

N° 2894.

AUTRICHE ET JAPON

Traité de commerce et de navigation avec protocole final, signés à Vienne, le 16 août 1930, et échange de notes y relatif de la même date.

AUSTRIA AND JAPAN

Treaty of Commerce and Navigation, with Final Protocol, signed at Vienna, August 16, 1930, and Exchange of Notes relating thereto of the same date.

No. 2894. — TREATY OF COMMERCE¹ AND NAVIGATION BETWEEN AUSTRIA AND JAPAN. SIGNED AT VIENNA, AUGUST 16, 1930.

Texte officiel anglais communiqué par le chancelier fédéral de la République d'Autriche et le directeur du Bureau du Japon à la Société des Nations. L'enregistrement de ce traité a eu lieu le 13 février 1932.

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA and HIS MAJESTY THE EMPEROR OF JAPAN, being desirous to strengthen the relations of amity and good understanding which happily exist between the two nations and to facilitate and extend their reciprocal commercial relations, have resolved to conclude a Treaty of Commerce and Navigation for that purpose, and to that end have named their Plenipotentiaries, that is to say :

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA :

Dr. Johann SCHÖBER, Federal Chancellor ; and

HIS MAJESTY THE EMPEROR OF JAPAN :

Morié OHNO, Jushii, the third class of the Imperial Order of the Sacred Treasure, His Imperial Majesty's Envoy Extraordinary and Minister Plenipotentiary to the Republic of Austria ;

Who, after having communicated to each other their respective Full Powers, found to be in good and due form, have agreed upon the following articles :

Article I.

The subjects or citizens of each of the High Contracting Parties shall have full liberty to enter and sejour in the territories of the other, and, conforming themselves to the laws of the country :

1. Shall, in all that relates to travel and residence, be placed in all respects on the same footing as native subjects or citizens.

2. They shall have the right, equally with native subjects or citizens, to carry on their commerce and manufacture, and to trade in all kinds of merchandise of lawful commerce, either in person or by agents, singly or in partnership with foreigners or native subjects or citizens.

It is understood, however, that the preceding stipulation in no wise affects the laws, decrees and special regulations regarding commerce and industry in force in the territories of each Party, and generally applicable to all foreigners.

¹ L'échange des ratifications a eu lieu à Vienne, le 22 décembre 1931.

¹ TRADUCTION. — TRANSLATION.N^o 2894. — TRAITÉ ² DE COMMERCE ET DE NAVIGATION ENTRE L'AUTRICHE ET LE JAPON. SIGNÉ A VIENNE, LE 16 AOUT 1930.

English official text communicated by the Federal Chancellor of the Austrian Republic and the Director of the Japanese Office accredited to the League of Nations. The registration of this Treaty took place February 13, 1932.

LE PRÉSIDENT FÉDÉRAL DE LA RÉPUBLIQUE D'AUTRICHE et SA MAJESTÉ L'EMPEREUR DU JAPON, animés du désir de resserrer les relations d'amitié et de bonne entente qui existent heureusement entre les deux nations et de faciliter et développer leurs relations commerciales réciproques, ont résolu de conclure, à cet effet, un traité de commerce et de navigation et ont nommé, à cette fin, pour leurs plénipotentiaires :

LE PRÉSIDENT FÉDÉRAL DE LA RÉPUBLIQUE D'AUTRICHE :

Le D^r Johann SCHÖBER, chancelier fédéral ; et

SA MAJESTÉ L'EMPEREUR DU JAPON :

M. Morié OHNO, Yushii, dignitaire de 3^{me} classe de l'Ordre impérial du Trésor sacré, Envoyé extraordinaire et ministre plénipotentiaire de Sa Majesté impériale auprès de la République d'Autriche ;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des articles suivants :

Article premier.

