

RECIPROCAL TRADE

*Agreement signed at Washington, for the United States and the United Kingdom, November 15, 1935, with related notes*¹

Proclaimed by the President of the United States December 2, 1935

Ratified by the United Kingdom, in respect of Canada, April 20, 1936

Proclamation and ratification exchanged at Ottawa May 14, 1936

Supplementary proclamation by the President of the United States May 14, 1936

Entered into force May 14, 1936; articles I, III, and IV operative from January 1, 1936

*Articles I, III, and IV inoperative January 1, 1939*²

Replaced June 17, 1939, by agreement of November 17, 1938

49 Stat. 3960; Executive Agreement Series 91

AGREEMENT

The President of the United States of America and His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, being desirous of facilitating and extending the commercial relations existing between the United States of America and Canada by granting mutual and reciprocal concessions and advantages for the promotion of trade, have resolved to conclude a Trade Agreement as a step toward the lowering of the barriers impeding trade between their two countries, and for this purpose have through their respective Plenipotentiaries agreed upon the following Articles:

ARTICLE I

The United States of America and Canada will grant each other unconditional and unrestricted most-favored-nation treatment in all matters concerning customs duties and subsidiary charges of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the sale or use of imported goods within the country.

¹ For schedules annexed to agreement, see 49 Stat. 3968 or p. 9 of EAS 91.

² In accordance with terms of agreement of Nov. 17, 1938 (EAS 149), *post*, p. 117.

Accordingly, natural or manufactured products having their origin in either of the countries shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products having their origin in any third country are or may hereafter be subject.

Similarly, natural or manufactured products exported from the territory of the United States of America or Canada and consigned to the territory of the other country shall in no case be subject with respect to exportation and in regard to the above-mentioned matters, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products when consigned to the territory of any third country are or may hereafter be subject.

Any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or Canada in regard to the above-mentioned matters, to a natural or manufactured product originating in any third country or consigned to the territory of any third country shall be accorded immediately and without compensation to the like product originating in or consigned to the territory of Canada or the United States of America, respectively, and irrespective of the nationality of the carrier.

ARTICLE II

Neither the United States of America nor Canada shall establish any prohibition or maintain any restriction on imports from the territory of the other country which is not applied to the importation of any like article originating in any third country. Any abolition of an import prohibition or restriction which may be granted even temporarily by either country in favor of an article of a third country shall be applied immediately and unconditionally to the like article originating in the territory of the other country. These provisions equally apply to exports.

In the event of quantitative restrictions being established by either the United States of America or Canada for the importation of any article it is agreed that in the allocation of the quantity of restricted goods which may be authorized for importation, the other country will be granted a share equivalent to the proportion of the trade which it enjoyed in a previous representative period prior to the establishment of such quantitative restrictions.

In all matters concerning the rules, formalities or charges imposed in connection with any form of quantitative restriction on the importation of any article, the United States of America and Canada agree to extend to each other every favor granted to a third country.

ARTICLE III

Articles the growth, produce or manufacture of the United States of America, enumerated and described in Schedule I³ annexed to this Agreement, shall, on their importation into Canada, be exempt from ordinary customs duties in excess of those set forth in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges, or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of Canada in force on the day of the signature of this Agreement.

Schedule I and the notes included therein shall have full force and effect as integral parts of this Agreement.

ARTICLE IV

Articles the growth, produce or manufacture of Canada, enumerated and described in Schedule II annexed to this Agreement, shall, on their importation into the United States of America, be exempt from ordinary customs duties in excess of those set forth and provided for in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges, or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the United States of America in force on the day of the signature of this Agreement.

Schedule II and the notes included therein shall have full force and effect as integral parts of this Agreement.

ARTICLE V

The provisions of Articles III and IV of this Agreement shall not prevent the Government of either country from imposing on the importation of any product a charge equivalent to an internal tax imposed on a like domestic product or on a commodity from which the imported product has been manufactured or produced in whole or in part.

ARTICLE VI

Articles the growth, produce or manufacture of the United States of America or Canada shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national origin or any other foreign origin.

The provisions of this Article in regard to granting of national treatment shall not affect the laws now in force in Canada whereby leaf tobacco, spirits, beer, malt and malt syrup imported from abroad are subject to special taxes,

³ See footnote 1, p. 75.

nor shall they affect the applicability to goods produced or manufactured in the United States of America of special excise taxes imposed under existing provisions of the Special War Revenue Act. In these respects, however, most-favored-nation treatment shall apply.

