Index of Selected Bilateral Treaties: United States and Japan

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This index has two purposes. One is to provide the student or practitioner with an overview of treaty relations between the United States and Japan. More importantly, this index seeks to aid researchers dealing with questions touching on U.S.-Japan relations to determine whether any applicable treaty in force exists. It is important to remember that many of these treaties are very sketchy, and often delegate power to administrative agencies of both governments to decide details of implementation. The index does not attempt to analyze the treaties to any great extent, but simply summarizes terms and features that seem most important. Whenever possible, the U.S. administrative agencies responsible for implementing these agreements have been noted.

The treaties in this index are grouped into four categories. The first are those treaties entered into in the aftermath of the Second World War, whose primary purpose was the industrial and economic regeneration of Japan. Treaties remaining in force in this group were enacted as early as 1952 and as recently as the 1970’s. These provide some insight into foreign aid mechanisms, as well as the type of treatment accorded a vanquished foe in the postwar era. This group is labeled “Reconstruction Treaties.” The second group of treaties overlaps somewhat in time and purpose with the first. The United States has exchanged promises of economic and technical cooperation with Japan. Most of these agreements refer to specific projects, often defense-related, which were undertaken jointly. Environmental protection treaties form the third group. Many important environmental treaties are multinational rather than bilateral. Those between only the U.S. and Japan deal with concerns of peculiar interest to those two countries and which are not covered by the multinational treaties.

The final category is something of a catch-all group. A substantial number of agreements seem primarily to perform a housekeeping function for both nations and private citizens. Two treaties probably most pertinent to the private rights dealt with by the ordinary practitioner are included in this group: The Convention for the Avoidance of Double Taxation on Income\(^2\) and the Treaty of Friendship, Commerce and Navigation.\(^3\) A wide range of subjects falls into this miscellaneous category, from extradition to standards of air-worthiness for commercial aircraft.

I. Reconstruction Treaties

A. Defense

In the Treaty of Mutual Cooperation and Security,\(^4\) Japan and the United States undertook to settle disputes peacefully between themselves and to refrain from threats or use of force against any third nation.\(^5\) The two countries' stated purposes are the maintenance of peace and economic cooperation in the Far East.\(^6\) By means of strengthening free institutions and cooperating in developing defense capacity, the two nations hoped to achieve these ends. Japan granted permission to the U.S. to build and staff land, sea and air military facilities in Japan in order to safeguard peace in the Far East.\(^7\)

Under the Mutual Defense Assistance Agreement,\(^8\) the United States committed itself to assist Japan in defense efforts. Each country promised to effectively use equipment, materials, or other assistance furnished to it to promote peace and security.\(^9\) Each promised not to transfer anything supplied under the treaty to third parties, and to return supplies when no longer needed.\(^10\) Japan agreed to furnish the U.S. with any raw materials in scarce supply in the U.S. and to deposit money from American assistance where

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5. Id. Preamble at 1633.
6. Id. art. II.
7. Id. art. VI at 1634.
9. Id. art. I, para. 2 at 664.
10. Id. paras. 3, 4 at 664-65.
it could neither be seized nor garnished by third parties.11 Japan granted tax exempt status to materials and equipment imported into or exported from Japan,12 as well as to expenditures made or financed by the U.S. government under this treaty or similar defense cooperation treaties between the U.S. and other countries.13 Japan is further obligated to receive all people sent to discharge defense-related duties. In addition, Japan must make whatever contribution possible to its own defense.14 The rest of the provisions delay decisions about security, dissemination of information to the public, and industrial property rights until specific terms can be agreed upon.

From 1955-1977, a group of treaties still in force set up programs under the Mutual Defense Assistance Agreement for building specific types of non-nuclear weapons.15 These treaties are characterized by their brevity and by Japan’s increasing responsibility for the programs’ cost.16 The Agreement Concerning Technical Missions17 is also defense-related, but is more general. It permits Japanese nationals to come to the United States to learn industrial procedures for defense production under the auspices of the U.S. government.18 Japan guaranteed its best efforts in protecting patent and other proprietary information rights exposed by this program and in providing redress of damage from unauthorized use or disclosure of secret information.

The Title Agreement for Relief from Taxation further lightened the tax load on the defense effort.19 This agreement guaranteed that U.S. expenditures for materials, supplies, equipment and services for use in any programs “intended to strengthen the free world”

11. Id. art. V at 666.
12. Id. art. VI at 666-67.
14. Supra note 8, art. VIII at 669.
16. See, e.g., Surface to Air Missile Battalions, supra note 15.
18. Id. at 318.
would be exempt from Japanese commodity and gasoline taxes when such taxes would constitute a significant portion of the purchase price.\textsuperscript{20}