Les sujets ou ressortissants de chacune des Hautes Parties contractantes auront toute liberté de pénétrer sur le territoire de l'autre Partie et d'y séjourner, et, en se conformant à la législation du pays :

1. Ils seront, pour tout ce qui concerne les voyages et la résidence, assimilés à tous égards aux nationaux ;

2. Ils auront le même droit que les nationaux d'exercer leur commerce ou leur industrie et de faire le négoce de toutes les marchandises dont le commerce est licite, personnellement ou par l'entremise de représentants, à titre individuel ou en association avec des étrangers ou des nationaux

Toutefois, il est convenu que la stipulation qui précède ne déroge en rien aux lois et règlements spéciaux en matière de commerce et d'industrie en vigueur sur le territoire de chacune des Parties et généralement applicables à tous les étrangers.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Vienna, December 22, 1931.

3. They shall in all that relates to the pursuit of their industries, callings, professions, educational studies and investigations be placed in all respects on the same footing as the subjects or citizens of the most favoured nation .

4. They shall be permitted to own or hire and to occupy houses, manufactories, warehouses, shops and premises and to lease land for residential, commercial, industrial and other lawful purposes, in the same manner as native subjects or citizens.

5. They shall, on condition of reciprocity, be at full liberty to acquire and possess every description of property, movable or immovable, which the laws of the country permit or shall permit the subjects or citizens of any other foreign country to acquire and possess, subject always to the conditions and limitations prescribed in such laws. They may dispose of the same by sale, exchange, gift, marriage, testament or in any other manner, under the same conditions which are or shall be established with regard to native subjects or citizens. They shall also be permitted, on compliance with the laws of the country, freely to export the proceeds of the sale of their property and also their goods in general without being subject as foreigners to other or higher duties than those to which subjects or citizens of the country would be liable under similar circumstances.

6. They shall enjoy constant and complete protection and security for their persons and property ; shall have free and easy access to the Courts of Justice and other tribunals in pursuit and defence of their claims and rights ; and shall have full liberty, equally with native subjects or citizens, to choose and employ lawyers and advocates to represent them before such Courts and tribunals ; and generally shall have the same rights and privileges as native subjects or citizens in all that concerns the administration of justice.

7. They shall not be compelled to pay taxes, fees, charges or contributions of any kind whatever, other or higher than those which are or may be paid by native subjects or citizens or by the subjects or citizens of the most favoured nation.

Article II.

The subjects or citizens of each of the High Contracting Parties in the territories of the other shall be exempted from all compulsory military services, whether in the army, navy, air force, national guard or militia ; from all contributions imposed in lieu of personal service ; and from all forced loans and military requisitions or contributions unless imposed on them equally with native subjects or citizens as owners, lessees or occupiers of immovable property.

In the above respects the subjects or citizens of each of the High Contracting Parties shall not be accorded in the territories of the other less favourable treatment than that which is or may be accorded to the subjects or citizens of the most favoured nation.

Article III.

The dwellings, warehouses, manufactories and shops of the subjects or citizens of each of the High Contracting Parties in the territories of the other, and all premises appertaining thereto used for lawful purposes, shall be respected. It shall not be allowable to proceed to make a domiciliary visit to, or a search of, any such buildings and premises, or to examine or inspect books, papers or accounts, except under the conditions and with the forms prescribed by the laws for native subjects or citizens.

Article IV.

Each of the High Contracting Parties may appoint Consuls-General, Consuls, Vice-Consuls and Consular Agents in all the ports, cities and places of the other, except in those where it may

not be convenient to recognise such officers. This exception, however, shall not be made in regard to one of the High Contracting Parties without being made likewise in regard to all other Powers.

Such Consuls-General, Consuls, Vice-Consuls and Consular Agents, having received exequaturs or other sufficient authorizations from the Government of the country to which they are appointed, shall, on condition of reciprocity, have the right to exercise their functions, and to enjoy the privileges, exemptions and immunities which are or may be granted to the Consular officers of the most favoured nation. The Government issuing exequaturs or other authorizations has the right in its discretion to cancel the same on explaining the reasons for which it thought proper to do so.

Article V.

In case of the death of a subject or citizen of one of the High Contracting Parties in the territories of the other, without leaving at the place of his decease any person entitled by the laws of the decedent's country to take charge of and administer the estate, the competent Consular officer of the State to which the deceased belonged shall, upon fulfilment of the necessary formalities, be empowered to take custody of and administer the estate in the manner and under the limitations prescribed by the law of the country in which the property of the deceased is situated.

