

**1964**

**COMMONWEALTH OF AUSTRALIA**

**AGREEMENT ON COMMERCE**

**BETWEEN**

**AUSTRALIA AND JAPAN**

*Originally signed on 6th July, 1957 and incorporating amendments, provisionally agreed on 5th August, 1963, and ratified by each Government on 27th May, 1964*

By Authority:

A. J. ARTHUR, Commonwealth Government Printer. Canberra

(Printed in Australia)

### **NOTE**

The Agreement on Commerce between the Commonwealth of Australia and Japan was originally signed at Hakone on 6th July, 1957.

The Agreement was reviewed in 1963 and a Protocol of Amendment and other documents were signed in Tokyo on 5th August, 1963. Under an exchange of letters provisional effect was given to these documents pending ratification by both Governments. The documents were ratified in Canberra on 27th May, 1964.

These amendments to the Agreement have been incorporated in the following text.

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## **AGREEMENT ON COMMERCE BETWEEN THE COMMONWEALTH OF AUSTRALIA AND JAPAN**

The Government of the Commonwealth of Australia and the Government of Japan,  
Being desirous of improving and developing the commercial relations between the two  
countries,

Have agreed as follows:

### **ARTICLE I.**

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 the application of internal taxes to exported goods and with respect to all internal taxes or other internal charges of any kind imposed on or in connection with imported goods and with respect to all laws, regulations and requirements affecting internal sale, offering for sale, purchase, distribution or use of imported goods, any advantage, favour, privilege or immunity which has been or may hereafter be granted by the Government of either country 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 other country.

2. The provisions of paragraph 1 shall not entitle the Government of Japan to claim the benefit of any preference or advantage which may at any time be accorded by the Government of the Commonwealth of Australia to any member country of the Commonwealth of Nations including its dependent territories, or to the Republic of Ireland.

### **ARTICLE II.**

1. No prohibitions or restrictions, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by the Government of either country on the importation of any product of the other country or on the exportation or sale for export of any product destined for the other country unless such prohibitions or restrictions are applied to all third countries.

2. In all matters relating to the allocation of foreign exchange affecting transactions involving the importation and exportation 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 are necessary to safeguard its external financial position and balance of payments.

**ARTICLE III.**

1. With respect to trade between Australia and Japan,

(a) Each Government undertakes that if it establishes or maintains a state trading enterprise, wherever located, or grants to any trading enterprise, formally or in effect, exclusive or special privileges, such trading enterprise shall, in its purchases or sales involving imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such trading enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford trading enterprises of the other country adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) Neither Government shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for re-sale or use in the production of goods for sale. With respect to such imports, the Government of each country shall accord to the trade of the other country fair and equitable treatment.

**ARTICLE IV.**

Nothing in this Agreement shall be construed so as to derogate from the rights and obligations that either country has or may have as a contracting party to the General Agreement on Tariffs and Trade, so long as both countries are contracting parties to the General Agreement on Tariffs and Trade.

**ARTICLE V.**

*(Deleted)*

**ARTICLE VI.**

1. Each Government shall accord sympathetic consideration to representations made by the other Government on matters arising out of the operation of this Agreement and shall afford to the other Government adequate opportunity for consultation.

2. Consultation shall in any event be held annually on the operation of this Agreement.

**ARTICLE VII.**

1. This Agreement shall be ratified by each Government and shall enter into force on the date of the exchange of instruments of ratification.
2. This Agreement shall remain in force until the day three years after the date of the entry into force of the Protocol of 5th August, 1963 amending the Agreement, and shall continue in force thereafter provided that it shall be terminated on that date or thereafter if either Government has previously given to the other Government at least three months' written notice of its intention to terminate the Agreement.

## AGREED MINUTES

The representatives of the Government of the Commonwealth of Australia and the representatives of the Government of Japan, confirming that the General Agreement on Tariffs and Trade will be applied between the Commonwealth of Australia and Japan, hereby record the following understandings which have been reached during the course of the negotiations between their respective Delegations leading to the signing today of the Protocol amending the Agreement on Commerce

between the Commonwealth of Australia and Japan, of 6th July, 1957:

### PART A

1. (a) The Japanese Delegation stated that the Japanese Government would not discriminate against raw wool, as compared with raw cotton, with respect to non-tariff matters which might affect its importation into Japan.

