



OFFICE OF THE
HISTORIAN

PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, TRANSMITTED TO CONGRESS, WITH THE ANNUAL MESSAGE OF THE PRESIDENT, DECEMBER 3, 1888, PART I

No. 216.

Mr. Denby to Mr. Bayard.

LEGATION OF THE UNITED STATES,

Pekin, June 25, 1888. (Received August 20.)

No. 651.] SIR: I now have the honor to transmit herewith the English text of the treaty between Portugal and China and convention appended thereto.

I have the honor, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 651.]

TREATY OF AMITY AND COMMERCE BETWEEN PORTUGAL AND CHINA.

Preamble of the treaty.

His Most Faithful Majesty the King of Portugal and Algarves, and His Imperial Majesty the Emperor of China, desiring to draw closer and to consolidate the ties of friendship which have subsisted already for more than three hundred years between Portugal and China, and having agreed at Lisbon the 26th day of March, 1887, second day of the third [Page 314] moon of the thirteenth year of the reign of the Emperor Kuang-hsü, through their representatives, on a protocol of four articles, have now resolved to conclude a treaty of amity and commerce to regulate the relations between the two states. For this end they have appointed as their plenipotentiaries: His Most Faithful Majesty the King of Portugal and Algarves Thomas de Souza Roza his envoy extraordinary and minister plenipotentiary in special mission to the court of Peking, knight of the order of Nossa-Senhora de Conceição de Villa Vicosa, Grand Cross of the Order of the Rising Sun of Japan and of the Crown of Siam, commander of the Order of Charles III and of Isabella the Catholic of Spain and knight of the Iron Crown of Austria;

His Imperial Majesty the Emperor of China his highness Prince Ch'ing, president of the Tsung-li Yamén, and Sun, senior vice-president of the board of works and minister of the Tsung-li Yamén; who, after having communicated to each other their respective full powers and found them to be in good and due form, have agreed upon the following articles:

ART. I. There shall continue to exist constant peace and amity between His Most Faithful Majesty the King of Portugal and the Algarves and his Imperial Majesty the Emperor of China, whose respective subjects shall equally enjoy, in the dominions of the high contracting parties, the most complete and decided protection for their persons and property.

ART. II. China confirms in its entirety the second article of the protocol of Lisbon, relating to the perpetual occupation and Government of Macao by Portugal.

It is stipulated that commissioners appointed by both Governments shall proceed to the delimitation of the boundaries, which shall be determined by a special convention; but so long as the delimitation of the boundaries is not concluded, everything in respect to them shall continue as at present, without addition, diminution, or alteration by either of the parties.

ART. III. Portugal confirms, in its entirety, the third article of the protocol of Lisbon, relating to the engagement never to alienate Macao without previous agreement with China.

ART. IV. Portugal agrees to co-operate with China in the collection of duties on opium exported from Macao into Chinese ports, in the same way and as long as England co-operates with China in the collection of duties on opium exported from Hong-Kong into Chinese ports.

The basis of this co-operation will be established by a convention appended to this treaty, which shall be as valid and binding to both the high contracting parties as the present treaty.

ART. V. His Most Faithful Majesty the King of Portugal and the Algarves may appoint an ambassador, minister, or other diplomatic agent to the court of His Imperial Majesty the Emperor of China, and this agent as well-as the persons of his suite and their families will be permitted, at the option of the Portuguese Government, to reside permanently in Peking, to visit that court, or to reside at any other place where such residence is equally accorded to the diplomatic representatives of other nations. The Chinese Government may also, if it thinks fit, appoint an ambassador, minister, or other diplomatic agent to reside at Lisbon, or to visit that court when his Government shall order.

ART. VI. The diplomatic agents of Portugal and China shall reciprocally enjoy in the place of their residence all the prerogatives and immunities accorded by the law of nations; their persons, families, and houses, as well as their correspondence, shall be inviolate.

ART. VII. The official correspondence, addressed by Portuguese authorities to the Chinese authorities, shall be written in the Portuguese language, accompanied by a translation in Chinese, and each nation shall regard as authoritative the document written in its own language.