The foregoing provisions shall also apply to the case of a subject or citizen of one of the High Contracting Parties dying outside the territories of the other, but possessing property therein, without leaving any person there entitled to take charge of and administer the estate.

It is understood that in all that concerns the administration of the estates of deceased persons, any right, privilege, favour or immunity which either of the High Contracting Parties has actually granted, or may hereafter grant, to the Consular officers of any other foreign State shall be extended immediately and unconditionally to the Consular officers of the other High Contracting Party.

Article VI.

There shall be between the territories of the two High Contracting Parties reciprocal freedom of commerce and navigation.

Article VII.

Articles, the produce or manufacture of the territories of one of the High Contracting Parties, upon importation into the territories of the other, from whatever place arriving, shall enjoy the lowest rates of customs duty and other charges applicable to the like articles of any other foreign origin.

Article VIII.

Articles, the produce or manufacture of the territories of one of the High Contracting Parties, exported to the territories of the other, shall not be subjected on export to other or higher charges than those paid on the like articles exported to any other foreign country.

Article IX.

No prohibition or restriction shall be maintained or imposed on the importation of any article, the produce or manufacture of the territories of either of the High Contracting Parties, into the territories of the other, from whatever place arriving, which shall not equally extend to the importation of the like articles from any other foreign country. Nor shall any prohibition or restriction be maintained or imposed on the exportation of any article from the territories of either

of the High Contracting Parties to the territories of the other, which shall not equally extend to the exportation of the like articles to any other foreign country.

The preceding provisions are not, however, applicable to such prohibitions or restrictions as follow, provided that they are applicable to all countries where similar conditions prevail :

1. Prohibitions or restrictions for reasons of public safety.
2. Prohibitions or restrictions for reasons of public health or for the protection of useful animals and plants against disease or parasites.

Article X.

The High Contracting Parties agree not to obstruct mutual commerce between the two countries by any prohibition or restriction placed upon the transit of any article, subject to the following exceptions which, however, shall be applicable to all countries alike or to those countries where similar conditions prevail :

1. Prohibitions or restrictions for reasons of public safety ;
2. Prohibitions or restrictions for reasons of public health or for the protection of useful animals and plants against disease or parasites ;
3. Prohibitions or restrictions upon munitions of war under extraordinary circumstances.

Articles, the produce or manufacture of the territories of either of the High Contracting Parties, passing in transit through the territories of the other, in conformity with the laws of the country, shall be reciprocally free from all transit duties, whether they pass direct, or whether during transit they are transhipped, unloaded, warehoused, repacked or reloaded.

Article XI.

No internal duties levied for the benefit of the State, local authorities or corporations which affect, or may affect, the production, manufacture or consumption of any article in the territories of either of the High Contracting Parties shall for any reason be a higher or more burdensome charge on articles, the produce or manufacture of the territories of the other, than on similar articles of native origin.

The produce or manufacture of the territories of either of the High Contracting Parties imported into the territories of the other, and intended for warehousing or transit, shall not be subjected to any internal duty.

Article XII.

Merchants and manufacturers, subjects or citizens of one of the High Contracting Parties, may, in the territories of the other, either personally or by means of commercial travellers, make purchases or collect orders, with or without samples, and such merchants, manufacturers and their commercial travellers, while so making purchases and collecting orders, shall, in the matter of taxation and facilities, enjoy the most-favoured-nation treatment.

Articles imported as samples for the purposes above mentioned shall, in each country, be temporarily admitted free of duty on compliance with the Customs regulations and formalities established in order to assure their re-exportation or the payment of the prescribed charges if not re-exported within the period allowed by law. But the foregoing privilege shall not extend to articles which, owing to their quantity or value, cannot be considered as samples, or which, owing to their nature, could not be identified upon re-exportation. The determination of the question of qualification of samples for duty-free admission rests in all cases exclusively with the competent authorities of the place where the importation is effected.

Article XIII.