B. Agricultural Commodities

The U.S. sold agricultural surpluses valued at over one hundred million dollars to Japan in the years from 1954 to 1956.\textsuperscript{21} Commodities sold included wheat, barley, rice, dry milk and cotton. The United States financed these purchases under terms favorable to Japan. Twenty-five to thirty percent of the price was kept in yen and spent by the U.S. in Japan. The remainder of the purchase price became a forty-year loan to Japan to be used to purchase goods and services from other friendly countries.\textsuperscript{22} The U.S. stipulated that Japan was forbidden to make the inexpensive goods purchased under these agreements available to nations hostile to the U.S. Japan was also obliged to take reasonable care not to disrupt world market prices or U.S. trade relations with these low-priced products.\textsuperscript{23} A final condition provided that private trade channels of both nations were to be used as much as possible in carrying out the exchange.\textsuperscript{24} Amendments to these commodities purchase agreements suggest uses for the yen the U.S. had to spend in Japan\textsuperscript{25} and arrange pre-payment of the forty-year loans.\textsuperscript{26}

C. Investments

One last method used by the Eisenhower Administration to revive the Japanese economy was to guarantee private investment by U.S. citizens in Japan.\textsuperscript{27} The two governments were to decide which projects were worthy of the guarantee.\textsuperscript{28}

\textsuperscript{20} Id.


\textsuperscript{22} Supra note 21, 5 U.S.T. at 724-25; 6 U.S.T. at 2123-26; 7 U.S.T. at 951-52.

\textsuperscript{23} Supra note 21, 5 U.S.T. at 724; 6 U.S.T. at 2123-26; 7 U.S.T. at 951-52.

\textsuperscript{24} Supra note 21, 6 U.S.T. at 2123; 7 U.S.T. at 951.


\textsuperscript{28} Id. at 792-93.
D. Claims

In the United States-Japan Treaty of Peace, Claims of islanders went unsettled until 1969 when the U.S. and Japan entered into the Agreement on the Trust Territory of the Pacific Islands. Under this agreement, Japan and the U.S. each gave five million dollars to residents of the Trust Territory of the Pacific Islands, thereby settling all claims of Japan and Japanese nationals or residents of the Trust Territory against the U.S. The fund also eliminated all claims of Trust Territory residents against Japan. Japan's contribution and the interest on the entire sum could be spent only on Japanese goods and services to be distributed among residents of the Trust Territory. Residents of the Marshall Islands, an area of early nuclear testing, accepted a settlement from the United States of two million dollars, which foreclosed all of their claims against the U.S. stemming from nuclear testing there.

Japan waived all claims for itself and its nationals arising under the U.S. occupation of the Ryukyu Islands at the time the U.S. relinquished its rights to those islands under the World War II Peace Treaty. In addition to its waiver of claims, Japan promised to pay $320 million over a five-year period to the U.S. as compensation for return of the Ryukyu group.

30. Id. art. 4(a) 3173.
32. The following Act was passed to administer this fund: Micronesian Claims Act of 1971, July 1, 1971, 85 Stat. 92. For the sad tale of one islander's struggle to obtain compensation, see Ralpho v. Bell, 569 F.2d 607 (D.C. Cir. 1977).
34. Damage Claims Agreement, Jan. 4, 1955, United States-Japan, 6 U.S.T. 1, T.I.A.S. No. 3160.
36. Supra note 29.
37. Supra note 35, at 456.
II. ECONOMIC AND TECHNICAL COOPERATION TREATIES

A. Basic Policy Agreements

The initial agreement for economic cooperation\(^{38}\) between the United States and Japan might be more properly classified as a "reconstruction" treaty. Entered into in 1955, it was designed to stimulate the Japanese economy by encouraging higher productivity. Production would be increased by improving technical efficiency and encouraging a labor movement.\(^{39}\) Distribution of goods and profits in order to improve the Japanese standard of living would hearten workers and better Japan's position in international trade.\(^{40}\)

The United States undertook to assist in training of Japanese nationals, and to send American specialists and technical aides to Japan.\(^{41}\) Japan established a "Productivity Center" for policymaking, providing technical services and disseminating technical information.\(^{42}\) Japan guaranteed effective use of U.S. aid and promised to report on activities financed with it.

The United States and Japan entered into a similar agreement to help other nations develop economically.\(^{43}\) Under this agreement, facilities would be established in Japan to provide technical training for other countries' nationals. Costs of both economic cooperation and third-country training programs were to be allocated between the United States and Japan according to ability to pay.

B. Energy

A program of meetings, information exchanges, and projects was agreed upon in 1974 to enable the U.S. and Japan to cooperate in energy research.\(^{44}\) The goal of the agreement is development of stable supplies of energy. Areas of research include: solar and geothermal power, storage batteries, hydrogen technology and gasifica-

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39. Id. at 1013.
40. Id.
41. Id. at 1014.
42. Id.
tion of coal.\textsuperscript{45} Implementation and details of the agreement, including arrangements for patents and other industrial property, were left to the appropriate government agencies.

