TREATY OF RECIPROCITY BETWEEN THE UNITED STATES OF AMERICA AND THE HAWAIIAN KINGDOM

Ratified by the Hawaiian Islands April 17, 1875
Ratified by the President of the United States, with amendments, May 31, 1875
Ratifications exchanged at Washington, June 3, 1875
Entered into force September 9, 1876
Supplemented by Convention of December 6, 1884

The United States of Americas and his Majesty the King of the Hawaiian Islands, equally animated by the desire to strengthen and perpetuate the friendly relations which have heretofore uniformly existed between them, and to consolidate their commercial intercourse, have resolved to enter into a Convention for Commercial Reciprocity. For this purpose, the President of the United States has conferred full powers on Hamilton Fish, Secretary of State, and His Majesty the King of the Hawaiian Islands has conferred like powers on Honorable Elisha H. Allen, Chief Justice of the Supreme Court, Chancellor of the Kingdom, member of the Privy Council of State, His Majesty's Envoy Extraordinary and Minister Plenipontentiary to the United States of America, and Honorable Henry A. P. Carter, member of the Privy Council of State, His Majesty’s special Commissioner to the United States of America.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due form, have agreed to the following articles:

ARTICLE I

For and in consideration of the right and privileges granted by His Majesty the King of the Hawaiian Islands in the next succeeding article of this Convention, and as an equivalent therefor, the United States of America hereby agree to admit all the articles named in the following schedule, the same being the growth and manufacture or produce of the Hawaiian Islands, into all the ports of the United States free of duty.

SCHEDULE

Arrow-root, castor oil, bananas, nuts, vegetables, dried and undried, preserved and unreserved; hides and skins, undressed; rice; pulu; seeds; plants, shrubs, or tree; muscovado, brown, and all other unrefined sugar, meaning hereby the grade of sugar heretofore commonly imported from the Hawaiian Islands, and now known in the markets of San Francisco and Portland a ” Sandwich Island Sugar ;” syrups of sugar-cane, melado, and molasses; tallow.

ARTICLE II

For and in consideration of the right and privilege granted by the United States of America in the preceding article of this Convention, and as an equivalent therefor, His Majesty the King of the Hawaiian Islands hereby agrees to admit all the articles named in the following schedule, the same being the growth, manufacture, or produce of the United States of America, into all the ports of the Hawaiian Islands free of duty.
SCHEDULE

Agricultural implements; animals; beef, bacon, pork, ham, and all fresh, smoked, or preserved meat; boots and shoes; grain, flour, meal, and bran. Bread and breadstuff, of all kinds; bricks, lime, and cement; butter, cheese, lard, tallow; bullion; coal; cordage, naval stores, including tar, pitch, resin, turpentine raw and rectified; copper and composition sheathing; nails and bolts; cotton and manufactures of cotton, bleached and unbleached, and whether or not colored, stained, painted, or printed; eggs; fish and oysters, and all other creatures living in the water, and the produce thereof; fruits, nuts, and vegetables, green, dried, or undried, preserved or unpreserved; hardware; hides, furs, skins and pelts, dressed or undressed; hoop iron and rivets, nails, spikes and bolts, sacks, brads, or sprigs; ice; iron and steel and manufactures thereof; leather; lumber and timber of all kinds, round, hewed, sawed and unmanufactured, in hole or in part; doors, sashes, and blinds; machinery of all kinds, engines and parts thereof; oats and hay; paper, stationary, and books, and all manufactures of paper or paper and wood; petroleum and all oils for lubricating or illuminating purposes; plants shrubs, trees, and seeds; rice; sugar, refined or unrefined; salt; soap; shooks, staves, and headings; wool and manufactures of wool, other than read-made clothing; wagons and carts for the purposes of agriculture or of dryage; wood and manufacture of wood, or of wood and metal, except furniture either upholstered or carved, and carriages; textile manufactures made of a combination of wool, cotton, silk, or linen, or of any two or more of them other than when ready-made clothing; harness and all manufactures of leather; starch; and tobacco, whether in leaf or manufactured.

ARTICLE III

The evidence that articles proposed to be admitted into the ports of the United States of America, or the ports of the Hawaiian Islands, free of duty, under the first and second articles of this Convention, are the growth, manufacture, or produce of the United States of America or of the Hawaiian Islands, respectively, shall be established under such rules and regulations and conditions for the protection of the revenue as the two Governments may from time to time respectively prescribe.