(b) The Japanese Delegation noted the significance which the Australian Government placed on the continued duty-free import of raw wool into Japan. The Australian Delegation was given to understand that the Japanese Government at this time had no intention of imposing a duty on raw wool, but that this did not in any way bind the Japanese Government legally or morally.

2. (a) In response to a request from the Australian Delegation with respect to the export of soft wheat to Japan, the Japanese Delegation stated that the importation into Japan of Australian soft wheat would continue at a stabilised level. The Japanese Delegation also indicated that it was the intention of the Japanese Government to study with the Australian Government the possibility of bringing the price differential in Japan between Australian F.A.Q. wheat and U.S. Western White wheat down to the differential in world markets.

(b) The Japanese Delegation also stated that the Japanese Government was prepared to purchase Queensland and northern New South Wales hard wheat when the necessary requirements for such purchase were found to have been met.

3. The Japanese Delegation stated that under normal circumstances Japan was now self-sufficient in barley production, but that emergency imports might be necessary from time to time, and confirmed that, with respect to any imports which might be made by the Food Agency, Australian barley would be accorded non-discriminatory access on a most-favoured-nation treatment basis.

4. (a) The Japanese Delegation confirmed that its Government would ensure most-favoured-nation and non-discriminatory treatment in respect of Australian products which were subject to import restrictions in Japan, and stated that it was the intention of its Government to make every effort to expand the opportunities for the import into Japan of the following Australian products: sugar, canned meat, leather, motor vehicles, butter and cheese.

(b) Both the Australian and Japanese Delegations stated that it was the intention of their respective

Governments to maintain the scope of import liberalisation currently in force in their respective countries, and further stated that, if, however, further import restrictions were imposed for balance of payment reasons, they would not be applied so as to prevent

unreasonably the importation of the products concerned in minimum commercial quantities the exclusion of which would impair regular channels of trade.

## **PART B**

(a) Against the background of the overall balance and pattern of trade between the two countries, the Japanese Delegation expressed active interest in the export of Japanese heavy industry products to Australia and requested that, in particular reference to the purchase of goods from abroad by the Australian Government and certain of its Statutory Authorities such as the Snowy Mountains Hydroelectric Authority and the Commonwealth Railways Commissioner for use in their developmental projects, full opportunities of fair competition would be accorded to Japanese products. The Australian Delegation took note of the above statement of the Japanese Delegation and stated that it was the general policy of the Australian Government and the Statutory Authorities named above to call public tenders for their overseas purchases, and further stated that equal opportunities of fair and equal competition were accorded to Japanese products in regard to such tenders.

(b) In regard to such tenders the Australian Delegation further confirmed that upon request by unsuccessful tenderers, explanations of the reasons for failure were given in detail by the Australian Government and the Statutory Authorities named above covering such matters as quality, efficiency of units, conformity with specifications, terms of delivery and servicing or availability of spares, etc., as the case may be and were also given as far as practicable on price.

## **PART C**

(a) The Australian Delegation confirmed that temporary protection under Part V of the Tariff Board Act was applied only when a product was being imported in such quantities or under such conditions as to cause or threaten serious injury to domestic producers of like or competitive products and that such temporary protection was applied only to such extent and for such time as might be necessary to prevent or remedy such injury.

(b) The Australian Delegation confirmed that the Australian Government would, before making a reference to a Special Advisory Authority on items of which Japan was a significant supplier, afford the Japanese Government the maximum practical degree of consultation, and stated that, if the urgency of the matter required a reference before the completion of such consultation, the consultation would be continued, if desired by the Japanese Government after the reference had been made.

(e) The Japanese Delegation confirmed that in the course of such consultation the Japanese Government would be prepared to co-operate with the Australian Government with a view to finding whether the need for action under Part V of the Tariff Board Act could be obviated by measures taken in Japan.

(d) The Australian Delegation confirmed that the practice of its Government in regard to such consultation was, upon receipt of an official application for temporary protection under Part V of the Tariff Board Act, to notify immediately the Japanese Government thereof, and to provide the Japanese Government with such details of the circumstances of the application as were relevant, available and not of a confidential nature in order for the consultation to proceed and that before reaching a decision on action under Part V of the Tariff Board Act, the Australian Government would take full account of any representations made by the

Japanese Government, particularly as to measures taken by Japanese interests to restrict exports to Australia of the items concerned.