Atomic energy is accorded the dignity of its own treaty.\textsuperscript{46} Security precluded any exchange of information relating to design and manufacture of weapons. Exchange of information concerning production of and source materials for uranium-235,\textsuperscript{47} and other fissionable elements, or concerning their use in the production of energy was also prohibited.\textsuperscript{48} Any transfer of equipment or services which would necessitate communication of restricted data\textsuperscript{49} is explicitly disallowed by the treaty.\textsuperscript{50} However, unlimited amounts of unclassified information about the peaceful use of nuclear power and about solutions to problems it poses may be exchanged by the two nations.\textsuperscript{51} Any equipment, and source materials other than those for fissionable materials may be freely exchanged.\textsuperscript{52} Heavy water, radioactive isotopes and by-product, and power-reactor design and developmental information are included in this group of peaceful devices and materials.\textsuperscript{53} An explicit disclaimer reminds the recipient that information and equipment carry no warranty of fitness.\textsuperscript{54}

The United States agreed to sell Japan 365 kilograms (803 pounds) of plutonium and 335,000 kilograms (737,000 pounds) of U-235 enriched uranium for use in defined research and in experimental reactors.\textsuperscript{55} Nuclear materials produced with the transferred plutonium and uranium-235 may be sold or given to any third country or international organization which has a contract of cooperation with the U.S. or guarantees civil use and acceptable safeguards.\textsuperscript{56} Safeguards for the elements transferred under this treaty, as

\begin{itemize}
  \item \textsuperscript{45} Id. at 1681-82.
  \item \textsuperscript{46} Supra note 44.
  \item \textsuperscript{47} A light isotope of uranium of mass number 235 that is physically separable from natural uranium, that when bombarded with slow neutrons undergoes rapid fission into smaller atoms with the release of neutrons and atomic energy. Uranium 235 is used in power plants and atom bombs. (Webster's 7th New Collegiate Dictionary).
  \item \textsuperscript{49} Id. at 5217. Restricted data is defined as all data concerning (1) design, manufacture, or utilization of atomic weapons, (2) production of special nuclear materials, or (3) use of special nuclear material in production of energy, except declassified data.
  \item \textsuperscript{50} Id. at 5218.
  \item \textsuperscript{51} Id.
  \item \textsuperscript{52} Id. at 5219.
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} Id. at 5220.
  \item \textsuperscript{56} Id. at 2327.
\end{itemize}
amended, will be outlined by the International Atomic Energy Agency.\textsuperscript{57} Japan and the U.S. both guarantee that nothing transferred under these agreements will be used for military purposes and pledge to maintain adequate safeguards.\textsuperscript{58}

The United States reserves the right to approve the design of storage facilities and to review the records which must be kept to account for source materials, equipment, and devices.\textsuperscript{59} Reactor design must be examined, both for safety and to ensure the civil nature of its use. The U.S. can suspend or terminate the treaty if Japan fails to comply with safeguards or any prohibitions against transfer. Should the U.S. terminate, it is obliged to give Japan a grace period in which to find alternative energy sources.\textsuperscript{60}

Other agreements relating to atomic energy provide for exchange of information about environmental impact and safety regulation of several nuclear power facilities in Japan,\textsuperscript{61} arrange for cooperation in several research projects,\textsuperscript{62} and permit Japan to reprocess up to 99 tons of spent fuel from U.S. plutonium reactors.\textsuperscript{63}

C. Space Technology

In a general agreement of cooperation,\textsuperscript{64} the United States allows private U.S. industry to supply Japan with unclassified technology to aid in design and manufacture of satellites and launch vehicles.\textsuperscript{65} The United States provides information only on condition that Japan ensure all information will be used exclusively for peaceful purposes.\textsuperscript{66} Japan undertakes to prevent transfer to third countries of information, technology, or equipment acquired under this agreement, unless the United States consents.\textsuperscript{67} Additional agreements set up a cooperative program, run by NASA and the Japanese Ministry of Posts and Telecommunications,\textsuperscript{68} to test experimental

\textsuperscript{57.} Supra note 48, at 5235.
\textsuperscript{58.} Id. at 5232.
\textsuperscript{59.} Id. at 5232-34.
\textsuperscript{60.} Id. at 5235-36.
\textsuperscript{63.} Agreement on Reprocessing of Special Nuclear Material, Sept. 12, 1977, --, U.S.T. --, T.I.A.S. No. 8734.
\textsuperscript{64.} Agreement on Space Cooperation, July 31, 1969, 20 U.S.T. 2720, T.I.A.S. No. 6735.
\textsuperscript{65.} Id. at 2726.
\textsuperscript{66.} Id.
\textsuperscript{67.} Id.
\textsuperscript{68.} Agreement on Experimental Communications Satellites, Nov. 6, 1962, United
satellites and arrange for NASA to launch three Japanese satellites. The U.S. also permitted Japan to establish satellite tracking stations on Okinawa and Kwajalein Island.

