

Treaty: establishment, US - India

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DEPARTMENT OF STATE
WASHINGTON

April 10, 1940

U.S. May 16
The Indian Govt. Trade

Commissioner was allowed to see to original draft & to sign before to see this. Draft to F.O., S.W. and H. Malik. 12 April 1940
Excellency: ✓ ✓ ✓

78/15/39.

C.S.

T.H. (page 1 and 2 notes)

With reference to my note to you of October 10, 1939 transmitting a draft of a Treaty of Establishment, Commerce, Navigation, and Consular Rights between the United States of America and India, the Department has been giving further consideration to that draft and has decided to propose to revise and expand it in certain particulars.

In view of the fact that the draft submitted with the note of October 10, 1939 makes no provision for exemption from military service it would appear appropriate to propose an article on that subject in substantially the form of the fourth paragraph of Article I of the Treaty of Friendship, Commerce, and Navigation between

the

His Excellency

The Right Honorable

The Marquess of Lothian, C. H.,

British Ambassador.

the United States and Siam signed November 13, 1937. A copy of that treaty is enclosed herewith. Should it be decided to include such an article, the following terms may prove acceptable:

"Nationals of either country shall be exempt in the territories of the other country from compulsory military service on land, on sea, or in the air, in the regular forces, or in the national guard, or in the militia; from all contributions in money or in kind, imposed in lieu of personal military service, and from all forced loans or military contributions. They shall not be subjected, in time of peace or in time of war, to military requisitions except as imposed upon nationals."

Such an article might be appropriately inserted between Articles I and II of the present draft treaty.

Article V, paragraph 1, of the draft treaty reads as follows:

"1. Vessels of the United States of America shall enjoy in India and Indian vessels shall enjoy in the United States of America the same treatment as national vessels or vessels of the most favored third country."

It

It is believed that it would be desirable in the interest of precision and clarity to redraft the quoted article to read as follows:

"1. Vessels of the United States of America shall enjoy in India and Indian vessels shall enjoy in the United States of America the same treatment as national vessels. In no case shall vessels of either country be accorded treatment less favorable than the vessels of the most favored third country."

Paragraph 1, Article X, of the present draft reads as follows:

"1. Each country will receive from the other country, consular officers in those of its ports, places and cities, where it may be convenient and which are open to consular representatives of any third country."

It is suggested that the word "or" be substituted for the word "and" appearing at the end of line 3 of this paragraph. This Government attaches considerable importance to the right to establish a consular office at Delhi in order to facilitate the conduct of problems of mutual interest.

interest. It is hoped that your Government may be in a position to aid in preparing the way for the establishment of such an office.

It would seem to be advisable to include an article relating to the acquisition of land and buildings for governmental purposes which customarily appears in treaties of friendship, commerce and consular rights and consular conventions of the United States. The provision would be in the following terms:

"1. The Government of the United States of America and the Government of India, respectively, shall have the right to acquire and own land and buildings required for diplomatic or consular premises in the territory of the other country and also to erect buildings in such territory for the purposes stated subject to local building regulations.

"2. Lands and buildings situated in the territory of the United States of America or India, respectively, of which the Government of the other country is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited."

If the provisions of the foregoing article are found acceptable, the article may well be inserted between Articles X and XI of the present draft treaty.

Finally, I have the honor to propose provisions relating to the inviolability of archives and related matters. These provisions, also, are standard in the treaties of the United States now in force with a number of countries. It is suggested that a new article, to be included after Article XI of the present draft might read as follows:

"Article ____

"The quarters where consular business is conducted and the archives of the consulates shall at all times be inviolable, and under no pretext shall any authorities of any character within the country make any examination or seizure of papers or other property deposited with the archives. When consular officers are engaged in business within the territory of the country where they are exercising their duties, the files and documents of the consulate shall be kept in a place entirely separate from the one where private or business papers are kept. Consular offices shall not be used as places of asylum. No consular officers shall be required to produce official archives in court or testify as to their contents."

*C.S. Ho
Chair Committee*

The insertion of the three foregoing articles, if
agreed

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agreed upon, will require the renumbering of the articles of the draft except Article I. While my Government desires to proceed to the conclusion of the treaty with India as soon as may be practicable, it is of the opinion that the time required for the negotiation of the three additional articles would not materially delay the successful conclusion of the negotiations.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

Rowland Moore

Enclosure:

Treaty Series, No. 940.