ARTICLE VII

No prohibitions, import or customs quotas, import licenses, or any other form of quantitative regulation, whether or not operated in connection with any agency of centralized control, shall be imposed by the United States of America on the importation or sale of any article the growth, produce or manufacture of Canada enumerated and described in Schedule II, nor by Canada on the importation or sale of any article the growth, produce or manufacture of the United States of America enumerated and described in Schedule I, except as specifically provided for in the said Schedules.

The foregoing provision shall not apply to quantitative restrictions in whatever form imposed by either country on the importation or sale of any article the growth, produce or manufacture of the other country in conjunction with governmental measures operating to regulate or control the production, market supply, or prices of like domestic articles, or tending to increase the labor costs of production of such articles. Whenever the Government of either country proposes to establish or change any restriction authorized by this paragraph, it shall give notice thereof in writing to the other Government and shall afford such other Government an opportunity within thirty days after receipt of such notice to consult with it in respect of the proposed action; and if an agreement with respect thereto is not reached within thirty days following receipt of the aforesaid notice, the Government which proposes to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after such action is taken to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE VIII

In the event that the United States of America or Canada establishes or maintains a monopoly for the importation, production or sale of a particular commodity or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular commodity, the Government of the country establishing or maintaining such monopoly, or granting such monopoly privileges, agrees that in respect of the foreign purchases of such monopoly or agency the commerce of the other country shall receive fair and equitable treatment. To this end it is agreed that in making its foreign purchases of any product such monopoly or agency will be influenced solely by those considerations, such as price, quality, marketability, and terms of sale, which would ordinarily be taken into account by a private commercial

enterprise interested solely in purchasing such product on the most favorable terms.

ARTICLE IX

The tariff advantages and other benefits provided for in this Agreement are granted by the United States of America and Canada to each other subject to the condition that if the Government of either country shall establish or maintain, directly or indirectly, any form of control of foreign exchange, it shall administer such control so as to insure that the nationals and commerce of the other country will be granted a fair and equitable share in the allotment of exchange.

With respect to the exchange made available for commercial transactions, it is agreed that the Government of each country shall be guided in the administration of any form of control of foreign exchange by the principle that, as nearly as may be determined, the share of the total available exchange which is allotted to the other country shall not be less than the share employed in a previous representative period prior to the establishment of any exchange control for the settlement of commercial obligations to the nationals of such other country.

The Government of each country shall give sympathetic consideration to any representations which the other Government may make in respect of the application of the provisions of this Article.

ARTICLE X

In the event that a wide variation occurs in the rate of exchange between the currencies of the United States of America and Canada, the Government of either country, if it considers the variation so substantial as to prejudice the industries or commerce of the country, shall be free to propose negotiations for the modification of this Agreement; and if an agreement with respect thereto is not reached within thirty days following receipt of such proposal, the Government making such proposal shall be free to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE XI

In the event that the Government of either country adopts any measure which, even though it does not conflict with the terms of this Agreement, is considered by the Government of the other country to have the effect of nullifying or impairing any object of the Agreement, the Government which has adopted any such measure shall consider such representations and proposals as the other Government may make with a view to effecting a mutually satisfactory adjustment of the matter.

The Government of each country will accord sympathetic consideration to, and when requested will afford adequate opportunity for consultation regarding, such representations as the other Government may make with respect

to the operation of customs regulations, quantitative restrictions or the administration thereof, the observance of customs formalities, and the application of sanitary laws and regulations for the protection of human, animal, or plant life.

In the event that the Government of either country makes representations to the Government of the other country in respect of the application of any sanitary law or regulation for the protection of human, animal, or plant life, and if there is disagreement with respect thereto, a committee of technical experts on which each Government will be represented shall, on the request of either Government, be established to consider the matter and to submit recommendations to the two Governments.

ARTICLE XII

Nothing in this Agreement shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either Government may see fit with respect to the control of the export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies.

Subject to the requirement that there shall be no arbitrary discrimination by either country against the other country in favor of any third country where similar conditions prevail, the provisions of this Agreement shall not extend to prohibitions or restrictions (1) imposed on moral or humanitarian grounds; (2) designed to protect human, animal or plant life; (3) relating to prison-made goods; (4) relating to the enforcement of police or revenue laws; (5) directed against misbranding, adulteration, and other fraudulent practices, such as are provided for in the pure food and drug laws of either country; and (6) directed against unfair practices in import trade.

ARTICLE XIII ⁴

Except as otherwise provided in the second paragraph of this Article, the provisions of this Agreement relating to the treatment to be accorded by the United States of America and Canada, respectively, to the commerce of the other country, shall not apply to the Philippine Islands, the Virgin Islands, American Samoa, the Island of Guam or to the Panama Canal Zone.