III. ENVIRONMENTAL COOPERATION TREATIES

A. Broad Cooperation

The basic compact on environmental protection between Japan and the U.S. was signed in 1975. The agreement encompasses air and water pollution, pesticide control, genetic effects of environmental degradation, and other areas to be mutually agreed upon. Administrative agencies of both governments are assigned the task of implementing the agreement. The two nations specify ways to achieve the treaty's aims. Meetings will be held to exchange information on research and development policies and practices and to identify possible cooperative projects. Both countries will arrange visits and exchanges of scientists. A committee was formed to discuss major policy issues, coordinate and review actions under the treaty, and make recommendations to both governments about ways to achieve the treaty's aims. Both governments adopted the Guiding Principles Concerning International Economic Aspects of Environmental Policies of the Council of the Organization for Economic Cooperation and Development as the basis for their formulation of environmental policies.
Less generalized treaties in the field of environmental protection concern fisheries, migratory birds, and whaling stations.

B. Fisheries

The basic aim of the Fisheries Agreement is to prevent Japanese vessels from fishing in waters adjacent to the U.S. territorial sea. Its concerns are not only economic, but also include environmental fears of depletion of stock in the Alaskan area. The principal catches involved are salmon, king crab and tanner crab. The Japanese, while permitted to fish in some coastal waters during some seasons, are limited as to type of gear, number of vessels, and size of catch. Similar types of limitations are placed on catches of rockfish, black cod, pollock, and herring in the North Pacific, East Bering Sea, and Aleutian Islands, as well as tuna in the South Pacific. The basic responsibility for compliance lies with the Japanese government, although U.S. government officials are allowed to board Japanese vessels in the crab fisheries of the East Bering Sea to ensure that crab fishermen are obeying treaty regulations for Economic Cooperation and Development, OECD and the Environment, Paris, 1976.

82. Supra note 79.
83. Id. at 3197.
84. Id. at 3248.
85. Id. at 3201.
86. Id. at 3236.
87. E.g., in 1975 and 1976, Japanese were permitted to fish for King and Tanner crab in areas north of 55.30'N and west of 164 W in the Eastern Bering Sea, supra note 79, at 3236.
88. E.g., in 1975 and 1976, Japanese vessels were not to engage in dragnet or longline fishing from July 10 to May 31 off Kodiak Island seaward or off Unimak Island seaward. Supra note 9 at 3219.
89. E.g., skipjack pole and line fishing was forbidden in waters off the leeward Hawaiian Islands. Supra note 79 at 3226.
90. E.g., in 1975 and 1976, no more than two Japanese fleets were permitted to fish for King and Tanner crab in the East Bering Sea. Supra note 79 at 3247.
91. E.g., King crabs of less than 15.8 cms. in maximum carapage must be thrown back. Supra note 75, at 3238.
92. Supra note 79, at 3248.
93. Id. at 3249.
94. Id. at 3250.
95. Id.
96. Id. at 3226.
97. Id. at 3247.
tions. By the same token, the federal government undertakes to regulate American fishermen in the crab fisheries to be certain that they are adhering to limitations as to size and sex of crabs caught.

A second fisheries agreement established procedures for Japanese wishing to fish within two hundred nautical miles of the U.S. coast. Each year the United States will determine the size of the catch allowed for each species in each fishery, and the portion of that catch which will not be taken by American vessels. Japan undertook to prevent Japanese nationals or vessels from fishing off the coast of the United States, except as authorized by this agreement.

C. Migratory Birds

The Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment covers the U.S. and its possessions, including the Trust Territory of the Pacific, Japan and all areas under Japanese administration. Migratory birds are defined as those species for which there is positive evidence of migration between the U.S. and Japan, including species common to both countries and species with subspecies common to both. The treaty prohibits the taking of protected birds or their eggs, and the sale, purchase, or exchange of live or dead birds, any of their parts, or their eggs.

Exceptions to these prohibitions include, inter alia, taking for scientific purposes or taking by Eskimos, Indians, or the indigenous peoples of the Trust Territory for their own food or clothing. Each nation takes responsibility for establishing sanctuaries for endan-
gered species and for notifying the other country of any threatened extinction.109

In order to protect the environments needed to support endangered bird species, the two governments agree to reduce pollution and other hazards,110 to control imports of live animals dangerous to the preservation of endangered species,111 and to control any introductions of plants and animals which may upset island ecologies.112

No details for implementing the treaty are decided. The nations simply agree to take "measures necessary to carry out the purposes of this Convention."