ART. VIII. The form of correspondence between the Portuguese and the Chinese authorities will be regulated by their respective rank and position, based upon complete reciprocity. Between the high Portuguese and Chinese functionaries at the capital or elsewhere, such correspondence will take the form of dispatch (chan-hoei); between the subordinate functionaries of Portugal and the chief authorities of the provinces, the former shall make use Of the form of exposition (xen-chen) and the latter that of declaration (cha-hsing); and the subordinate officers of both nations shall correspond together on terms of perfect equality. Merchants, and generally all others who are not invested with an official character, shall adopt in addressing the authorities the form of representation or petition (pin-ching).

ART. IX. His Most Faithful Majesty the King of Portugal and the Algarves may appoint consuls-general, consuls, vice-consuls, or consuls agents in the ports or other places where it is allowed to other nations to have them. These functionaries will have powers and attributes similar to those of the consuls of other nations, and will enjoy all the

exemptions, privileges, and immunities, which at any time the consular functionaries of the most favored nation may enjoy.

The consuls and the local authorities will show to each other reciprocal civilities and correspond with each other on terms of perfect equality.

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The consuls and acting consuls will rank with Tau-tais; vice-consuls, acting vice-consuls, consular agents, and interpreters—translators, with prefects. The consuls must be officials of the Portuguese Government and not merchants. The Chinese Government will make no objection in case the Portuguese Government should deem it unnecessary to appoint an official consul at any port and choose to intrust a consul of some other nation, for the time being, with the duties of Portuguese consul at that port.

ART. X. All the immunities and privileges, as well as all the advantages concerning commerce and navigation, such as any reduction in the duties of navigation, importation, exportation, transit, or any other which may have been or may be hereafter granted by China to any other State, or to its subjects, will be immediately extended to Portugal and its subjects. If any concession is granted by the Chinese Government to any foreign government under special conditions, Portugal, on claiming the same concession for herself and for her own subjects, will equally assent to the conditions attached to it.

ART. XI. Portuguese subjects are allowed to reside at or frequent the ports of China opened to foreign commerce, and there carry on trade or employ themselves freely. Their boats may navigate without hindrance between the ports open to foreign commerce, and they may import and export their merchandise, enjoying all the rights and privileges enjoyed by the subjects of the most favored nation.

ART. XII. Portuguese subjects shall pay import and export duties on all merchandise according to the rates specified in the tariff of 1858, adopted for all the other nations; and in no instance shall higher duties be exacted from them than those paid by the subjects of any other foreign nation.

ART. XIII. Portuguese subjects are permitted to hire any description of boats they may require for the conveyance of cargo or passengers, and the price of said hire will be fixed by the contracting parties alone, without interference of the Chinese Government. No limit shall be put to the number of boats, neither will it be permitted to any one to establish a monopoly of such boats or of the service of coolies employed in the carriage of merchandise.

Should contraband articles be on board any such boats, the guilty parties shall immediately be punished according to law.

ART. XIV. Portuguese subjects residing in the open ports may take into their service Chinese subjects and employ them in any lawful capacity in China, without restraint or hindrance from the Chinese Government, but shall not engage them for foreign countries in contravention of the laws of China.

ART. XV. The Chinese authorities are bound to grant the fullest protection to the persons and to the property of Portuguese subjects in China, whenever they may be exposed to insult or wrong. In case of robbery or incendiarism, the local authorities will immediately take the necessary measures to recover the stolen property, to terminate the disorder, to seize the guilty and punish them according to the law. Similar protection will be given by Portuguese authorities to Chinese subjects in the possessions of Portugal.

ART. XVI. Whenever a Portuguese subject intends to build or open houses, shops, or warehouses, churches, hospitals, or cemeteries, at the treaty ports, or at other places, the purchase, rent, or lease of these properties shall be made out according to the current terms of the place, with equity, without exaction on either side, without offending against the usages of the people, and after due notice given by the proprietors to the local authority. It is understood, however, that the shops or warehouses above mentioned shall only be allowed at the ports open to trade, but not in any place in the interior.