(e) The Australian Delegation confirmed that in any reference made to a Special Advisory Authority on items of which Japan was a significant supplier, the Australian Government would continue to seek the advice of a Special Advisory Authority as to whether any temporary protection recommended should apply to products in direct transit to Australia at the date of the reference, and in considering such advice, the Australian Government would continue to pay due regard to the need not to apply such temporary protection unreasonably to such goods.

(f) The Australian Delegation confirmed that in any case where a reference was made to a Special Advisory Authority, the Japanese Government and other Japanese interests would be free to place any information they might so desire before the Australian authorities.

The understandings contained in these Agreed Minutes will, as from the date of the coming into force of the Protocol amending the Agreement on Commerce between the Commonwealth of Australia and Japan of 6th July, 1957 signed today, supersede the understandings embodied in the Agreed Minutes attached to the Exchange of Notes of 6th July, 1957.



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## EXCHANGE OF LETTERS

I-Iakone

[Translation]

July 6, 1957.

Your Excellency,

With reference to the Agreement on Commerce between Japan and the Commonwealth of Australia signed today, I have the honour to inform your Excellency that the most-favoured-nation provisions of the said Agreement shall not apply to advantages which are accorded or which may be accorded hereafter by Japan to such areas as are set forth in Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, so long as the situation set forth in the second sentence of the said Article continues with respect to the administration, legislation and jurisdiction over those areas.

I have further the honour to request your Excellency to be good enough to confirm the foregoing understanding on behalf of your Government.

I avail myself, Excellency, of this opportunity to extend assurances of my highest consideration.

His Excellency,

J. McEwen,

Minister for Trade,

Commonwealth of Australia.

NOBUSUKE KISHI

Minister for Foreign Affairs

of Japan.

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The Minister for Foreign Affairs,

Tokyo.

Hakone

6th July, 1957.

Your Excellency,

I have the honor to acknowledge receipt of your Excellency's Note dated July 6, 1957, which reads as follows:

" With reference to the Agreement on Commerce between Japan and the Commonwealth of Australia signed today, I have the honour to inform your Excellency that the most-favoured-nation provisions of the said Agreement shall not apply to advantages which are accorded or which may be accorded hereafter by Japan to such areas as are set forth in Article 3 of the Treaty of Peace which Japan signed at the city of San Francisco on September 8, 1951, so long as the situation set forth in the second sentence of the said Article continues with respect to the administration, legislation and jurisdiction over those areas.

I have further the honour to request your Excellency to be good enough to confirm the foregoing understanding on behalf of your Government."

On behalf of the Government of the Commonwealth of Australia I have the honour to confirm the understanding stated in your Excellency's Note with respect to the application of the Agreement on Commerce between the Commonwealth of Australia and Japan signed today to the areas specified in Article 3 of the Treaty of Peace with Japan.

I avail myself, Excellency, of this opportunity to renew assurances of my highest consideration.

J. McEWEN,  
Minister for Trade.

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The Minister for Foreign Affairs,  
Tokyo.

Hakone  
6th July, 1957.

Your Excellency,

With reference to the Agreement on Commerce between the Commonwealth of Australia and Japan signed today, I have the honour to inform your Excellency 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 have the honour to request your Excellency to be good enough to confirm the foregoing understanding on behalf of your Government.

I avail myself, Excellency, of this opportunity to renew assurances of my highest consideration.

J. McEWEN,  
Minister for Trade.

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[Translation]

Hakone  
July 6, 1957.

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note dated July 6, 1957, which reads as follows:

" With reference to the Agreement on Commerce between the Commonwealth of Australia and Japan signed today, I have the honour to inform your Excellency 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 have the honour to request your Excellency to be good enough to confirm the foregoing understanding on behalf of your Government."

On behalf of the Government of Japan I have the honour to confirm the understanding stated in your Excellency's Note with respect to the application of the Agreement on Commerce between Japan and the Commonwealth of Australia signed today to the external territories administered by the Government of the Commonwealth of Australia.

I avail myself, Excellency, of this opportunity to renew assurances of my highest consideration.

His Excellency,

J. McEwen,  
Minister for Trade,  
Commonwealth of Australia.

NOBUSUKE KISHI,  
Minister for Foreign Affairs  
of Japan.

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Tokyo  
5th August, 1963.

