CHAPTER 5
COMMERCIAL OBJECTIVES

The Second World War familiarized United States of America with the commercial and the economic resources and potential of India - hitherto a monopoly of British Imperial System. During the years - 1941-45, despite British inhibitions American Trade and Commerce with India increased significantly. The war time expansion of trade with India meant a rise from a little more than 1% to 5.5% at the total US exports (though exports for cash had risen only to 1.6%) and a rise from 3 to 4% of total US imports. For India it meant a rise between 6 and 7% to approximately 17% of total Indian imports and from 8.5 to 18% of total Indian imports.\(^1\)

With the end of the war and Indian independence the American Business Organisation like Far-East American Council of Commerce and Industry, American Asiatic Association, and Indian Chamber of Commerce of America pressed for the opening up of Indian market to American capital, and planned to send an American trade mission to India around the middle of 1947.\(^2\) Some of the American officials who had served in India during the war testified to the existence of a vast Indian market for American investment and export of machinery and plant needed for industrialization in India.\(^3\) So as to bottle up free flow of American goods in India, Congressmen like Emmanuel Cellar campaigned for the opening of trade channels with India. His
letter to William L. Clayton, Assistant Secretary of State, along with Clayton's reply thereto was published by the Department of State as "INDIAN TRADE MUDDLE". American business interests could hardly be expected to participate extensively in trade and industry in India unless there was a treaty to provide a general framework for such a participation. The Truman Administration, therefore, suggested for a treaty of friendship, commerce and navigation with India. The US Ambassador at New Delhi, Henry F. Grady was directed to sound legitimate Indian officials. One a positive response from Indian Government a draft of the proposed treaty was prepared and sent to New Delhi. Henry F. Grady presented it on February 7, 1948. It was entitled "DRAFT TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND INDIA". It had a preface, twenty one articles and protocol. It was framed upon the prescripts of national treatment and most favoured nation treatment unconditionally accorded. The draft was as as under:

DRAFT TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND INDIA

Preamble

The Governments of the United States of America and India, desirous of strengthening of bonds of peace and
friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and being cognizant of the contributions which may be made towards these ends by arrangements establishing mutual rights and privileges and promoting mutually advantageous commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation based in general upon the principles of national and of most-favoured-nation treatment unconditionally accorded, and for that purpose have agreed through their respective Plenipotentiaries upon the following Articles:

**Article I : Entry and Basic Personal Rights**

1. National of either Party shall be permitted to enter the territories of the other Party: (a) for the purpose of carrying on trade between the territories of the two Parties and for the purpose of engaging in related commercial activities, upon terms no less favourable than those accorded to nationals of any third country who are permitted entry for the purpose of carrying on trade between the territories of such other Party and the territories of such third country and of engaging in related commercial activities; and (b) for other purposes, subject to the immigration laws.

2. Nationals of either Party, within the territories of the other Party, shall be permitted: (a) to
travel therein freely, and to reside at places of their choice; (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; (d) to bury or cremate their dead according to their religious customs in suitable and convenient places; and (e) to gather and to transmit material for dissemination to the public abroad, and otherwise to communicate with other regions inside and outside the territories by mail, telegraph and other means open to general public use.

3. The provisions of the present Article and of Article XVI shall be subject to the right of either Party to apply measures that are necessary to maintain public order and necessary to protect the public health, morals and safety.

**Article II : Protection of Persons**

1. National of either Party within the territories of the other Party shall be free from unlawful molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is accused of crime and taken into custody, the nearest consular representative of such other Party shall be immediately notified. Such national shall: (a) receive reasonable and humane treatment; (b) be
formally and immediately informed of the accusations against him; (c) be brought to trial as prompted as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonable necessary to his defense, including the services of competent counsel and interpreters.

**Article III : Military Service**

1. Nationals of either Party shall be exempt from compulsory services in the armed forces of the other Party and shall also be exempt from all contributions in money or in kind imposed in lieu thereof.