ART. XVII. Portuguese subjects conveying merchandise between open ports shall be required to take certificates from the superintendent of the custom-house, such as are specified in the regulations in force with reference to other nationalities.

But Portuguese subjects, who, without carrying merchandise, should like to go to the interior of China must have passports issued by their consuls and countersigned by the local authorities. The bearer of the passport must produce the same when demanded; and the passport not being irregular, he will be allowed to proceed and no opposition shall be offered, especially to his hiring persons or vessels for the carriage of his baggage or merchandise.

If he be without a passport, or if he commits any offense against the law, he shall be handed over to the nearest consul of Portugal, to be punished, but he must not be subjected to any oppressive measure. No passport need be applied for by persons going on excursions from the ports open to trade to a distance not exceeding 100 li and for a period not exceeding five days.

The provisions of this article do not apply to crews of ships, for the due restraint of whom regulations will be drawn up by the consul and the local authorities.

ART. XVIII. In the event of a Portuguese merchant vessel being plundered by pirates or thieves within Chinese [Page 316] waters, the Chinese authorities are to employ their utmost exertions to seize and punish the said robbers and to recover the stolen goods, which, through the consul, shall be restored to whom they belong.

ART. XIX. If a Portuguese vessel be shipwrecked on the coast of China, or be compelled to take refuge in any of the ports of the Empire, the Chinese authorities, on receiving notice of the fact, shall provide the necessary protection, affording prompt assistance and kind treatment to the crews and, if necessary, furnishing them the means to reach the nearest consulate.

ART. XX. Portuguese merchant vessels of more than 150 tons burden will pay tonnage dues at the rate of 4 mace per ton; if of 150 tons and under, they shall be charged at the rate of 1 mace per ton. Superintendent of the customs shall grant a certificate, declaring that the tonnage dues have been paid.

ART. XXI. Import duties shall be paid on the landing of goods; and export duties upon the shipment of the same.

ART. XXII. The captain of a Portuguese ship may, when he deems convenient, land only a part of his cargo at one of the open ports, paying the duties due on the portion landed; the duties on the remainder not being payable until they are landed at some other port.

ART. XXIII. The master of a Portuguese ship has the option, within forty-eight hours of his arrival at any of the open ports of China, but not later, to decide whether he will leave port without opening the hatches, and in such case he will not have to pay tonnage dues. He is bound, however, to give notice of his arrival for the legal registering as soon as he comes into port, under penalty of being fined in case of noncompliance within the term of two days.

The ship will be subject to tonnage dues forty-eight hours after her arrival in port, but neither then nor at her departure shall any other impost whatever be exacted.

ART. XXIV. All small vessels employed by Portuguese subjects in carrying passengers, baggage, letters, provisions, or any other cargo which is free of duty, between the open ports of China, shall be free from tonnage dues; but all such vessels carrying merchandise subject to duty shall pay tonnage dues every four months at the rate of 1 mace per ton.

ART. XXV. Portuguese merchant vessels approaching any of the open ports will be at liberty to take a pilot to reach the harbor; and likewise to take a pilot to leave it, in case the said ship shall have paid all the duties due by her.

ART. XXVI. Whenever a Portuguese merchant ship shall arrive at any of the open ports of China the superintendent of the customs will send off one or more customhouse officers, who may stay on board of their boat or on board of the ship, as best suits their convenience. These officers will get their food and all necessaries from the custom-house, and will not be allowed to accept any fee from the captain of the ship, or from the consignee, being liable to a penalty proportionate to the amount received by them.

ART. XXVII. Twenty-four hours after the arrival of a Portuguese merchant ship at any of the open ports the papers of the ship, manifest, and other documents shall be handed over to the consul, whose duty it will be also to report to the superintendent of the customs, within twenty-four hours, the name, the registered tonnage, and the cargo brought by the said vessel. If, through negligence or for any other motive, this stipulation be not complied with within forty-eight hours after the arrival of the ship, the captain shall be subject to a fine of 50 taels for each day's delay over and above that period, but the total amount of the fines shall not exceed 200 taels.

