

No. 22943

**JAPAN
and
GERMAN DEMOCRATIC REPUBLIC**

**Treaty on commerce and navigation (with protocol and
exchange of notes). Signed at Tokyo on 28 May 1981**

Authentic text: English.

Registered by Japan on 18 June 1984.

**JAPON
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE**

**Traité de commerce et de navigation (avec protocole et
échange de notes). Signé à Tokyo le 28 mai 1981**

Texte authentique : anglais.

Enregistré par le Japon le 18 juin 1984.

TREATY¹ ON COMMERCE AND NAVIGATION BETWEEN JAPAN AND THE GERMAN DEMOCRATIC REPUBLIC

The Government of Japan and the Government of the German Democratic Republic,

Desirous of strengthening the bonds of friendship and mutual cooperation and of deepening and further developing the economic relations between the two countries,

Have resolved to conclude a Treaty on Commerce and Navigation, and for that purpose have appointed as their Plenipotentiaries,

The Government of Japan: Mr. Sunao Sonoda, Minister for Foreign Affairs of Japan,

The Government of the German Democratic Republic: Mr. Oskar Fischer, Minister of Foreign Affairs of the German Democratic Republic,

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

Article 1. The Contracting Parties will, in accordance with their respective laws and regulations, endeavour to cooperate on the basis of the principles of equality and mutual benefit with a view to expanding trade and to strengthening economic relations between the two countries and to encourage initiatives and measures for these purposes.

Article 2. 1. 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 in connection with importation and exportation, and with respect to all matters referred to in Article 4 of the present Treaty, any advantage, favour, privilege or immunity which has been or may hereafter be granted by either Contracting Party to any product originating in or destined for any third country shall be accorded immediately and unconditionally to the like product originating in or destined for the territory of the other Contracting Party.

2. The provisions of the preceding paragraph shall not apply to special advantages accorded by either Contracting Party:

- (a) To adjacent countries in order to facilitate frontier traffic;
- (b) To produce of the sea to be treated as imports in accordance with the laws and regulations of such Contracting Party in case this produce is taken by vessels of such Contracting Party or processed or manufactured at sea in the vessels of such Contracting Party.

Article 3. 1. The products of either Contracting Party after they have been in transit through the territories of one or more third countries shall not, upon their importation into the territory of the other Contracting Party, be subject to customs

¹ Came into force on 22 September 1982, i.e., the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Berlin on 23 August 1982, in accordance with article 15 (2).

duties or charges higher than those to which they would be subject if they were imported directly from the territory of the former Contracting Party.

2. The provisions of the preceding paragraph are also applicable to goods which during their transportation through the territory of a third country underwent transshipment, repacking and storing in warehouses.

Article 4. 1. The products originating in the territory of either Contracting Party and imported into the territory of the other Contracting Party shall not be subject, within the territory of such other Contracting Party, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

2. The products originating in the territory of either Contracting Party and imported into the territory of the other Contracting Party shall be accorded within the territory of such other Contracting Party treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

Article 5. 1. No prohibitions or restrictions shall be applied by either Contracting Party on the importation or exportation of any product from or to the territory of the other Contracting Party, unless the importation of the like product or the exportation of the like product to any third country is similarly prohibited or restricted.

2. The provisions of the preceding paragraph shall not be interpreted as precluding each Contracting Party from adopting or executing measures relating to the protection of essential security interests as well as the protection of public health and of animals and plants against diseases, harmful insects and parasites.

Article 6. Without prejudice to the provisions of paragraph 1 of Article 2 of the present Treaty, each Contracting Party shall, in accordance with its laws and regulations, accord most-favoured-nation treatment with respect to exemption from customs duties and charges on the following articles of the other Contracting Party which are brought into temporarily and taken out of its territory:

- (a) Samples of commodities;
- (b) Articles destined for tests and experiments;
- (c) Articles destined for exhibitions, contests and fairs;
- (d) Tools to be used by assemblers in assembling and installing equipment;
- (e) Articles to be processed or repaired and materials required for processing or repairing; and
- (f) Containers of exported or imported goods.

Article 7. 1. Nationals of either Contracting Party shall be accorded, within the territory of the other Contracting Party, national treatment and most-favoured-nation treatment with respect to the protection of their persons and property.

2. Nationals of either Contracting Party shall be accorded, within the territory of the other Contracting Party, national treatment and most-favoured-nation treatment with respect to access to the courts of justice and to administrative organs, in all degrees of jurisdiction, both in pursuit and in defence of their rights.

3. Nationals of each Contracting Party shall be granted the right to communicate with a consular officer of their country and to visit him at his office.