2. The foregoing paragraph shall not apply when both Parties are, through armed action against the same third country, in connection with which there is general compulsory service, concurrently conducting hostilities or enforcing measures in pursuance of obligations for the maintenance or restoration of international peace and security. However, in this event, nationals of either Party in the territories of the other Party who have not lawfully declared their intention to acquired the nationality of the latter, shall be exempt from service in its armed forces if, within a reasonable period of time, they elect in lieu thereof serve in the armed forces of the Party of which they are nationals. In any such situation the Parties will make the necessary arrangements for giving effect to the provisions of the present paragraph.
Article IV: Corporations and Other Legal Entities (Companies)

1. As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

2. Companies created or organized under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party.

3. National treatment accorded under the provisions of the present Treaty to companies of India shall, in any state, territory or possession of the United States of America, be the treatment accorded therein to companies created or organized in other states, territories and possessions of the United States of America.

4. Nationals and companies of either Party shall be accorded within the territories of the other Party the right to organize, control and manage companies for engaging in commercial, manufacturing, processing, construction, mining, educational, philanthropic, religious, and scientific activities. Companies, controlled by nationals and companies of either Party and created or organized under the applicable laws and regulations within the territories of the other Party for engaging in the aforementioned

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activities, shall be accorded national treatment therein with respect to such activities.

**Article V : Activities of Persons and Companies**

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to: (a) engaging in commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious, philanthropic and professional activities, except the practice of law; (b) obtaining and maintaining patents of invention, and rights in trade marks, trade names, trade labels, and industrial property of all kinds; (c) having access to the courts of justice and to administrative tribunals and agencies, in all degrees of jurisdiction, both in pursuit and in defense of their rights; and (d) employing attorneys, interpreters and other agents and employees of their choice.

2. Nationals and companies of either Party shall further be accorded, within the territories of the other Party, most-favoured-nation treatment with respect to: (a) the matters enumerated in paragraph 1 of the present Article; (b) exploring for and exploiting mineral deposits; (c) engaging in the practice of law and in fields of economic and cultural activity in addition to those enumerated; and (d) organizing, participating in and operating companies of such other Party.
3. Nationals of either Party admitted into the territories of the other Party for limited purposes shall not, however, enjoy rights to engage in gainful occupations in contravention of limitations expressly imposed, according to law, as a condition of their admittance.

**Article VI: Property Rights**

1. Nationals and companies of India shall be accorded, within the territories of the United States of America: (a) national treatment with respect to leasing land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious, philanthropic, professional, residential and mortuary activities, and with respect to occupying and using such property; and (b) other rights in immovable property permitted by the applicable laws of the states, territories and possessions of the United States of America.

2. Nationals and companies of the United States of America shall be accorded, within the territories of India, national treatment with respect to acquiring by purchase, lease or otherwise, and with respect to owning, occupying and using land, buildings and other immovable property. However, in the case of any such national domiciled in, or any such company organized under the laws of, any state,
territory or possession of the United States of America that accords less than national treatment to nationals and companies of India in this respect, India shall not be obligated to accord treatment more favourable in this respect then such state, territory or possession accords to nationals and companies of India.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party: (a) most-favoured-nation treatment with respect to acquiring, owning and possessing all kinds of movable property, both tangible and intangible; and (b) national and most-favoured-nation treatment with respect to disposing of property of all kinds.

Article VII : Protection of Property

1. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to unlawful entry or molestation. Official searches and examinations of such premises and their contents, when necessary, shall be made with careful regard for the convenience of the occupants and the conduct of business.

2. Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party. Such
property shall not be taken without the prompt payment of just and effective compensation, nor without compliance with the requirements of international law.

3. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party which but for their alienage, would be acquired by them through testate or intestate succession; and they shall be permitted a term of at least five years in which to effect such disposition.