D. Whaling, Observers

The U.S.-Japan whaling agreement operates as an adjunct to the International Convention for Regulation of Whaling.113 The bilateral agreement114 provides for observers who will maintain surveillance of whaling operations at land stations in the North Pacific. Land stations are processing points where whalers bring their catch after slaughter. The reasons for the observers’ presence are conservation of North Pacific whale stocks and maintenance of proper productivity in whaling operations.115 Observers answer only to the Whaling Commission.116 They watch all activities in the land stations to verify compliance with provisions of the International Convention for Regulation of Whaling.117 Observers may examine all records, as well, and report any infractions to the station manager and the senior national inspector.118

IV. MISCELLANEOUS

A. Treaty of Friendship, Commerce and Navigation

The fundamental compact in this category is the Treaty of

109. The agency responsible for such notification is the Bureau of Fish and Game in the Department of Interior.
110. Supra note 104 at 3335, art. VI.
111. Id. A list of 189 such species is annexed to the treaty, in addition to lists of those birds considered to be in danger of extinction.
112. Id.
114. Supra note 81.
115. Id. at 1010.
116. Id. at 1011.
118. Supra note 81 at 1012.
Friendship, Commerce and Navigation. Personal and property rights of each country’s nationals while in the other country fall within the scope of this agreement. Key concepts in understanding this agreement are “national treatment” and “most-favored nation” treatment. The former means “. . . treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels, or other objects, as the case may be, of such Party.” “Most favored nation” treatment means essentially that the citizens, companies, products, and possession of the party nation are to be treated no less favorably than those of any third nation, so that privileges granted to any third country must also be granted to all “most favored” nations.

Under this agreement, extensive rights are accorded to nationals of Japan and the U.S. They may enter the host country to further trade between the U.S. and Japan, or to develop enterprises in which they have financial interests. Within the host nation, the foreign citizen may travel freely and live where he will. He is guaranteed liberty of conscience and religion, and the rights to gather information and transmit it abroad and to communicate by public means. He and his property are to be afforded the same degree of protection as is given to native inhabitants and their belongings. If arrested, the foreigner is entitled to reasonable treatment, to know the charges against him, to have a prompt trial, and to inform his counsel of his arrest. Nationals of both parties have the right to national treatment with reference to worker’s compensation and compulsory social security laws, as well as access to the courts of the host nation. No discriminatory measures may be enforced within one country which would diminish legal rights of the other’s citizens regarding capital, technology, or the acquisition of these items. Nationals of a party nation are allowed to engage in business in the other’s territory and are entitled to “national” treatment in all business activities. They may establish branches to

120. Id. at 2079, art. XXII.
121. Id.
122. Id. at 2066, art. I.
123. Id.
124. Id.
125. Id. at 2067, art. II.
126. Id. at 2067, art. III.
127. Id. at 2067, art. IV.
128. Id. at 2068, art. V.
129. Id. at 2069, art. VII.
conduct business, organize companies under foreign law, acquire companies so organized, and control and manage the enterprises they establish or acquire. 130

The property of aliens must also be protected according to "national" or "most favored nation" standards. 131 Aliens' property may be neither unlawfully entered, 132 nor seized without compensation. 133 Those foreign nationals seeking to lease real property 134 or to acquire tangible or intangible personalty 135 must be accorded "national" or "most favored nation" treatment. Aliens and alien corporations seeking to obtain or maintain patents, trademark rights, trade names or labels, and industrial property of every kind must also receive "national" or "most favored nation" treatment. 136

The rights of aliens to conduct business are, however, subject to some limitations. Host nations may curtail alien attempts to acquire interest in public utilities, shipbuilding industries, air or water transport, banking concerns involving depository or fiduciary functions, or businesses exploiting natural resources. 137 A host country may restrict alien ownership of instrumentalities considered dangerous to public safety. 138

Resident aliens engaged in business, scientific, or educational activities may not be subjected to taxes, fees, or charges upon income, capital, or transactions more burdensome than those borne by nationals or citizens of third countries. 139 Both countries reserve the right to extend special tax advantages to their own nationals, or to residents of contiguous countries. 140 Neither country is permitted to impose exchange restrictions 141 except to prevent reserves from falling to a very low level or to effect a moderate increase in very low reserves. 142 In the event of such a restriction, the party imposing it must provide for withdrawal of earnings of aliens,

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130. Id.
131. Id. at 2068, art. VI.
132. Id.
133. Id. at 2069, art. VI.
134. Id. at 2071, art. IX.
135. Id.
136. Id. at 2071, art. X.
137. Id. at 2069, art. VII.
138. Id. at 2071, art. IX.
141. Defined as "... all restrictions, regulations, charges, taxes or other requirements . . . which burden or interfere with payments remittances or transfers of funds or of financial instruments between the territories of the two parties." Id. at 2073, art. XII.
142. Id.
amounts for amortization of loans, depreciation of direct investments, and capital transfers in the aliens' native currency.\textsuperscript{143} No restriction may be imposed in a manner that unnecessarily discriminates against aliens or harms their interests.\textsuperscript{144}

Products of the other nation basically are accorded "most favored nation" treatment, with some exceptions.\textsuperscript{145} This advantage applies to customs duties, methods of levying duties, charges for import or export, and customs rules and formalities.\textsuperscript{146} No restrictions or prohibitions on import or export of products may be imposed unless similar restrictions apply to third countries.\textsuperscript{147} Public notice must be given before imposing any quantitative restrictions on the import or export of a product important to the other country.\textsuperscript{148} Restrictions may be imposed on noncommercial grounds, including prevention of deceptive or unfair trade practices.\textsuperscript{149} Most favored nation treatment does not apply to fishery products.\textsuperscript{150} Products from adjacent countries which are more favorably treated in order to speed frontier traffic or those specially treated because a party nation belongs to a customs union or free-trade area cannot be compared in determining what is the "most favored nation" treatment of particular products.\textsuperscript{151}