The captain of the ship is responsible for the correctness of the manifest, in which the cargo shall be minutely and truthfully described, subject to a fine of 500 taels as a penalty in case the manifest should be found incorrect. This fine, however, will not be incurred if, within twenty-four hours after the delivery of the manifest to the custom-house officers, the captain expressed the wish to rectify any error which may have been discovered in the said manifest.

ART. XXVIII. The superintendent of customs will permit the discharging of the ship as soon as he shall have received from the consul the report drawn in due form. If the captain of the ship should take upon himself to commence discharging without permission, he shall be fined 500 taels and the goods so discharged shall be confiscated.

ART. XXIX. Portuguese merchants having goods to ship or to land will have to obtain a special permission from the superintendent of customs to that effect, without which all goods shipped or landed shall be liable to confiscation.

ART. XXX. No transshipment of goods is allowed from ship to ship without special permission, under penalty of confiscation of all the goods so transshipped.

ART. XXXI. When a ship shall have paid all her duties, the superintendent of customs will grant her a certificate, and the consul will return the papers, in order that she may proceed on her voyage.

ART. XXXII. When any doubt may arise as to the value of goods which by the tariff are liable to an *ad valorem* duty, and the Portuguese merchant disagrees with the custom-house officers as regards the value of said goods, both [Page 317] parties will call two or three merchants to examine them, and the highest offer made by any of the said merchants to buy the goods will be considered as their just value.

ART. XXXIII. Duties will be paid on the net weight of every kind of merchandise. Should there be any difference of opinion between the Portuguese merchant and the custom-house officer as to the mode by which the tare is to be fixed, each party will choose a certain number of boxes or bales from among every hundred packages of the goods in question, taking the gross weight of said packages, then the tare of each of the packages separately, and the average tare resulting therefrom will be adopted for the whole parcel.

In case of any doubt or dispute not mentioned herein the Portuguese merchant may appeal to the consul, who will refer the case to the superintendent of customs; this officer will act in such a manner as to settle the question amicably. The appeal, however, will only be entertained if made within the term of twenty-four hours; and in such a case no entry is to be made in the custom-house books in relation to the said goods until the question shall have been settled.

ART. XXXIV. Damaged goods will pay a reduced duty proportionate to their deterioration. Any doubt on this point will be solved in the way indicated in the clause of this treaty with respect to duties payable on merchandise *ad valorem*.

ART. XXXV. Any Portuguese merchant who, having imported foreign goods into one of the open ports of China and paid the proper duties thereon, may wish to re-export them to another of the said ports, will have to send to the superintendent of customs an account of them, who, to avoid fraud, will direct his officers to examine whether or not the duties have been paid; whether the same have been entered on the books of the customs; whether they retain their original marks, and whether the entries agree with the account sent in. Should everything be found correct, the same will be stated in the export permit, together with the total amount of duties paid, and all these particulars will be communicated to the custom-house officers at other ports.

Upon arrival of the ship at the port to which the goods are carried, permission will be granted to land without any new payment of duties whatsoever, if, upon examination, they are found to be the identical goods, but if during the examination any fraud be detected the goods may be confiscated by the Chinese Government.

Should any Portuguese merchant wish to re-export to a foreign country any goods imported, and upon which duties have been already paid, he will have to make his application in the same form as required for the re-exportation of goods to another port in China, in which case a certificate of drawback or of restitutions of duties will be granted, which will be accepted by any of the Chinese custom-houses in payment of import or export duties.

Foreign cereals imported by Portuguese ships into the ports of China may be re-exported without hinderance, if no portion of it has been discharged.

ART. XXXVI. The Chinese authorities will adopt at the ports the measures which they may deem the most convenient to avoid fraud or smuggling.

ART. XXXVII. The proceeds of fines and confiscations inflicted on Portuguese subjects, in conformity to this treaty, shall belong exclusively to the Chinese Government.

ART. XXXVIII. Portuguese subjects carrying goods to a market in the interior of the country, on which the lawful import duties have already been paid at any of the open ports, or those who buy native products in the interior to bring to the ports on the Yang-tse-Kiang, or to send to foreign ports, shall follow the regulations adopted towards the other nations.