4. Nationals and companies of either Party shall be permitted freely to withdraw from the territories of either Party the proceeds realized through the application of paragraphs 2 and 3 of the present article, by obtaining exchange in the currency of their own country at the most favourable rate of exchange prevailing: (a) at the time the property was taken, in the case of proceeds realized through the application of paragraph 2, and (b) at the time for which application for such exchange is made, in the case of proceeds realized through the application of paragraph 3. Each Party reserves the right, however, to regulate the withdrawal of such proceeds from its territories to the extent necessary to permit the utilization of available foreign exchange to finance the purchase and importation of essential goods. Withdrawal of proceeds realized through the application of the aforementioned paragraph 2 shall be exempt from any transfer or remittance tax.
5. Nationals and companies of either Party shall in no case be accorded, within the territories of the other Party, less than most-favoured-nation treatment with respect to the matters set forth in the present Article; nor shall they be accorded less than national treatment with respect to the matters set forth in paragraphs 1 and 2 of the present Article. Moreover, enterprises in which nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national and most-favoured-nation treatment in all matters relating to the taking of privately-owned enterprises into public ownership and the placing of such enterprises under public control.

Article VIII : Taxation of Persons and Companies

1. Nationals and companies of either Party shall not be subjected to the payment of internal taxes, fees and charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of the other Party: (a) more burdensome than those borne by nationals, residents and companies of any third country; (b) in the case of persons resident or engaged in business within the territories of such other Party and of companies engaged in business therein, or organized and operated exclusively for
scientific, educational, religious or philanthropic purposes, more burdensome than those borne by nationals and companies of such other Party.

2. In the case of companies of either Party engaged in business within the territories of the other Party, and in the case of nationals of either Party engaged in business within the territories of the other Party but not resident therein, such other Party shall not impose or apply any interest tax, fee or charge upon any income, capital or other basis in excess of that reasonable allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A like rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

3. Each Party, however, reserves the right to: (a) extend specific advantages as to taxes, fees and charges to nationals, residents and companies of all foreign countries on the basis of reciprocity; (b) accord to nationals, residents and companies of a third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue; and (c) accord to its non-resident nationals and to residents of contiguous countries more favourable exemptions of a personal nature than are accorded to other non-resident persons.

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Article IX : Commercial Travelers

Commercial travelers representing nationals and companies of either Party engaged in business within the territories thereof shall, upon their entry into and departure from the territories of the other Party and during their sojourn therein, be accorded most-favoured-nation treatment in respect of customs and other rights and privileges, including, subject to the exceptions in paragraph 3 of Article VIII, taxes and charges applicable to them, their samples, and the taking of orders.

Article X : Entry of Goods

1. Each Party shall accord most-favoured-nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to articles destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, in all matters relating to the customs, including duties and other charges imposed on or in connection with imports and exports, and the administration of the customs.

2. Neither Party shall impose any prohibition or restriction on the importation of any product of the other Party, or on the exportation of any article to the territories of the other Party, that : (a) if imposed on sanitary or other customary grounds of a non-commercial nature or in the interest of preventing deceptive or unfair practices, arbitrarily discriminates in favour of the
importation of the like article to, any third country; (b) if imposed on other grounds, does not apply equally to the importation of the like product of, or the exportation of the like article to, any third country; or (c) if a quantitative regulation involving allotment to any third country with respect to an article in which such other Party has an important interest, fails to afford to the commerce of such other party, a share proportionate to the amount by quantity or value supplied by or to such other Party during a previous representative period, due consideration being given to any special factors affecting the trade in the article.

3. Nationals and companies of either Party shall be accorded national and most-favoured-nation treatment with respect to all matters relating to importation and exportation.

4. As used in the present Treaty the term "products of" means "articles the growth, produce or manufacture of". The provisions of the present Article shall not apply to advantages accorded by either Party: (a) to products of its national fisheries; (b) to adjacent countries in order to facilitate frontier traffic; or (c) by virtue of a customs union of which either Party, after consultation with the other Party, may become a member.

Article XI : Customs Administration

1. Each Party shall promptly publish laws, regulations and administrative rulings of general
application pertaining to rates of duty, to the classification of articles for customs purposes, and to restrictions on imports and exports; and shall administer such laws, regulations and rulings in a uniform, impartial and reasonable manner. As a general practice, new administrative requirements affecting imports, with the exception of requirements imposed on grounds of sanitation or public safety, shall not go into effect before the expiration of 30 days after publication, or, alternatively, shall not apply to articles on route at time of publication.