Each party is obligated to publish regulations\textsuperscript{152} and administrative rulings concerning taxes, charges and classification of articles for customs purposes, and to publish import requirements or restrictions. Both nations must administer these laws uniformly and impartially.\textsuperscript{153} Each party must provide an appeals procedure for aliens who wish to contest customs rulings, fines, or penalties.\textsuperscript{154}

Imported products must be accorded "most favored nation" treatment within the host country with respect to internal taxes, sale, distribution, storage and use.\textsuperscript{155} Those articles produced by aliens within the host nation are entitled to "national" treatment

\begin{enumerate}
\item \textsuperscript{143} Id.
\item \textsuperscript{144} Id.
\item \textsuperscript{145} Id. at 2074, art. XIV.
\item \textsuperscript{146} Id.
\item \textsuperscript{147} Id.
\item \textsuperscript{148} Id.
\item \textsuperscript{149} Id.
\item \textsuperscript{150} Id. at 2075, art. XIV.
\item \textsuperscript{151} Id.
\item \textsuperscript{152} U.S. Customs regulations are published by the Treasury Department.
\item \textsuperscript{153} Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, United States-Japan, 4 U.S.T. 2063, 2075, art. XV, T.I.A.S. No. 2863.
\item \textsuperscript{154} See 19 U.S.C. §§ 1514, 1520(c)(1977).
\item \textsuperscript{155} Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, United States-Japan, 4 U.S.T. 2063, 2076, art. XVI, T.I.A.S. No. 2863.
\end{enumerate}
with reference to export, taxation, sale and distribution.\textsuperscript{156} Aliens and alien companies can compete on an equal footing with nationals of the host country for government contracts and concessions. They may also compete to purchase any service supplied by the government or by an exclusive monopoly.\textsuperscript{157}

Both party nations join in condemning unfair trade practices, whether engaged in by private or public enterprises if they restrain competition, limit access to markets, or foster monopoly.\textsuperscript{158} The only remedy mentioned, however, is an \textit{ad hoc} consultation between the two governments.\textsuperscript{159}

Vessels under the flag of either party, warships and fishing vessels excepted, may enter ports of the other party which are open to foreign commerce and navigation with freedom equal to that of domestic vessels or those of any third nation.\textsuperscript{160} Products carried by such vessels must be treated by customs officials as if they were carried by native vessels.\textsuperscript{161}

Vessels which are shipwrecked, stranded, or forced to port must receive the same treatment as native or third countries' ships receive under similar circumstances.\textsuperscript{162} Native vessels are reserved rights to the coasting trade,\textsuperscript{163} work in national fisheries\textsuperscript{164} and to all inland navigation.\textsuperscript{165}

Freedom of transit through each other's territories is accorded to nationals of party nations and their baggage.\textsuperscript{166} People and baggage enroute to or from one party's territory may pass freely through the other's territory.\textsuperscript{167} Products of any origin enroute to or from the other's territories are likewise granted passage. All are exempt from

\textsuperscript{156} Id.
\textsuperscript{157} Id. at 2076, art. XVII.
\textsuperscript{158} Id. at 2076-77, art. XVIII.
\textsuperscript{159} Id. at 2077, art. XVIII. This consultation is not, however, an exclusive remedy exempting businesses from prosecution under federal antitrust laws. \textit{See In re Grand Jury Investigation of the Shipping Industry}, 186 F. Supp. 298 (1960); \textit{United States v. R. P. Oldham Co.}, 152 F. Supp. 818 (1957).
\textsuperscript{160} Supra note 153, at 2077, art. XIX.
\textsuperscript{161} Id.
\textsuperscript{162} Id. at 2077-78.
\textsuperscript{163} Defined as: commerce and navigation between different places along the coast. \ldots \textit{Commercial intercourse between different districts in different states, different districts in the same state, or different places in the same district, on sea coast or on navigable river. Black's Law Dictionary} 323 (rev. 4th ed. 1968).
\textsuperscript{164} See, e.g., the U.S. concessions to and limitations on Japanese fishing in U.S. coastal waters, \textit{Agreement Concerning Fisheries off the Coast of the United States}, March 18, 1977, \underline{U.S.T.} \underline{8728}, T.I.A.S. No. 8728.
\textsuperscript{165} Supra note 153, at 2078, art. XIX.
\textsuperscript{166} Id. at 2078, art. XX.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
customs or transit duties, unreasonable charges, delays or restrictions.\textsuperscript{169}

The treaty explicitly states that it in no way precludes regulation in several areas: import and export of gold and silver, traffic in fissionable materials, source materials, or radioactive byproducts, weapons and implements of war.\textsuperscript{170} A company actually owned by a third nation may be denied the advantages of this treaty.\textsuperscript{171}

Other trade treaties deal with specific items traded between the United States and Japan. The earlier treaties reduce duties on common Japanese exports: fabric and electrical goods,\textsuperscript{172} silk and toys,\textsuperscript{173} metal and other manufactured articles.\textsuperscript{174} Later agreements are relief measures for two United States domestic industries, specialty steel\textsuperscript{175} and color television receivers.\textsuperscript{176}

\textbf{B. Miscellaneous}

Other than the complex agreements concerning inheritance\textsuperscript{177} and income taxes,\textsuperscript{178} the remainder of this miscellaneous category can be dealt with fairly briefly.