The provisions of this Agreement regarding most-favored-nation treatment shall apply to articles the growth, produce or manufacture of any territory under the sovereignty or authority of the United States of America or Canada, imported from or exported to any territory under the sovereignty or authority of the other country. It is understood, however, that the provisions of this paragraph do not apply to the Panama Canal Zone.

⁴ For an understanding relating to art. XIII, see U.S. note, p. 82.

The advantages now accorded or which may hereafter be accorded by the United States of America, its territories and possessions and the Panama Canal Zone exclusively to one another or the Republic of Cuba shall be excepted from the operation of this Agreement. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to the Philippine Islands irrespective of any change in the political status of the Philippine Islands.

The advantages now accorded or which may hereafter be accorded by Canada exclusively to other territories under the sovereignty of His Majesty the King of Great Britain, Ireland, and the British dominions beyond the Seas, Emperor of India, or under His Majesty's suzerainty or protection, shall be excepted from the operation of this Agreement.

ARTICLE XIV

The Government of each country reserves the right to withdraw or to modify the concession granted on any article under this Agreement, or to impose quantitative restrictions on any such article if, as a result of the extension of such concession to third countries, such countries obtain the major benefit of such concession and in consequence thereof an unduly large increase in importations of such article takes place: Provided, That before the Government of either country shall avail itself of the foregoing reservation, it shall give notice in writing to the other Government of its intention to do so, and shall afford such other Government an opportunity within thirty days after receipt of such notice to consult with it in respect of the proposed action and in respect of such compensatory modifications of the terms of the present Agreement as may be appropriate; and if an agreement with respect thereto is not reached within thirty days following the receipt of the aforesaid notice, the Government which proposes to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after such action is taken to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE XV

The present Agreement shall be proclaimed by the President of the United States of America and shall be ratified by His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada.

The provisions of Article I and of Articles IV and III, respectively, shall, subject to the reservations and exceptions elsewhere provided for in this Agreement, be applied by the United States of America and Canada, on and

after January 1, 1936, pending ratification of the Agreement in respect of Canada as provided in the first paragraph of this Article.

The entire Agreement shall come into force on the day of the exchange of the proclamation and ratification at Ottawa. The Agreement shall remain in force until December 31, 1938, subject to the provisions of Article VII, Article X and Article XIV.

Unless at least six months before December 31, 1938, the Government of either country shall have given to the other Government notice of intention to terminate the Agreement on that date, the Agreement shall remain in force thereafter, subject to the provisions of Article VII, Article X and Article XIV, until six months from such time as the Government of either country shall have given notice to the other Government.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, at the City of Washington, this fifteenth day of November, 1935.

For the President of the United States of America:
CORDELL HULL [SEAL]
*Secretary of State
of the United States of America*

For His Majesty the King of Great Britain, Ireland
and the British dominions beyond the Seas, Emperor of
India, for the Dominion of Canada:
W. L. MACKENZIE KING [SEAL]
*Prime Minister,
President of the Privy Council and
Secretary of State for External Affairs
of the Dominion of Canada*

[For schedules annexed to agreement, see 49 Stat. 3968 or p. 9 of EAS 91.]

RELATED NOTES

The Secretary of State to the Canadian Chargé d'Affaires ad interim

DEPARTMENT OF STATE
Washington, November 15, 1935

SIR:

With reference to Article XIII of the Trade Agreement signed this day between the United States and Canada, the Government of the United States, as an exceptional measure, will refrain from claiming any advantages now

accorded or which may hereafter be accorded by Canada exclusively to territories under His Majesty's mandate and administered as integral portions of territory under His Majesty's sovereignty.

Accept, Sir, the renewed assurances of my high consideration.

CORDELL HULL

Mr. HUME WRONG,
Chargé d'Affaires ad interim of Canada.

The Canadian Chargé d'Affaires ad interim to the Secretary of State

CANADIAN LEGATION
Washington, November 15, 1935

No. 159

SIR:

At the moment of signature of the Trade Agreement between Canada and the United States of America, I am directed by the Secretary of State for External Affairs to state for the information of your Government that it is the intention of His Majesty's Government in Canada to invite Parliament at its next session to enact legislation amending the provisions of the Customs Act presently fixing the methods of determining the value of merchandise for duty purposes, as a step toward the realization of their declared objective of eliminating arbitrary executive interference with the normal courses of trade. They propose, at the first opportunity, to press forward with the reform of the administrative provisions of the Customs Act with this end in view, and believe that the modifications which they have had in mind and which have been discussed with representatives of your Government will stabilize and safeguard the value of the mutual concessions in rates of duty incorporated in today's Agreement.