2. Each Party shall provide some administrative or judicial procedure under which nationals and companies of the other Party, and importers of products of such other Party, shall be permitted to appeal against fines and penalties imposed upon them by the customs authorities, confiscations by such authorities and rulings of such authorities on questions of customs classification and valuation. Penalties imposed for infractions of the customs laws and regulations shall be merely nominal in cases resulting from clerical errors or when good faith can be demonstrated.

Article XII : State Trading

1. Products of either Party shall be accorded by the other Party fair and equitable treatment, according to commercial considerations, as compared with the treatment accorded products of any third country, with respect to:

(a) the purchase of supplies by the government of such other
Party; and (b) purchases and sales by enterprises owned or controlled by the government of such other Party, or by monopolies or agencies granted exclusive privileges within the territories of such other Party.

2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, according to commercial considerations, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the matters enumerated in paragraph 1 of the present Article; (b) the awarding of concessions and other government contracts; and (c) the purchase and sale of any service under the control of any monopoly or exclusive agency.

3. Each Party agrees: (a) upon the request of the other Party, to consult with respect to business practices which, in their impact upon commerce between their respective territories, restrain competition, limits excess to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises; and (b) to take measures it deems appropriate with a view to eliminating the harmful effects of such practices upon such commerce.

Article XIII: Internal Treatment of Goods

1. Products of either Party shall be accorded, within the territories of the other Party, national and
most-favoured-nation treatment in all matters affecting internal taxation and sale, storage, distribution and use.

2. Articles produced by nationals and companies of either Party within the territories of the other Party, or by companies of the latter Party controlled by such nationals and companies, shall be accorded therein treatment no less favourable than that accorded to like articles of national origin by whatever person or company produced, in all matters affecting exportation, taxation, and sale, distribution, storage and use.

Article XIV : Exchange Control

1. The treatment prescribed in the present Article shall apply to all forms of control of financial transactions, including: (a) limitations upon the availability of media necessary to effect such transactions; (b) rates of exchange; and (c) prohibitions, restrictions, delays, taxes, charges and penalties on such transactions; and shall apply whether a transaction takes place directly, or through an intermediary in another country. As used in the present Article, the term "financial transactions" means all international payments and transfers of funds effected through the medium of currencies, securities, bank deposits, dealings in foreign exchange or other financial arrangements, regardless of the purpose or nature of such payments and transfers.

2. Financial transactions between the territories of the two Parties shall be accorded by each Party treatment
no less favourable than that accorded to like transactions between the territories of that Party and the territories of any third country.

3. Nationals and companies of either Party shall be accorded by the other Party national and most-favoured-nation treatment with respect to financial transactions between the territories of the two Parties or between the territories of such other Party and of any third country.

4. In general, any control imposed by either Party over financial transactions shall be so administered as not to influence disadvantageously the competitive position of the commerce or investment of capital of the other Party in comparison with the commerce or the investment of capital of any third country.

Article XV : Navigation

1. Vessels of either Party shall have liberty, on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of the other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national and most-favoured-nation treatment within the ports, places and waters of such other Party; but each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.
2. Vessels of either Party shall be accorded national and most-favoured-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such articles shall be accorded treatment no less favourable than that accorded like articles carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds; (b) to administration of the customs; and (c) bounties, drawbacks and other privileges of this nature.

3. Vessels of either Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other Party, and shall receive friendly treatment and assistance.

4. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not except with reference to paragraph 3 of the present article, means vessels of war.

Article XVI : Transit

There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit: (a) for nationals of the other Party, together with their baggage; (b) for other persons, together with their baggage, en route to or from the territories of such other Party; and (c) for articles en route to or from the territories of such other Party.
Such persons and articles in transit shall be exempt from transit, customs and other duties, and from unreasonable charges and requirements; and shall be free from unnecessary delay and restrictions. They shall, however, be subject to measures referred to in paragraph 3 of the Article I, and to non-discriminatory regulations necessary to prevent abuse of the transit privilege.

Article XVII: General Exceptions

1. The present Treaty shall not preclude the application of measures: (a) regulating the importation and exportation of gold and silver; (b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof, and to materials that are the source of fissionable materials; (c) regulating the production of and traffic in arms, ammunition and implements of war, and traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; (d) necessary to fulfil the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential interests in time of national emergency; (e) imposing exchange restrictions, in the case of a Party which is a member of the International Monetary Fund, in conformity with the Articles of Agreement thereof, but without utilizing the privileges under Section 3 of Article VI of that Agreement so as to impair any provision of the present Treaty; and (f) denying...
the advantages of the present Treaty to any company to the ownership or direction of any third country or countries have directly or indirectly a controlling interest.