The Air Transport Services Agreement\textsuperscript{179} grants rights necessary to establish international air services on agreed routes. The agreement permits air carriers to fly over the other country’s territory, to make stops for non-traffic purposes, and to stop for passengers and cargo at designated points.\textsuperscript{180} Both nations reserve the rights of domestic carriage.\textsuperscript{181} Arrangements are made governing charges for use of public airports and for duty-free import of techni-
cal supplies consumed in service.\textsuperscript{182} Both agree to accept the other nation's air worthiness certification, as long as both maintain minimum standards of safety equal to those of the Convention on International Civil Aviation.\textsuperscript{183} Airlines of both countries may compete equally on specified routes.\textsuperscript{184} Rates must be reasonable, and are subject to the approval of the Civil Aeronautics Board and the Japanese Air Regulation Board.\textsuperscript{185} Any disputes remaining unsettled after consultation are submitted to arbitration.

The Consular Convention\textsuperscript{186} outlines the functions and privileges of consuls and their staffs. The basic purpose of consulates is to assist nationals abroad. Consuls will inquire into some types of incidents affecting a citizen's interests to the extent of giving legal assistance. They attend to paperwork involving nationals' births, marriages, deaths, estates, passports, or visas. Other important functions include serving documents on behalf of their sending states, taking depositions, and administering oaths. The complex duties and prerogatives of consulates are beyond the scope of this index. The writer intends only to give a sample of what this lengthy treaty contains.

The Agreement on the Joint Committee on Cultural and Educational Cooperation\textsuperscript{187} establishes a committee to implement recommendations\textsuperscript{188} of the Cultural and Educational Conferences, to review and recommend activities, and to plan future educational and cultural conferences.\textsuperscript{189}

The Agreement on the United States Educational Commission in Japan\textsuperscript{190} establishes a commission to administer programs in Japan which will promote understanding between the two nations based on educational contacts.\textsuperscript{191} These programs, financed by the sales of agricultural commodities,\textsuperscript{192} will send U.S. citizens to Japa-

\textsuperscript{182} Id.
\textsuperscript{185} Id. at 1953, art. XIII.
\textsuperscript{187} Agreement on the Joint Committee on Cultural and Educational Cooperation, Nov. 8, 1968, United States-Japan, 19 U.S.T., 7549, T.I.A.S. No. 6597.
\textsuperscript{188} Id. at 7557.
\textsuperscript{189} Id.
\textsuperscript{191} Id. at 90.
\textsuperscript{192} Id. at 93.
nese schools and vice-versa. Japanese may attend schools within the U.S. only when they will not displace American students. The Commission, composed of four Japanese and four Americans, recommends scholars for exchange. It sets standards of qualifications for such scholars and makes financial arrangements for their studies. Amendments provide for further funding.

The Arrangement for Exchange of Official Publications directs the National Diet Library of Japan and the Smithsonian Institute to transmit all official publications of each government. The Library of Congress and the National Diet Library are to receive and store such publications.

The Extradition Treaty, first signed in 1886 and revived after the Second World War, arranges for party nations to extradite all people found within their jurisdictions who are accused or convicted of offenses in the other country. Crimes warranting extradition include murder, perjury, and piracy, to name a few. If the offender is being held for another crime in the country from which extradition is sought, that country may try the individual first for local offenses and then send him or her to the requesting country. Extradition for political offenses is expressly disallowed. Countries are not obliged to deliver up their own citizens. The treaty outlines the extradition procedure: a formal request by diplomats, a copy of the sentence or warrant, adherence to some unspecified standard of probable cause, and a reasonable effort by the nation receiving the request to arrest and detain the person sought.

The Narcotics Treaty, also revived in 1953, simply arranges for exchange of information and evidence about individuals suspected of trafficking and for cooperation in investigative work. An
amendment to this compact extends the role of consular and diplomatic staff in reporting the movements of people known to be engaged in drug traffic.


The Shellfish Agreement calls for improvement and standardization of sanitation in the shellfish trade between the U.S. and Japan. Japan accepts as its guide the U.S. Public Health Service Manual of Recommended Practice for Sanitary Control of the Shellfish Industry. Both the U.S. Public Health Service and the Japanese Ministry of Health agree to inform each other about the extent of compliance with these rules by domestic industry.

