactions in the goods concerned have been taking place between the two countries during the two years immediately before the date at which the tariff change is being considered.

Article VI

1. For the purposes of Article VI, natural rubber and latex shall be defined as raw natural rubber and latex, unvulcanised rubber, including solutions and dispersions (not being prepared adhesives), and partly vulcanised or vulcanised rubber including vulcanised latices, not processed or processed to a lesser extent than the state of preformed shapes.

2. For the purposes of the Article, the term "synthetic rubber" is to be taken to apply to unsaturated synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanisation with Sulphur, Selenium or Tellurium, and which, when so vulcanised as well as may be (without the addition of any substances such as plasticisers, fillers or re-inforcing agents not necessary for the cross-linking), can produce non-thermoplastic substances which, at a temperature between fifteen and twenty degrees centigrade, will not break on being extended to three times their original length and will return after being extended to twice their original length, within a period of two hours, to a length not greater than one and a half times the original length.

3. The assurance given in Article VI relates to synthetic rubber (as defined in paragraph 2 of this minute) which is unvulcanised, partly vulcanised or vulcanised, not processed or processed to a lesser extent than the state of preformed shapes.

Article VII

1. The Delegations agreed, in respect of the undertaking by the Federation Government in Article VII, that the Australian Government should take all action possible to ensure that the price and quality of flour and wheat exported to the Federation are not less favourable, allowing for freight and other transportation charges, than the price and quality of wheat and flour being sold on commercial terms to any other regular market in neighbouring areas for orders of comparable size.

2. The Australian Delegation stated that for the duration of the agreement Australian flour would be available up to the full requirements of Federation importers.

3. The two Delegations agreed that the figures specified in paragraph 1 of Article VII were a realistic estimate of the minimum share of the Federation market which Australian flour and wheat could be expected to obtain under normal fair trade and commercial practices. It was further agreed that should there be changes in the relative importance of flour as compared with wheat in the Federation market, any reductions in the one could be expected to be compensated by increases in the other.

4. The Federation Delegation agreed that the Federation Government will at any time during the calendar year on the request of the Australian Government consult with the Australian Government regarding the level of imports of Australian flour and wheat with a view to determining whether there is cause to take action under Article VII.

Article VIII

1. The Australian Delegation pointed out that owing to the rapid development and diversification of manufacturing capacity in Australia, it was now possible for Australia to supply the Federation with a wide range of its requirements of manufactured goods. The Australian Delegation considered that three of the major factors inhibiting effective Australian participation in the Federation market for developmental and capital goods were :

- (a) insufficient knowledge in the Federation of Australia's capacity to supply ;
- (b) insufficient knowlegde in Australia of the Federation's requirements ;
- (c) a system of government purchasing which appeared to make it difficult for Australia to gain access to the Federation market.

2. The Federation Delegation stated that the basic policy of the Federation Government was to purchase its supplies in the cheapest market having due regard to quality and the need to economise in hard currencies.

3. It was pointed out by the Federation Delegation that where goods are purchased on the open market by tender the Federation Government will be prepared to request the Government Department concerned to ensure that such tenders are advertised in the local Federation Press and that except in cases of special urgency, sufficient time will be given for the Australian High Commission in the Federation to bring these to the notice of potential Australian tenderers.

4. The Federation Delegation agreed that, where the Federation Government was purchasing supplies, which for technical reasons have to be acquired through Consulting Engineers or Agents (including the Crown Agents in the United Kingdom), the Federation Government will request such consultants or agents to ensure (as far as is reasonably practicable having regard to the time factor, facilities for inspection, and other considerations) that such tenders are so publicised as to give a fair opportunity to potential Australian suppliers to submit bids.

Article IX

1. Both Delegations expressed the concern of their Governments about the obstacles and uncertainties in international commodity trade which confront primary exporting countries and the effects of these difficulties upon their economic stability. It was agreed that there is an urgent need to find means of producing a greater degree of stability and predictability in international trade in primary products. To this end their Governments would give sympathetic consideration to international action designed to improve the conditions of international trade in primary products of direct interest to either country.

2. It was agreed by the two Delegations that either Government would at any time, on request, be prepared to consult with the other Government before accepting primary commodities offered by third countries under programmes of surplus disposal or other non-commercial arrangements.

INITIALED at Kuala Lumpur, 26th August, 1958.

TAN SIEW SIN
Minister of Commerce and Industry
Federation of Malaya

J. McEWEN
Minister for Trade
Commonwealth of Australia