2. The most-favoured-nation provisions of the present Treaty shall not apply to advantages accorded: (a) by virtue of a multilateral economic agreement of general applicability designed to liberalize international commerce, and open to adoption by all members of the United Nations; or (b) by the United States of America or its territories and possessions, irrespective of any future change in their political status, to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands, or to the Panama Canal Zone.

3. The present Treaty does not accord any rights to engage in political activities.

4. No enterprise of either Party which is publicly owned or controlled shall, if it engages in commercial, manufacturing, processing, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately-owned and controlled enterprises are subject therein.

Article XVIII : Territorial Application

Article XIX : Settlement of Disputes

Any dispute between the Parties as to the interpretation or application of the present Treaty, not
satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

Article XX : Termination of Existing Agreements

Relationship with outstanding treaties and agreements to be supplied later, if necessary.

Article XXI : Ratification and Termination

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at ________ as soon as possible.

2. The present Treaty shall enter into force on the day of exchange of ratifications. It shall remain in force for ten years from that day and shall continue in force thereafter until terminated as provided herein.

3. Either Party may, by giving one year’s written notice to the other Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English language, at ________, this _______ day of __________, one thousand nine hundred forty ________.
Protocol

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and India, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral part of the aforesaid Treaty:

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favourable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party.

2. The term "most-favoured-nation treatment" means treatment accorded within the territories of a Party upon terms no less favourable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

3. Rights and privileges with respect to commercial, manufacturing and processing activities accorded, by the provisions of the Treaty, to privately-owned and controlled enterprises of either Party within the territories of the other Party shall extend to rights and privileges of an economic nature granted to publicly owned or controlled enterprises of such other Party, in situations
in which such publicly-owned or controlled enterprises operate in fact in competition with privately-owned and controlled enterprises. The preceding sentence shall not, however, apply to subsidies granted to publicly-owned or controlled enterprises in connection with: (a) manufacturing or processing goods for government use, or supplying goods and services to the government for government use; or (b) supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

4. The term "mineral", as used in Article V, paragraph 2(b), refers to petroleum as well as to other mineral substances.

5. The provisions of Article VII, paragraph 3, providing for the payment of compensation shall extend to interests, held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

6. The provisions of Article XII, paragraph 2(b) and (c), and of Article V, paragraph 2, shall not apply to postal services.

According to the protocol "national treatment" meant treatment accorded within the territories of a Party upon terms no less favourable than the treatment accorded therein like situations to nationals, companies, products,
vessels or other objects, as the case may be, of any third country. Ten years was to be the initial term of the Treaty.\textsuperscript{6}

While the Treaty blue print was yet to be discussed between the contracting parties, the Government of India issued its first Industrial Policy Resolution of 6 April 1948. The Resolution gave the state exclusive monopoly in defense, strategic industries and Railways, and a dominant role in the development of basic capital intensive industries. It provided for regulation of private sector investment and had a provision for nationalization of key industries after ten years.\textsuperscript{7} This policy resolution was in keeping with India's economic interests. Of all the ex-colonial nations that gained political independence in the aftermath of the Second World War, India appeared the most likely to escape foreign economic domination and pursue an independent path of economic development. With a vast and varied endowment of natural resources and a huge population, India was not bound to depend heavily on external resources or external markets. Though India emerged from the colonial rule as one of the poorest countries of the world, its continental size offered a vast potential for mobilizing domestic resources.