Your Excellency,

On the occasion of the signing today of the Protocol amending the Agreement on Commerce between the Commonwealth of Australia and Japan of 6th July, 1957. I have the honour to inform you that the Government of the Commonwealth of Australia will, on the date of the entry into force of the above-mentioned Protocol, cease to invoke Article XXXV of the General Agreement on Tariffs and Trade against Japan.

A copy of this Note is being forwarded to the Executive Secretary of the General Agreement for the information of the Contracting Parties.

I avail myself, Excellency, of this opportunity to extend assurances of my highest consideration.

His Excellency,

Mr. Hajime Fukuda,  
Minister for Foreign Affairs *ad interim*,  
Minister of State of Japan.

J. McEWEN,  
Minister for Trade,  
Commonwealth of Australia.

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Tokyo

5th August, 1963.

Your Excellency,

I have the honour to acknowledge receipt of your Note of 5th August, 1963 which reads as follows:

" On the occasion of the signing today of the Protocol amending the Agreement on Commerce between the Commonwealth of Australia and Japan of 6th July, 1957, I have the honour to inform you that the Government of the Commonwealth of Australia will, on the date of the entry into force of the above-mentioned Protocol, cease to invoke Article XXXV of the General Agreement on Tariffs and Trade against Japan.

A copy of this Note is being forwarded to the Executive Secretary of the General Agreement for the information of the Contracting Parties."

I avail myself, Excellency, of this opportunity to extend assurances of my highest consideration.

His Excellency,

Mr. J. McEwen,

Minister for Trade,

Commonwealth of Australia.

HAJIME FUKUDA,

Minister for Foreign Affairs *ad interim*

Minister of State of Japan

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Tokyo

5th August, 1963.

Your Excellency,

I have the honour to refer to the documents mentioned hereunder which have been signed today by us:

- (1) Protocol amending the Agreement on Commerce between the Commonwealth of Australia and Japan;
- (2) Agreed Minutes.

The agreements and understandings between our two Governments embodied in these documents will come into force on the date of the entry into force of the Protocol mentioned in (1) above.

In view of the desirability of putting into operation, as soon as possible, the agreements and understandings embodied in these documents, my Government proposes that, pending the entry into force of the above-mentioned agreements and understandings, our two Governments give provisional effect, within the limits of their constitutional authority, to these agreements and understandings as from today on the understanding that such provisional effect may be terminated by either Government subject to three months prior notice in writing.

If the above proposal is acceptable to your Government, I have the honour to suggest that the present Note and your Excellency's reply to that effect shall be regarded as constituting an agreement between our two Governments which shall enter into force oil today's date.

I avail myself, Excellency, of this opportunity to renew assurances of my highest consideration.

His Excellency,

Mr. J. McEwen,

Minister for Trade,

Commonwealth of Australia.

I-IAJIME FUKUDA,

Minister for Foreign Affairs *ad interim*

Minister of State of Japan.

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Tokyo

5th August, 1963.

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of 5th August, 1963 which reads as follows:

" I have the honour to refer to the documents mentioned hereunder which have been signed today by us:

- (1) Protocol amending the Agreement on Commerce between Japan and the Commonwealth of Australia;
- (2) Agreed Minutes.

The agreements and understandings between our two Governments embodied in these documents will come into force on the date of the entry into force of the Protocol mentioned in (1) above.

In view of the desirability of putting into operation, as soon as possible, the agreements and understandings embodied in these documents, my Government proposes that, pending the entry into force of the above-mentioned agreements and understandings, our two Governments give provisional effect, within the limits of their constitutional authority, to these agreements and understandings as from today oil the understanding that such provisional effect may be terminated by either Government subject to three months prior notice in writing.

If the above proposal is acceptable to your Government, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between our two Governments which shall enter into force oil today's date."

On behalf of the Government of the Commonwealth of Australia, I have the honour to accept the proposal contained in your Excellency's Note with respect to the provisional application of the agreements and understandings embodied in the documents listed, signed by us today, and to accept the suggestion that your Excellency's Note and my reply shall be regarded as constituting ail agreement between our two Governments entering into force oil today's date.

I avail myself, Excellency, of this opportunity to renew assurances of my highest consideration.

His Excellency,

Mr. Hajime Fukuda,

Minister for Foreign Affairs *ad interim*

Minister of State of Japan.

J. McEWEN,

Minister for Trade,

Commonwealth of Australia.