ARTICLE IV

No export duty or charges shall be imposed in the Hawaiian Islands, or in the United States, upon any of the articles proposed to be admitted into the ports of the United States or the ports of the Hawaiian Islands free of duty under the first and second articles of this Convention. It is agreed, on the part of His Hawaiian Majesty, that, so long as this Treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, or grant so special privilege or right of use therein, to any other power, state, or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty hereby secured to the United States.

ARTICLE V

The present Convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and shall have been ratified and duly proclaimed on the part of the government of the United States, but not until a law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the Convention having been exchanged provided in Article I., this Convention shall remain in force for seven years from the date at which it may come into operation; and further, until the expiration of twelve months after either of the contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years, or at any time thereafter.
ARTICLE VI

The present Convention shall be duly ratified and the ratification exchanged at Washington City, within eighteen months from the date hereof, or earlier if possible.

In faith whereof the respective Plenipotentiaries of the high contracting parties have signed this present Convention, and have affixed thereto their respective seal.

Done in duplicate, at Washington, the thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

HAMILTON FISH
ELISHA H. ALLEN
HENRY A.P. CARTER

King Kalaukaua in his speech before the opening session of the 1887 Hawaiian Legislature stated:

"I take great pleasure in informing you that the Treaty of Reciprocity with the United States of America has been definitely extended for seven years upon the same terms as those in the original treaty, with the addition of a clause granting to national vessels of the United States the exclusive privilege of entering Pearl River Harbor and establishing there a coalin and repair station. This has been done after mature deliberation and the interchange between my Government and that of the United States of an interpretation of the said clause whereby it is agreed and understood that it does not cede any territory or part with or impair any right of sovereignty or jurisdiction on the part of the Hawaiian Kingdom and that such privilege is coterminous with the treaty.

I regard this as one of the most important events of my reign, and I sincerely believe that it will re-establish the commercial progress and prosperity which began with the Reciprocity Treaty."

Department of Foreign Affairs:
Honolulu, December 8, 1887

Foreign Minister Brown:

Hon. S. G. Wilder, President Legislature, 1887-Sir:

In reply to the hon. member for Wailuku (Hon. W.F. Daniels), I have the honor to state that the paragraph in His Majesty's address to the Legislature was founded upon the information received and the advise given to His Majesty by His Majesty's Ministers. The paragraph referred to says that "after mature deliberation and the interchange between my Government and that of the United States of an interpretation of the said clause whereby it is agreed and understood that it does not cede any territory or part with or impair any right of sovereignty or jurisdiction on the part of the Hawaiian Kingdom and that such privilege is coterminous with the treaty" and that "the Treaty of Reciprocity with the United States of America has been definitely extended for seven years upon the same terms as those in the original treaty".

The notes exchanged between Mr. Carter and Mr. Bayard in regard to the construction and interpretation
of the U.S. Senate's amendment are accepted as sufficient to justify His Majesty's Government, relying upon the good faith of the United States in adopting the amendment. These notes are hereafter referred to.

On October 19, 1887, I had the honor to state to H.B.M.'s Commissioner, in dispatch to him on this subject that "all rights, the sovereignty and independence of this Kingdom are to be conserved, such a privilege could not have been conceded to any other power, the status of other nations possessing treaties with Hawaii is unchanged by the preferential character of the article, and in no other respect has any preference been given which has not hitherto been enjoyed by the United States."

There is not "saving clause" in the ratification by the Hawaiian Government "misconstruction." The reliance is placed upon the good faith of the United States Government to adhere to the notes of interpretation through which the exchange of ratification was agreed upon. In the event of any doubt appearing as to the true intent and meaning of any clause or part of a treaty, notes explanatory thereof have been exchanged prior to ratification, and these notes have afterwards been held to give the true interpretation of the clause held to be vague or ambiguous.

There are precedents for this course, and the notes exchanged between H.M.'s Ministers Plenipotentiary at Washington and the Hon. Secretary of State, prior to the exchange of ratifications, which I have had the honor to place before the Legislature, Mr. Carter says: "The amendment which now you officially communicate to me was inserted into the convention in secret session of the Senate, and no opportunity was given mutual consultation and consideration of its terms, consequently my Government has had no part in its construction, and could not have suggested any changes, in its working to guard against misapprehension. Under these circumstances it becomes proper in me, before transmitting it to my Government, to ascertain the views of the Government of the U.S. as to the construction proper to be put upon the interpolated article.