At the time of independence India had already experienced some degree of industrialization, and a
substantial share of modern business enterprise had come under the control of indigenous capitalists. Factory establishments and mines accounted for only 6.5 per cent of the national product and employed only 2.5 per cent of the labour force. Modern industry was in absolute terms, quite important. Indian capitalists had gradually improved their position vis-a-vis foreign (predominantly British) capital. A good deal of British capital followed the retreat of the colonial government to London. India attained independence with a significant indigenous capitalists class that had a history of considerable antagonism towards foreign capitalists. Unlike most other ex-colonial nations, India was not completely dependent on foreign business enterprise or managerial expertise. There already existed a significant class of indigenous professionals and administrators. This British educated elite had assumed increasingly important—though always subordinate—positions in the professions and in the colonial administration. Such educated and Westernized Indians naturally came to resent their enforced subordination and figured predominantly among the leaders of the Indian nationalist movement. Their own professional competence, combined with their anticolonial perspective, contributed to the desirability of limiting the role of the foreign personnel and technical assistance.

The pronouncements of the leaders of the nationalist movement, who subsequently became the rulers of
independent India, emphasized the restriction of foreign economic interests. Jawaharlal Nehru, the leading spokesman on economic matters and, as Prime Minister, India’s most powerful political leaders, set the tone for Indian economic policy by committing the ruling Congress party to a "socialistic pattern of society". Nehru’s concept of socialism involved a strong emphasis on economic self-reliance to be achieved by centralized economic planning and a foreign policy of non-alignment. The government was clearly on record in favour of a path or economic development in which foreign aid, foreign private capital and foreign personnel would play at most a minor and subordinate role. Hence there was a wide difference between Indian economic philosophy and free Market Economy so dear to the United States.

Hence some of the articles of the Treaty blueprint needed revision. Manifestly articles 4, 5 and 6 were not in consonance with the provision of state monopoly controls, and ultimate nationalization prescribed in the New Industrial Policy of the Government of India.

Revision was sought as some of the incongruities were pinpointed by the American Embassy at New Delhi. The Department of State clarified that the Draft was contrived to apply to countries generally open to free competitive enterprise and could be made adaptable to nations that have
state owned industries. With respect to the indicated policy of the Government of India providing for state monopoly of the production of military supplies and atomic energy were specifically excepted from the application of the proposed Treaty articles 17(Ib,c). Transportation was not included among the activities for which national treatment is provided in article 4(4), the term commercial being construed narrowly to include principally the buying and selling of goods. Transportation was of course, included among the activities for which a most favoured nation standard was provided in article 5(2c), but this standard would warrant the ostracism of US nationals if all aliens were ostracized. The Treaty would also be no bar to the nationalization of industries in the fields specified in article 4(4) and 5(1) provided that the nationalization were not more burdensome upon the alien than upon the Indian nationals. Article 7(2) provided that property shall not be taken without prompt payment of just and effective compensation and under article 7(5), the rule of national and most favoured nation treatment was to apply with respect to all matters relating to the nationalization of enterprise. The Treaty was not a fore thought to accord rights for United States nationals and corporations to participate in India State owned enterprise. The non-discriminatory extension by the State of reasonable controls over the operation of private enterprise would not be barred by the Treaty. 8

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Seven meetings were held from 2 September 1948, in the first round of negotiation at Delhi between American Embassy officials and the officials of the Government of India. In the beginning it was agreed that for the sake of secrecy, the Press would be advised that the meetings were being held at the technical level. A clause by cause consultation on variegated articles took place. The clarifications were received from the Department of State between January and May 1949. The clarifications were submitted on May 31, 1949, by the Embassy.

For consultation with Indian officials so as to offer verifications in terms of international law and usage and thereby remove misunderstanding, if any. Professor Robert R. Wilson, a specialist on international law from Duke University was deputed before the resumption of negotiations. From 1 August 1949 to September 1949, a second round of meetings was held. A difference sheet of eighteen points was worked out. It related to the phraseology, meaning and scope of various provisions. On 5 September, 1949 each of the eighteen points were worked out as under:

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| 13.   | XIV     |      | a) Incorporation by reference in Paragraphs 3 and 4, of provisions in Articles of Agreement of IMF.  

   b) Applicability of second and third sentences of Paragraph 5 to existing restrictions.  

14.   | XV      | 3    | a) Definition of "coasting" to include trade from Indian ports to Goa, Pondicherry, Ceylon, Pakistan, Burma.  

   b) Reservation of coasting trade, or inclusion of an exception (from MFN provisions) for British vessels.  