Custom-house officers who do not comply with the regulations, or who may exact more duties than are due, shall be punished according to the Chinese laws.

ART. XXXIX. The consuls and local authorities shall consult together, when necessary, as to the construction of light-houses and the placing of buoys and lightships.

ART. XL. Duties shall be paid to the bankers authorized by the Chinese Government to receive them in sycee or in foreign coin, according to the official assay made at Canton on the 15th of July, 1843.

ART. XLI. In order to secure the regularity of weights and measures and to avoid confusion, the superintendent of customs will hand over to the Portuguese consul at each of the open ports standards similar to those given by the Treasury Department for collection of public dues at the customs at Canton.

ART. XLII. Portuguese merchant ships may resort only to these ports of China which are declared open to commerce. It is forbidden to them, except in the case of *force majeure*, provided for in Article XIX, to enter into other ports, or to carry on a clandestine trade on the coast of China; and the transgressor of this order shall be subject to confiscation of his ship and cargo by the Chinese Government.

ART. XLIII. All the Portuguese vessels dispatched from one of the open ports of China to another or to Macao, are entitled to a certificate of the custom-house, which will exempt them from paying new tonnage dues during the [Page 318] period of four months, reckoned from the date of clearance.

ART. XLIV.

ART. XLIV. If any Portuguese merchant ship is found smuggling, the goods smuggled, no matter of what nature or value, will be subject to confiscation by the Chinese authorities, who may send the ship away from the port, after settlement of all her accounts, and prohibit her to continue to trade.

ART. XLV. As regards the delivery of Portuguese and Chinese criminals, with the exception of the Chinese criminals who take refuge in Macao, and for whose extradition the governor of Macao will continue to follow the existing practice, after the receipt of a due requisition from the viceroy of the two Kwangs, it is agreed that in the Chinese ports open to foreign trade the Chinese criminals who take refuge at the houses or on board the ships of Portuguese subjects, shall be arrested and delivered to the Chinese authorities on their applying to the Portuguese consul; and likewise the Portuguese criminals, who take refuge in China, shall be arrested and delivered to the Portuguese authorities on their applying to the Chinese authorities; and by neither of the parties shall the criminals be harbored, nor shall there be delay in delivering them.

ART. XLVI. It is agreed that either of the high contracting parties to this treaty may demand a revision of the tariff, and of the commercial articles of this treaty, at the end of ten years; but if no demand be made on either side within six months after the end of the first ten years, then the tariff shall remain in force for ten years more, reckoned from the end of the preceding ten years; and so it shall be, at the end of each successive ten years.

ART. XLVII. All disputes arising between Portuguese subjects in China with regard to rights, either of property or person, shall be submitted to the jurisdiction of the Portuguese authorities.

ART. XLVIII. Whenever Chinese subjects become guilty of any criminal act toward Portuguese subjects, the Portuguese authorities must report such acts to the Chinese authorities in order that the guilty be tried according to the laws of China.

If Portuguese subjects become guilty of any criminal act towards Chinese subjects, the Chinese authorities must report such acts to the Portuguese consul in order that the guilty be tried according to the laws of Portugal.

ART. XLIX. If any Chinese subject shall have become indebted to a Portuguese subject and withholds payment, or fraudulently absconds from his creditors, the Chinese authorities shall use all their efforts to apprehend him and to compel him to pay, the debt being previously proved and the possibility of its payment ascertained. The Portuguese authorities will likewise use their efforts to enforce the payment of any debt due by any Portuguese subject to a Chinese subject-But in no case will the Portuguese Government or the Chinese Government be considered responsible for the debts of their subjects.

ART. L. Whenever any Portuguese subject shall have to petition the Chinese authority of a district, he is" to submit his statement beforehand to the consul, who will cause the same to be forwarded should he see no impropriety in so doing, otherwise he will have it written out in other terms, or decline to forward it. Likewise, when a Chinese subject shall have occasion to petition the Portuguese consul, he will only be allowed to do so through the Chinese authority, who shall proceed in the same manner.