In revising the methods of determining the value of merchandise for duty purposes the following principles, among others, will be incorporated in the contemplated amendments to the Customs Act of Canada:

(a) The value for duty established under authority of Section 36(2) will not include an advance for selling cost or profit greater than that which in the ordinary course of business under normal conditions of trade, is added, in the case of goods similar to the particular goods under consideration, by manufacturers or producers of goods of the same class or kind in the country of export.

(b) No rate of discount established under Section 37 will operate to increase the value for duty of any goods beyond the price at which such or similar goods are freely offered for sale to purchasers at the time and place of shipment in the country of export, in the usual quantities and in the ordinary course of trade.

(c) In the case of any value for duty which may be established under authority of Section 43, other than those provided for in Schedule I of the Trade Agreement signed today, opportunity will be afforded for appeal to the Tariff Board respecting any such value in order to ascertain and make public the finding whether, to what extent, and for what period, such value may be required to prevent the importation of the goods into Canada from prejudicially or injuriously affecting the interests of Canadian manufacturers and producers.

(d) In interpreting the words "of a class or kind made or produced in Canada", provision will be made to make it clear that the phrase "made or produced in Canada" in this context means "made or produced in Canada in commercial quantities" and arrangements will be made for giving adequate notice of the transfer, for customs purposes, of a product from the category "not of a class or kind made or produced in Canada" to the category "of a class or kind made or produced in Canada."

Pending the entry into force of amendments to the Customs Act incorporating the substance of the foregoing principles, the competent Departments of the Canadian Government will, to the extent of their administrative discretion, give the fullest possible effect to these general principles in the administration of the Act.

In the meantime, and pending the entry into force of the legislative changes foreshadowed in this Note, the Canadian Government are prepared as from the 1st January 1936, to cancel the values for duty purposes, established under authority of Section 43 of the Customs Act of Canada and now applicable to the undermentioned goods, the produce or manufacture of the United States, on importation into Canada:

Meats, fresh, prepared or preserved	Roses, cut
Eggs, frozen, desiccated, powdered, etc.	Canned asparagus
Loganberries, dried	Eggs in the shell
Slack cooperage stock	Baby chicks
Lime	Peas, dried
Doors of hardwood	Beans, dried
Women's and children's clothing	Market poultry
Fabrics of cotton or of artificial silk	Livestock
Fringes, gimps and tassels	Canned salmon
Electric light fixtures; lamps and shades	Sugar of milk

I am further directed to state that the Canadian Government propose to invite Parliament to permit the entry free of duty and charges of incidental purchases by residents of Canada returning from the United States of America, not exceeding the value of one hundred dollars, under regulations, particularly as to the frequency of such entry and duration of visits, to be prescribed, for such time as treatment substantially equivalent to that now in effect is accorded by the Government of the United States of America

to incidental purchases by residents of that country returning from Canada.

I have the honour to be, with the highest consideration, Sir,

Your most obedient, humble servant,

H. H. WRONG
Chargé d'Affaires

The Hon. CORDELL HULL,
Secretary of State of the United States,
Washington, D.C.

The Secretary of State to the Canadian Chargé d'Affaires ad interim

DEPARTMENT OF STATE
Washington, November 29, 1935.

SIR:

The receipt is acknowledged of your note No. 159 of November 15, 1935, which was handed to me on the occasion of the signing of the trade agreement between our two Governments and which informed me that, pursuant to the discussions between our respective representatives, the Canadian Parliament will be invited, at its next session, to enact legislation amending the provisions of the Customs Act presently fixing the methods of determining the value of merchandise for duty purposes.

As I informed Mr. Herridge in my note of December 27, 1934, this question is considered of importance by the United States Government and I am therefore gratified to receive the assurances set forth in your note under acknowledgment. I wish to thank you particularly for your assurance that pending the entry into force of the legislation in question, the Canadian authorities will, to the extent of their administrative discretion, give the fullest possible effect to the principles agreed upon.

It is also noted with appreciation that in accordance with our recent understanding, the Canadian Parliament will be invited to permit, under regulation, the entry free of duty and charges of incidental purchases by residents of Canada returning from the United States, not exceeding one hundred dollars in value.

Accept, Sir, the renewed assurances of my high consideration.

CORDELL HULL

Mr. HUME WRONG,
Chargé d'Affaires ad interim of the Dominion of Canada.