15.   | XV      | 4    | Consistency with Indian practice of collecting income tax in advance on profits derived by certain vessels (belonging to companies not having agencies in India).  

16.   | XVII    | 2    | Specification of additional preferences which India is to be allowed to give.  

17.   | XVII    | 3    | a) Retention of world "specifically"  

   b) Dropping of cross references to ITO Charter and GATT and spelling out of provisions.  

18.   | Protocol| 3(a) | Insertion of words "engaged in" after sixth words in line 2.  

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During the item by item discussion it became evident that the modification suggested and desired by the Indian side substantially altered the Draft Treaty. Basic discrepancies related to the India unwillingness to permit American concerns to initiate investment of carry on business in India except on an individual application basis and without and general authorization in advance. The Indian Government was unable to commit India to national treatment in the selection of private business to be nationalized, and unwilling to make any engagement as to exchange control that would go beyond the Articles of Agreement of International Monetary Fund. To India the Treaty formula for compensation for property nationalized was also unacceptable. If the provision meant to invite the investment of private American capital in India were modified according to Indian recommendations, Sir Girja Shankar Bajpai was told by the American Ambassador Loy Henderson that the Draft Treaty was drawn on standard articles and would become useless from the American viewpoint. No promise was made by Bajpai on the query of policy. He simply stated the nation that fresh conversations have served the purpose essential towards agreement.\textsuperscript{14}

The Department of State beckoned Ambassador Henderson to Washington for discussion and stock taking of the position, after the cessation of negotiation at New Delhi. The discussion took place on 5 October, 1949.
Henderson disclosed that Indian officials have intimated him that their Government would be proficient to adopt a Treaty provision guaranteeing American enterprise national treatment with regard to the selection of enterprises for nationalization. The right to increase investments, however, was sought to be justified for balance of payment reasons, while at the time of the negotiations held at New Delhi screening was defended largely on the basis that India desired to direct investments into areas that could make the maximum contribution to the public welfare and that India craved to carry on a policy of Indianization of industry. That Indian Government was unlikely to concede on the query of screening of investments and have taken the stance that they must be free to decide in individual cases manifestly without any specific criteria. An endeavor could be made to expedite the negotiations for the treaty, if the Department could work out a recipe making substantial concessions to India on screening. The query was then raised as to whether the best policy would be to press for the negotiations now or delay in the hope that Indian Government would further alter its stance on foreign investments. It was decided to defer the negotiations until the early part of 1950, by which time Prime Minister Nehru and C.D. Deshmukh would have visited the United States. US Embassy in New Delhi was informed accordingly.
K.P.S. Menon, Foreign Secretary, Government of India, reopened the negotiations through an Aide-Memoire, dated 8th Feb. 1950. In the Aide-Memoire, it was explained that complete reciprocity in national treatment cannot be of the same value to India as to the United States because there would be far more U.S. nationals and companies engaged in business and industrial enterprise than the Indian companies act and nationals in the U.S. It is therefore necessary to re-draft the treaty keeping in view this fact as well as Government of India’s policy of planning regulation of trade and commerce. The Aide-Memoire further mention that Indian Commercial Policy would be non-discriminatory in general, but in exceptional cases preferential treatment to national or a selective admission of foreign enterprise would be done.

On the question of compensation, the Indian position was that foreign enterprise acquired by law would receive fair and equitable compensation as per the provisions embodied in the Constitution of India. Therefore the phase "full and equivalent of the properties taken" in the draft was irrelevant. With regard to financial dealings, exchange control restrictions could not be fully eliminated. On account of her balance of payments position as also on account of her membership of the Sterling Area, India had introduced and would continue a system of exchange control to dollar areas. Besides complying with the Articles
allow facilities for current transaction with the United States. Therefore, it was not necessary to have a clause in the treaty for deliberations with the United States Government or a routine review existing restriction.\textsuperscript{17}