Marks, stamps or seals placed upon the samples mentioned in the preceding Article by the Customs authorities of either High Contracting Party at the time of exportation, and any officially attested list of such samples containing a full description thereof issued by them, shall be reciprocally accepted by the Customs officials of the other as establishing their character as samples and exempting them from inspection, except so far as may be necessary to establish that the samples produced are those enumerated in the list. The Customs authorities of either High Contracting Party, may, however, affix a supplementary mark to such samples in special cases where they may think this precaution necessary.

Article XIV.

Any authorities recognised in the territories of one of the High Contracting Parties as competent for the issue of such certificates as may be required for merchants, manufacturers and commercial travellers shall be accepted by the other as competent authorities in that regard.

Each of the High Contracting Parties will inform the other what are the competent authorities for the issue of these certificates as well as of the forms which are required.

Article XV.

Limited liability and other companies and associations, commercial, industrial and financial, including insurance companies, already or hereafter to be organised in accordance with the laws of either High Contracting Party, and registered in the territories of such Party, are authorized, in the territories of the other, to exercise their rights and appear in the Courts either as plaintiffs or defendants, subject to the laws of such other Party.

The admission of these companies and associations to the exercise of commerce and industry in the territories of the other Party shall, in all respects, be governed by the laws and regulations valid in the territories of that Party.

The said companies and associations shall enjoy in these respects in the territories of the other Party the same rights and privileges as are or may be granted to the like companies or associations of the most favoured nation.

The said companies and associations shall also enjoy in the territories of the other Party the same treatment in regard to the imposition of taxes, fees, charges or contributions as is accorded to the like companies and associations of the most favoured nation.

The provisions of Article II shall be equally applied to the said companies and associations as far as they are applicable to juridical persons.

Article XVI.

The coasting trade of the High Contracting Parties is excepted from the provisions of the present Treaty and shall be regulated according to the laws of each of the High Contracting Parties.

Article XVII.

Except as otherwise expressly provided in this Treaty, the High Contracting Parties agree that, in all that concerns commerce, navigation and industry, any favour, privilege or immunity either High Contracting Party has actually granted, or may hereafter grant, to the ships, subjects or citizens of any other foreign State shall be extended immediately and unconditionally to the

ships, subjects or citizens of the other High Contracting Party, it being their intention that the commerce, navigation and industry of each country shall be placed in all respects on the footing of the most favoured nation.

Article XVIII.

The stipulations of the present Treaty shall be applicable to all the territories and possessions belonging to or administered by either of the High Contracting Parties.

Article XIX.

The stipulations of this Treaty shall not apply to tariff concessions granted by either of the High Contracting Parties to contiguous States solely to facilitate frontier traffic within a limited zone on each side of the frontier, so long as such concessions are not extended to any other foreign country, nor to the treatment accorded to the produce of the national fisheries of the High Contracting Parties, nor to special tariff favours granted by Japan in regard to fish and other aquatic products taken in foreign waters in the vicinity of Japan.

Article XX.

The present Treaty shall be ratified and the ratifications thereof shall be exchanged at Vienna as soon as possible.

It shall enter into operation on the tenth day after the date of the exchange of ratifications and shall remain in force for three years from that date.

In case neither of the High Contracting Parties shall have given notice to the other, twelve months before the expiration of the said period of three years, of its intention to terminate the Treaty, it shall continue operative until the expiration of one year from the date on which either of the High Contracting Parties shall have denounced it.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed thereto the seal of their arms.

Done at Vienna in duplicate this 16th day of August, in the nineteen hundred and thirtieth year of the Christian era, corresponding to the 16th day of the 8th month of the 5th year of Showa.

(L. S.) SHOBER.

(L. S.) M. OHNO.

FINAL PROTOCOL.

In proceeding this day to the signature of the present Treaty of Commerce and Navigation between Austria and Japan, the undersigned Plenipotentiaries of the two High Contracting Parties, duly authorized on that behalf, have agreed as follows :

1. The first sentence of Article I " The subjects or citizens of each of the High Contracting Parties shall have full liberty to enter and sojourn in the territories of the other" in no way affects those special laws, ordinances and regulations regarding public safety, police and sanity which are generally applicable to all foreigners alike.