The first question of construction has reference to the effect of the license, or right, to enter the harbor or Pearl River, upon the jurisdiction of the Hawaiian Government over the harbor. It would seem to be clear that the question of Hawaiian jurisdiction is left untouched by the article, and that in the event of the United States availing itself of the right stipulated for, autonomous control of the Hawaiian Government remains the same as its control over other harbors in the group where national vessels may be except that the article, in accordance with the article IV of the existing convention, prevents the Hawaiian Government from granting similar exclusive privileges during the continuance of the convention to any other nation.

As no especial jurisdiction is stipulated for in the article inserted by the Senate, it cannot be inferred from anything in the article that it was the intention of the Senate to invade the autonomous jurisdiction of Hawaii, and to transfer the absolute property in and jurisdiction over the harbor to the United States.

To satisfy the natural and proper susceptibilities of Hawaiians, of which I have heretofore informed you, strong intimations have emanated from those charged with the administration of my Government with their communications to me, I take occasion to say that I consider it probable that my Government will desire that its understanding of the article in this respect shall be made known to the Government of the United States.

Another point which to some minds may be left in doubt that would be the duration of the license or right granted by the interpolated article.

The article mentions no special term for continuance of the privileges, but as the whole, and only purpose of the convention into which the article was inserted was, as stated in its preamble, to fix the definite limitation of the duration of the existing convention providing for the reciprocal exchange of privileges, to

which this privilege is added by virtue of this interpolated article, it follows in the absence of any stipulation to the contrary that its term of duration would be the same as that fixed for the other privileges given by the original convention.

The only excuse for the insertion of such an article into a treaty of this nature would be its relevancy to the privileges stipulated for in the original convention of 1875, to which this is supplementary and the duration of which this convention is intended to limit and define.

No separate single article or part of a treaty can be held to have a continuing power apart from the rest of the treaty unless provided for in specific terms. The supplementary provisions and the original provisions which they effect, are necessary merged into one instrument to be dealt with throughout as a whole.

It could not have been expected in the Senate that Hawaii would consent to a perpetual grant of the privilege sought in return for seven years' extension of the treaty of 1875, especially in view of the danger of a material lessening of the advantages to Hawaii by changes in tariff laws of the United States, and it must be apparent that if any different term of duration was intended it would have been stipulated for, as it cannot be thought that the Senate had any other intent than that plainly set forth.

"Therefore the conclusion which I have reached and which I think is the obvious conclusion to be drawn from the words of the interpolated article is that it does not and is not intended to invade or diminish in any way autonomous jurisdiction of Hawaii, while giving to the United States the exclusive rights of use in Pearl harbor stipulated therein for the sole purposes stated in the article, and further, that the article II of the convention and the privilege conveyed by it will cease and determine with the termination of the treaty of 1875, under the conditions fixed by this convention.

"I apprehend that my Government will agree with my conclusions and that in considering the advisability of ratifying the convention with this amendment inserted by the U.S. Senate my Sovereign will doubtless be aided in coming to a favorable conclusion if it shall be found that on these questions of interpretation of the convention the two Governments do not differ, and the Hawaiian Government will doubtless desire that their understanding, which I believe I have set forth in this note, shall be fully understood by the Government of the Untied States before ratifications are exchanged.

In correspondence between the two government's representative on December 8, 1887 the United States Secretary Bayard replied as follows:

"The amendment relating to the harbor of Pearl River was adopted in its Executive Session by the Senate, and I have no other means of arriving at its extent and meaning than the words employed naturally import.

"No ambiguity or obscurity in that amendment is observable, and I can discern therein no subtraction from Hawaiian Sovereignty over the harbor to which it relates nor any language importing a longer duration for the interpolated Article II than is provide for in article I of the supplementary convention.

"The limitation of my official powers does not make it competent for me in this connection to qualify, expand or explain the amendments engrafted on that convention by the Senate, but in the present case, I am unable to perceive any need for auxiliary interpretation or ground for doubt as to the plain scope and meaning thereof, and as the President desires a ratification of the supplementary convention in its present shape, I can see no cause for misapprehension by your Government for the manifest effect and meaning of the amendment in question.
"I therefor trust that it will be treated as it is tendered in simple good faith and accepted without doubt or hesitation."

As the notes above referred to are regarded as being a correct interpretation of the construction of the amendment, His Majesty's Government have accepted them in reliance that the U.S. Government will sustain the expressions of opinion of the present secretary of State.

Respectfully submitted:

GODFREY BROWN
Minister of Foreign Affairs.
December 8, 1887

Mahalo to Sam Monet (monet@hawaii-nation.org) and the Hawaii Resource Library for providing the text of these documents.

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