To examined the Indian position as reflected in the Aide-Memoire, the Department of State and the Department of Commerce officials held a meeting on 24 April 1950. The Commerce Policy Section felt that inclusion of screening would lead to discrimination against American business and capital and was against the Open-Door principle.\textsuperscript{18} The US would insist on retaining the principle that there would be no discrimination against Americans. The American firms should not be nationalized unless Indian firms were likewise nationalized. On the matter of compensation, the regulation that compensation for expropriated property represented the full value and the world "\textit{fair and equitable}" be substituted for "\textit{just}" only if it were made clear that no change in meaning resulted. The need for strong compensation clause for necessary for avoiding unnecessary nationalization.\textsuperscript{19}

The Department of Commerce organized a meeting at New York on 5 June 1950. To elicit the views of the representatives of the Business on the issue of screening and evolving a consensus for the purpose. Delegates of Messrs. Westing House, Standard Vaccum, National City Bank,
General Electrical International, Chase National Bank, National Foreign Trade Council, US Machinery Company and General Motors took part along with the officials of the Department of State and the Department of Commerce. Opinion against the treaty having a screening clause was expressed by all the business delegates.\textsuperscript{20}

The experts in the Commerce and Treasury Departments, the Department of State analyzed the major issue of the commitment India was ready to undertake with respect to the right of American enterprise to do business in India. The Indian position was laid bare in the negotiations, amounted to a rejection of the principle of national treatment in both aspects: (a) right of Americans to establish business enterprise in India; (b) and treatment to be accorded to American enterprise actually allowed to establish in India. That enterprise duly allowed to set up should not be subjected thereafter to possible discrimination and harassment impairing their ability to complete successfully in business along with locally owned enterprise.\textsuperscript{21}

It was decided to concede the screening demand without abandoning the principle of national treatment after admission.\textsuperscript{22} Accordingly, it was suggested that exchange of notes setting forth principle of non-discrimination be attached to the draft treaty. The suggested exchange of notes were sent to Ambassador Henderson for presentation to
the Government of India.\textsuperscript{23} Henderson, however, did not present the documents because of tension over Korea and China between the two countries. The US Ambassador Henderson, presented the revised documents to C.D. Deshmukh, Finance Minister on 3 October, 1951 after the tempers had coaled down and the Indian Food Emergency Act had been passed.\textsuperscript{24} The Government of India reacted to the American position and sought clarification on issues like selective admission of foreign capital and investment. A revised draft was submitted on 11 February 1952,\textsuperscript{25} and article by article discussion took place from 5 May to 23 May 1952. The discussions proved fruitless because the revisions suggested by the Indian officials were unacceptable to the United States Government. Meanwhile Ambassador Chester Bowles came to New Delhi in place of Henderson.\textsuperscript{26} The new Ambassador was friendly to India and advised that instead of the pending treaty a new treaty of friendship be proposed. On his insistence a revised draft was prepared eliminating the provisions dealing with navigation and commerce. On 8 May 1953, it was submitted to Mr. B.K. Nehru, Ministry of External Affairs, Government of India.\textsuperscript{27} Formal negotiations were never conducted on the new draft treaty.

Meanwhile, the entire gambit of Indo-US relationship was vitiated by the American decision to enter into a
military pact with Pakistan. A discordant note was evident, during a meeting between John F. Loftus of US Embassy and K.G. Ambegaonkar of Ministry of Finance, Government of India. Loftus was plainly told by Ambegaonkar that he was very skeptical about the value of the treaty on which so much labour has been put during the past several years. Over the reported American intention of entering into a military alliance with Pakistan, he referred to public and Parliamentary agitation in India. It was believed by the India Government that the time was not opportune for a treaty which would invite acrimonious political comments in the Parliament and would in fact be rejected. It was rightly concluded by the American Embassy that the treaty was beyond reach.

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3. Decimal File No.845.00/6-546; National Archives, Washington, D.C.

4. Decimal File No.611.4531/6-1445; National Archives, Washington, D.C.

5. Decimal File No.711.452/1-2148; National Archives, Washington, D.C.

6. Ibid.


8. Decimal File No.711.452/4-2848; National Archives, Washington, D.C.
   It may also be noted that the proposed treaty article X and XVII conflicted with the provisions of General Agreement on Tariff and Trade (GATT) signed by twenty three nations including USA and India, October 30, 1947.


10. Decimal File No.711.452/6-349; National Archives, Washington, D.C.

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