C. Taxation

The Convention for Prevention of Double Taxation on Income has two stated purposes: preventing double taxation and preventing tax evasion. The U.S. tax involved is federal income tax, and the Japanese taxes are the income tax and the corporation tax.

The basic mechanism by which the treaty prevents double taxation is a credit for tax actually paid to the foreign country. This credit includes taxes paid to state and local governmental bodies. Residents of one country may be taxed by the second country on any income from sources within that second country. An elaborate set of rules details the sources for various types of income, such as dividends, royalties, and earnings from personal services, or from real property. Since certain types of income originating in

206. Narcotics Agreement, Apr. 23 - Sept. 6, 1929, United States-Japan, 9 Bevans 455.
209. Id. at 2452.
210. Id.
212. Id. at 969.
213. Id. at 969, art. I.
214. Id.
215. Id. at 976, art. V.
216. Id. at 977, art. V.
217. Id. at 973, art. IV.
218. Id. at 977, art. VI.
219. Id. at 978, art. VI.
220. Id. at 979, art. VI.
221. Id.
one country and received by a citizen of the other are taxable in both countries, these source rules have important tax consequences. Industrial or commercial profits attributable to a permanent establishment, such as a branch office, which is maintained in the second country by a resident of the first may be taxed by that second country. Such profits include interest, royalties, capital gains, and income from real property if effectively connected with the permanent establishment. Unless such a permanent establishment exists in the second country, that country may not tax commercial or industrial profits of a nonresident. Since the existence of such a permanent establishment may have substantial tax consequences, the treaty details standards for determining what constitutes a permanent establishment and allows for a reallocation of gains and income when dealings with the permanent establishment have not been at arm's length.

Several types of income are taxable by both countries when the recipient is in one country and the source in the other. These include royalties, interest, and dividends. The tax rates on these, however, are limited. Capital gains are normally exempt from taxation, except in the taxpayer's country of residence. However, when such gains are connected to a permanent establishment in the foreign country or are derived from the sale of real property or real property rights located in the foreign country, then they are taxable by the foreign country. If the recipient of the gain either is present in or maintains a fixed base in the second country, the gain may be taxed by that second country. The exemptions for income from personal services allowed by the treaty to U.S. citizens have been substantially superseded by Internal Revenue Code § 911.

Pensions, wages, and salaries paid by the government of the first country to its citizens are not taxable by the second country unless the citizen receiving the pension has been admitted to the second country for permanent residence or has immigrant status or

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222. Id. at 988, art. XII.
223. Id. at 980-81, art. VI.
224. Id. at 981, art. VI.
225. Id. at 982, art. VIII.
226. Id. at 984-87, art. IX.
227. Id. at 987-88, art. XI.
228. Id. at 988, art. XI.
229. Id. at 991-92, art. XIV.
230. Id. at 990-91, art. XIII.
231. Id. at 998, art. XII.
232. Id. at 994, art. XVI.
233. Id.
234. Id.
citizenship there. Subject to that provision, pensions and annuities, including Social Security benefits, are taxable only in the recipient's country of residency.

The treaty provides for mutual governmental aid in collection of taxes, exchange of information and prevention of fraud. A taxpayer may appeal to the competent authority in her home nation if she feels an action of one nation will tax her contrary to the intent or terms of the treaty. The authorities must then reach an agreement on the taxpayer's liability. Predicted points of difficulty for taxpayers are the attribution of profits to a foreign permanent establishment, determination of the source of income and allocation of profits between a branch and a home establishment when related persons are involved.

The Convention on Double Taxation for Taxes on Estates, Inheritances and Gifts also allows a credit for taxes imposed by one country on property situated in that country at the time of transfer. Credits are allowed only for simultaneously imposed taxes. The main body of this estate tax treaty consists of rules governing the situs of particular types of property for the purpose of imposing estate or gift taxes. Real property and real property rights, tangibles, and moveables are taxed at their physical location. Corporate stock is taxed at the place of incorporation, debts at the residence of the debtor. Only such property as would be otherwise subjected to taxes of both countries is covered by these situs rules. Taxes imposed solely on the basis of property situs at the time of the death or gift transferring them are diminished by the same exemptions which would have been granted had the decedent or beneficiary been a national or domiciliary of the taxing nation.

235. Id. at 995, art. XVII.
236. Id. at 1002, art. XXI.
237. Id. at 1003, art. XXIII.
238. Id. at 1006-07, arts. XXVI-XXVII.
239. In the United States, the Commissioner of Internal Revenue; in Japan, the Minister of Finance.
241. Id. at 1004-05, art. XXV.
242. Id. at 1005, art. XXV.
244. Id. at 120, art. V.
245. Id. at 122, art. V.
246. Id. at 117, art. III.
247. Id.
248. Id.
249. Id. at 119, art. III.
Procedures for exchange of information and appeal are essentially identical to those in the Convention for Prevention of Double Taxation on Income.\textsuperscript{250}

\textsuperscript{250} Id. at 119, art. IV.