4. If, within the territory of either Contracting Party, a national of the other Contracting Party has been placed under detention, or any other restriction of the personal liberty, whether pending trial or otherwise, the competent authorities of the former Contracting Party shall notify immediately a consular officer of such other Contracting Party thereof. A consular officer of such other Contracting Party shall be permitted, without delay, to visit and communicate with such national.

5. Nationals of either Contracting Party shall not, within the territory of the other Contracting Party, be subject to taxes, fees or charges of any kind other or more burdensome than those imposed upon nationals of any third country. However, each Contracting Party reserves the right to extend specific tax advantages on a basis of reciprocity or to accord special tax advantages by virtue of agreements for the avoidance of double taxation.

Article 8. When a vessel of either Contracting Party enters ports or other places of anchorage of the other Contracting Party, a consular officer of the former Contracting Party shall have the right to extend full assistance to the said vessel and its crew and passengers.

Article 9. 1. Legal persons organized in accordance with the laws and regulations of either Contracting Party and having their seats within its territory, shall be recognized as such within the territory of the other Contracting Party.

2. Nationals and legal persons of either Contracting Party shall be accorded, within the territory of the other Contracting Party, most-favoured-nation treatment in all matters relating to their business activities, including commercial, industrial and financial activities.

3. Legal persons of either Contracting Party shall have the right to be represented through agents within the territory of the other Contracting Party in accordance with the laws and regulations of such other Contracting Party.

4. The provisions of Article 7 of the present Treaty shall be equally applied to the legal persons as far as they are applicable to legal persons.

Article 10. 1. Vessels under the flag of either Contracting Party and carrying the papers required by its laws and regulations in proof of nationality shall be deemed to be vessels of such Contracting Party both on the high seas and within the ports, places and waters of the other Contracting Party.

2. The certificates concerning measurement of vessels issued by the competent authorities of either Contracting Party shall be recognized by the competent authorities of the other Contracting Party as equivalent to the certificates issued by the latter.

3. Merchant vessels of either Contracting Party shall have the right to the same extent and under the same conditions as the merchant vessels of the other Contracting Party and of any third country, to enter, leave and anchor in all ports, places and waters of such other Contracting Party open to foreign commerce and navigation.

Merchant vessels of either Contracting Party, and the crew, passengers and cargoes thereof, shall in all respects be accorded by the other Contracting Party treatment no less favourable than that accorded to merchant vessels of such other Contracting Party and of any third country, and the crew, passengers and cargoes thereof, in the ports, places and waters of such other Contracting Party.

4. The provisions of the preceding paragraphs of the present Article shall not apply to coasting trade. The voyages of merchant vessels of either Contracting Party from port to port of the other Contracting Party, in accordance with the laws and regulations of such other Contracting Party, for the purpose of landing the whole or a part of passengers or cargoes brought from abroad or of taking on board the whole or a part of passengers or cargoes for a foreign country shall not be considered as the coasting trade mentioned above.

5. The term "merchant vessel" as used in the present Treaty does not include fishing boats.

Article 11. 1. In case of shipwreck, damage at sea or forced putting in, either Contracting Party shall grant to vessels of the other Contracting Party, and the crew, passengers and cargoes thereof, the same assistance, protection and immunities as are in like cases accorded by such Contracting Party to its own vessels and the crew, passengers and cargoes thereof. Goods salvaged from such vessels shall be exempt from all customs duties, unless the goods are entered for domestic consumption.

2. If a vessel of either Contracting Party has stranded or has been wrecked on the coasts of the other Contracting Party, the appropriate authorities of such other Contracting Party shall notify the occurrence to the nearest consular officer of the country to which the vessel belongs or, in his absence, to the diplomatic mission of that country.

Article 12. 1. The Contracting Parties shall encourage by every possible means the use of arbitration boards in both countries for the settlement of disputes which may arise from or in relation to commercial contracts concluded between nationals or legal persons referred to in Article 9 of the present Treaty of either Contracting Party and nationals or such legal persons of the other Contracting Party.

2. Each Contracting Party shall recognize as binding and enforce, in accordance with the rules of procedure of the territory where the award is relied upon, arbitral awards on disputes which may arise from or in relation to commercial contracts concluded between nationals or legal persons referred to in Article 9 of the present Treaty of either Contracting Party and nationals or such legal persons of the other Contracting Party, provided that the settlement of such disputes by arbitration has been stipulated in the contracts themselves or in separate agreements executed in due form.

3. Recognition and enforcement of the award may be refused:

- (1) At the request of the party against whom it is invoked, only if that party furnishes to the competent authority in the Contracting Party where the recognition and enforcement is sought, proof that
 - (a) The parties to the contract or agreement referred to in the preceding paragraph were, under the laws and regulations applicable to them, under some incapacity, or the said contract or agreement is not valid under the laws and regulations to which the parties have subjected it or, failing any indication thereon, under the laws and regulations of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the laws and regulations of the country where the arbitration took place; or
 - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority in the country in which, or under the laws and regulations of which, that award was made; or
- (2) If the competent authority in the Contracting Party where the recognition and enforcement is sought finds that
- (a) The subject matter of the difference is not capable of settlement by arbitration under the laws and regulations of that Contracting Party; or
 - (b) The recognition and enforcement of the award would be contrary to the public order of that Contracting Party.