ART. LI. Portuguese subjects who may have any complaint or claim against any Chinese subject, shall lay the same before the consul, who will take due cognizance of the case and will use all his efforts to settle it amicably.

Likewise, when a Chinese subject shall have occasion to complain of a Portuguese subject, the consul will listen to his complaint and will do what he possibly can to re-establish harmony between the two parties.

If, however, the dispute be of such a nature that it can not be settled in that conciliatory way, the Portuguese consul and Chinese authorities will hold a joint investigation of the case, and decide it with equity, applying each the laws of his own country according to the defendant.

ART. LII. The Catholic religion has for its essential object the leading of men to virtue. Persons teaching it and professing it shall alike be entitled to efficacious protection from Chinese authorities; nor shall such persons, pursuing peaceably their calling and not offending against the laws, be persecuted or interfered with.

ART. LIII. In order to prevent for the future any discussion, and considering that the English language, among all foreign languages, is the most generally known in China, this treaty, with the convention appended to it, is written in Portuguese, Chinese, and English, and signed in six copies, two in each language. All these versions have the same sense and meaning, but if there should happen to be any divergence in the interpretation of the Portuguese and Chinese versions, the English text will be made use of to resolve the doubts that may have arisen.

ART. LIV. The present treaty, with the convention appended to it, shall be ratified by his most faithful majesty the King of Portugal and the Algarves and his imperial majesty the Emperor of China. The exchange of the ratifications [Page 319] shall be made within the shortest possible time, at Tientsin, after which the treaty, with the convention appended, shall be printed and published, in order that the functionaries and subjects of the two countries may have full knowledge of their stipulations and may fulfill them.

In faith whereof the respective plenipotentiaries have signed the present treaty and have affixed their seals thereto.

Done in Peking, this first day of the month of December, in the year of our Lord Jesus Christ 1887, corresponding with the Chinese date the 17th day of 10th moon of the 13 year of Kwang Sü.

[L. S.]

THOMAS DE SOUSA ROSA.

Signatures of the Chinese plenipotentiaries.

[CHINESE SEAL.]

PRINCE CHING,

SUN-IU UEN.

Ratifications exchanged April 28, 1888.

[Inclosure 2 in No. 651.]

Convention appended to the treaty of amity and commerce concluded between Portugal and China on the 1st December, 1887.

ART. I. Portugal will enact a law subjecting the opium trade of Macao to the following provisions:

- (1) No opium shall be imported into Macao in quantities less than one chest.
- (2) All opium imported into Macao must, forthwith on arrival, be reported to the competent department under a public functionary appointed by the Portuguese Government, to superintend the importation and exportation of opium in Macao.
- (3) No opium imported into Macao shall be transshipped, landed, stored, removed from one store to another, or exported, without a permit issued by the superintendent.
- (4) The importers and exporters of opium in Macao must keep a register, according to the form furnished by the Government, showing with exactness and clearness the quantity of opium they have imported, the number of chests they have sold, to whom and to what place they were disposed of, and the quantity in stock.
- (5) Only the Macao opium farmer, and persons licensed to sell opium at retail, will be permitted to keep in their custody raw opium in quantities inferior to one chest.
- (6) Regulations framed to enforce in Macao the execution of this law will be equivalent to those adopted in Hong-Kong for similar purposes.

ART. II. Permits for the exportation of opium from Macao into Chinese ports, after being issued, shall be communicated by the superintendent of opium to the commissioner of customs at Kung-pacuan.

ART. III. By mutual consent of both the high contracting parties the stipulations of this convention may be altered at any time.

In faith whereof the respective plenipotentiaries have signed and sealed this convention.

Done in Peking this 1st day of December, in the year of our Lord Jesus Christ 1887 corresponding with the Chinese date the 17th day of 10th moon of the 13th year of Kwang-Sü.

[L. S.]

THOMAS DE SOUSA ROSA.

Signatures of the Chinese plenipotentiaries.

[CHINESE SEAL.]

PRINCE CHING,

SUN-IU-UEN.