2. The most-favoured-nation treatment provided for in Article I, No. 7, and in Article XV shall not apply to any special stipulations contained in treaties already concluded or to be concluded between either of the High Contracting Parties and a third State, for the adjustment of internal and external taxes, and particularly for the avoidance of double taxation.

3. With regard to the provisions of Articles IX and X, it is understood that, in case one of the High Contracting Parties should apply or put into force new prohibitions or restrictions on importation, exportation or transit calculated seriously to affect the commerce of the other Party, the latter Party shall have the right to denounce the present Treaty within one year from the date of the application or coming into force of such new prohibitions or restrictions.

In this case the Treaty shall cease to be in force on the expiration of six months after the denunciation.

4. The stipulation contained in the first sentence of Article XII " Merchants and manufacturers, subjects or citizens of one of the High Contracting Parties, may, in the territories of the other, either personally or by means of commercial travellers make purchases or collect orders " implies that the said merchants, manufacturers and commercial travellers must conform therein to the laws of the country concerned.

5. The provisional commercial agreement¹ reached between Austria and Japan by the exchange of notes on October 2nd, 1923, together with the additional commercial agreement of October 3rd, 1925, shall cease to be operative upon the coming into force of the present Treaty of Commerce and Navigation.

Done at Vienna in duplicate this 16th day of August, 1930 (5th year of Showa).

(L. S.) SCHOBER.

(L. S.) M. OHNO.

I.

VIENNA, August 16th, 5 Showa (1930).

MONSIEUR LE CHANCELIER FÉDÉRAL,

With reference to Article VII of the Treaty of Commerce and Navigation between Japan and Austria signed this day, I have the honour, in order to avoid any possible misunderstanding in future, to declare that the Japanese Government understand :

(1) That the stipulations of the said Article will not be held to preclude the Japanese Government from making any special reduction of customs duty in respect of goods imported across the land frontier of Japanese territory which may be shown to be justified by the considerations referred to in Article 7 of the Statute² on the International Régime of Maritime Ports adopted at the Second General Conference on Communications and Transit, which met at Geneva on the 15th November, 1923 ; and

(2) That is understood, however, that articles, the produce or manufacture of the territory of the Republic of Austria, shall enjoy the treatment of the most favoured nation in regard to such special reduction of customs duty as is referred to in the foregoing paragraph.

I should be much gratified to be assured that Your Excellency's Government concur in the interpretation above given.

I avail myself of this opportunity to renew to Your Excellency, Monsieur le Chancelier Fédéral, the assurance of my highest consideration.

M. OHNO.

His Excellency

Dr. Johann Schober,

Federal Chancellor of the Republic of Austria,
Vienna.

¹ Vol. XXII, page 349, de ce recueil.

² Vol. LVIII, page 285 ; vol. LXIX, page 102 ; vol. LXXII, page 485 ; vol. LXXXIII, page 416 ; vol. CVII, page 401 ; vol. CXVII, page 184, et vol. CXXII, page 349, de ce recueil.

II.

VIENNA, August 16th, 1930.

MONSIEUR LE MINISTRE,

In reply to Your Excellency's note of this date, with reference to the interpretation of Article VII of the Treaty of Commerce and Navigation between Austria and Japan signed this day, I have the honour to state that the Austrian Government entirely concur in the following interpretation given by the Japanese Government to the said Article :

(1) That the stipulations of the said Article will not be held to preclude the Japanese Government from making any special reduction of customs duty in respect of goods imported across the land frontiers of Japanese territory which may be shown to be justified by the considerations referred to in Article 7 of the Statute on the International Régime of Maritime Ports adopted at the Second General Conference on Communications and Transit, which met at Geneva on the 15th November, 1923 ; and

(2) That it is understood, however, that articles, the produce or manufacture of the territory of the Republic of Austria, shall enjoy the treatment of the most favoured nation in regard to such special reduction of customs duty as is referred to in the foregoing paragraph.

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

SCHÖBER.

His Excellency
Monsieur Morié Ohno,
Envoy Extraordinary and Minister Plenipotentiary
of His Majesty the Emperor of Japan.