Article 13. All payments between the Contracting Parties shall be effected in convertible currencies in accordance with the laws and regulations of the respective countries.

Article 14. Each Contracting Party shall accord sympathetic consideration to such proposals as the other Contracting Party may make with respect to any matter affecting the operation of the present Treaty and shall accord adequate opportunity for consultation.

Article 15. 1. The present Treaty shall be ratified, and the instruments of ratification shall be exchanged at Berlin as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification, and shall remain in force for a period of five years and shall continue in force thereafter until terminated as provided for in paragraph 3 of the present Article.

3. Either Contracting Party may, by giving six months' written notice to the other Contracting Party, terminate the present Treaty at the end of the initial five year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed thereunto their seals.

DONE at Tokyo, on May 28, 1981, in duplicate, in the English language.

For the Government
of Japan:

SUNAO SONODA

For the Government
of the German Democratic Republic:

OSKAR FISCHER

PROTOCOL

At the time of signing the Treaty on Commerce and Navigation between Japan and the German Democratic Republic (hereinafter referred to as "the Treaty") the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the Treaty:

1. No provision of the Treaty shall be construed so as to grant any right or impose any obligation in respect of copyright and industrial property right.

2. No provision of Article 12 of the Treaty shall be construed so as to derogate from the rights and obligations which either Contracting Party has or may have as a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on June 10, 1958¹ or any multilateral agreement amendatory or supplementary thereto.

3. No provision of the Treaty shall be construed so as to derogate from the rights and obligations of either Contracting Party under the General Agreement of Tariffs and Trade² or the Articles of Agreement of the International Monetary Fund³ or any multilateral agreement amendatory or supplementary thereto, in case such Contracting Party is a party to such agreement.

4. (1) Each Contracting 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 state enterprise or 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.

(2) The provisions of the preceding paragraph shall be understood to require that such state enterprise or enterprise shall, having due regard to the provisions of the Treaty, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability marketability and other conditions of purchase or sale.

5. With reference to paragraph 4 of Article 7 of the Treaty, it is understood that:

- (a) The notification referred to in the said paragraph shall be made in any event within three days from the moment when a national concerned of the other Contracting Party has been placed under detention or any other restriction of the personal liberty; and that
- (b) A consular officer of such other Contracting Party shall be permitted to visit and communicate with such national in any event within four days from the moment when such national has been placed under detention or any other restriction of the personal liberty.

¹ United Nations, *Treaty Series*, vol. 330, p. 3.

² *Ibid.*, vol. 55, p. 187.

³ *Ibid.*, vol. 2, p. 39.

6. For the purposes of the Treaty, it is agreed that the most-favoured-nation treatment referred to in paragraph 2 of Article 9 of the Treaty will be accorded on the basis of reciprocity with respect to direct investment, such as:

- (a) Creation or extension of a wholly-owned enterprise, subsidiary or branch;
- (b) Acquisition of full ownership of an existing enterprise; or
- (c) Participation in a new or existing enterprise.

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

DONE at Tokyo, on May 28, 1981, in duplicate, in the English language.

For the Government
of Japan:

SUNAO SONODA

For the Government
of the German Democratic Republic:

OSKAR FISCHER

EXCHANGE OF NOTES

I

Tokyo, May 28, 1981

Excellency,

I have the honour to confirm, on behalf of the Government of Japan, the following understanding reached between the Government of Japan and the Government of the German Democratic Republic.

The Trade Agreement between the Government of Japan and the Government of the German Democratic Republic signed at Tokyo on February 1, 1975, shall expire upon the entering into force of the Treaty on Commerce and Navigation between Japan and the German Democratic Republic signed today at Tokyo.

I have further the honour to request Your Excellency to be good enough to confirm the above understanding on behalf of the Government of the German Democratic Republic.

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

SUNAO SONODA
Minister for Foreign Affairs
of Japan

His Excellency Mr. Oskar Fischer
Minister of Foreign Affairs
of the German Democratic Republic

II

Tokyo, May 28, 1981

Excellency,

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

[See note I]

I have further the honour to confirm the understanding contained in Your Excellency's Note, on behalf of the Government of the German Democratic Republic.

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

OSKAR FISCHER
Minister of Foreign Affairs
of the German Democratic Republic

His Excellency Mr. Sunao Sonoda
Minister for Foreign Affairs of Japan
