

September 11, 1946

**AGREEMENT ON SURPLUS WAR PROPERTY BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF
AMERICA**

Note: The Agreement was approved by the Senate, September 27, 1946 and entered into force retroactively, September 2, 1946.

Reference; This Agreement is also published in I DFA TS No. 1, p. 95 and 43 UNTS, p. 231.

This agreement between the Government of the United States of America, hereinafter called "UNITED STATES", and the Government of the Republic of the Philippines, hereinafter called "PHILIPPINES",

WITNESSETH:

WHEREAS, the cessation of active military operations in the war with Japan has rendered surplus to the needs of the United States quantities of its property now situated in the Philippine Islands; and

WHEREAS, the Congress of the United States has, by the Surplus Property Act of 1944, as amended, authorized the disposal of the surplus property of the United States; and the Central Field Commissioner for the Pacific and China of the Office of the Foreign Liquidation Commissioner has been charged with responsibility for that disposal in the Philippine Islands; and

WHEREAS, such surplus property available for sale to the Philippines, exclusive of property which is already under contract or firm commitment for sale or transfer, represents an estimated aggregate procurement cost of approximately Six Hundred Thirty Million Dollars (\$630,000,000) in movables and Fifty-five Million Dollars (\$55,000,000) in fixed installations, of which over one-half has already been declared surplus; and

WHEREAS, it is the policy of the United States, as declared in the Surplus Property Act, to establish and develop foreign markets and promote mutually advantageous economic relations between the United States and other countries by the orderly disposition of surplus property to other countries, and to dispose of surplus property as promptly as feasible without fostering monopoly or restraint of trade; and

WHEREAS, the prosecution of the war with Japan caused widespread damage and loss in the Philippine Islands; and

WHEREAS, the Congress of the United States has, by the Philippine Rehabilitation Act of 1946, authorized the grant to the Philippines of surplus property in the Philippine Islands aggregating not more than One Hundred Million Dollars (\$100,000,000) in fair value without reimbursement to the United States; and

WHEREAS, a general understanding as to the property to be granted under the Philippine Rehabilitation Act of 1946 has been reached between the United States and the Philippines, and certain of such property has heretofore been transferred to the Philippines in accordance with the terms of Contracts Nos. W-ANL (PA-D-206, W-

ANL(PA-1)-1611, and W-ANL(PA-1)-3811 on the understanding that if and when said Rehabilitation Act became law, the fair value of the property so transferred would be charged as a transfer within the contemplation of, and under, said Rehabilitation Act; and

WHEREAS, the United States has a financial obligation to the Philippines arising from advances and loans to the United States and the issuance of emergency currency and guerrilla currency during the war with Japan. Now, THEREFORE, in consideration of the provisions and the mutual agreements and covenants hereinafter stated, it is agreed:

ARTICLE 1. Property Sold and Granted. That by these presents the United States sells and grants and the Philippines buys and accepts all that property owned by the United States on the effective date hereof but surplus to its needs in the Philippine Islands, except aircraft, ships (other than as specified in Article 6, paragraph a, hereof), and non-demilitarized combat material, subject, however, to the limitations following:

- (1) That the property has been or will be declared surplus by the United States owning agency, pursuant to the said Surplus Property Act, and
- (2) That no property is sold hereby which is already under contract or firm commitment for sale or transfer, and
- (3) That, at the option of the United States, exercised within ninety (90) days from the effective date hereof, property having a sales value of Ten Million Dollars (\$10,000,000), in addition to the property designated in Article 1 (2) hereof, shall be deemed to be under firm commitment to governments other than the Philippines to which the United States has extended credit for the purchase of surplus property.

ARTICLE 2. Transfer of Possession.

- a. That the right to possession of the property sold under Article 1 hereof shall, after declaration to the Foreign Liquidation Commissioner for disposal' as surplus, pass to the Philippines at the earliest practicable date upon either (1) the surrender by the United States and the acceptance by the Philippines of physical or constructive possession, or (2) the passage of sixty (60) days' time after notice to the Philippines that specified property is available for transfer, whichever shall first occur. That such notice shall be deemed to have been duly given when delivered, in writing, to the Office of the Philippine Government Purchasing Commission at Manila, and shall be deemed sufficient if it either generally describes the property available or generally describes the location thereof.
- b. That until right to possession passes to the Philippine pursuant to paragraph a. of this Article, the United States shall continue to have custody and control of the property sold, and shall give said property the same care and protection as is accorded to its own property of like character.
- c. That after the right to possession with respect to specified property has passed to the Philippines pursuant to paragraph a, all responsibility, risk of loss, and liability for the care, custody, protection and

maintenance of such property shall be upon the Philippines, including rents and liabilities for the storage thereof and damages and claims of any nature arising out of or incident to the ownership of such property, and the Philippines shall indemnify and hold the United States harmless from any such responsibilities, risks, liabilities, rents, damages and claims. That the Philippines shall promptly enter into such rental and leasing arrangements as may be necessary or appropriate to the possession or use of the property transferred, and shall assume all obligations under such rental and leasing arrangements to which the United States is now a party, without charge to the United States other than such charges as shall have rightfully accrued prior to the effective date here, and the Philippines shall remove the property from land owned by the United States within six months, and from other land used or controlled by the United States within twenty-two months, after passage of right to possession hereunder.

d. That all crating, conditioning, handling, loading and transportation of the property sold shall be arranged and paid for by the Philippines.

e. That the owning agency of the United States shall make such property available for visual inspection before the transfer of right to possession.

f. That representatives of the Philippines engaged in guarding, storing, removal of property located on lands owned by the United States and on other lands used or controlled by the United States shall be subject to the rules and regulations of the owning agency of the United States, as may be agreed upon by the two governments.

ARTICLE 3. Distribution.

That the Philippines shall utilize to the greatest extent possible established commercial distribution channels for the resale of property sold hereby and that United States distributors established in the Philippine Islands shall have an equal opportunity to bid for and to obtain such property. That the Philippines shall recognize normal distribution practices including the marketing wherever practicable of name brand products through the established agencies for such products.

ARTICLE 4. Warranties.

That the United States warrants title to the property transferred, and that in lieu of any other warranty or undertaking as to the kind, size, weight, quantity, quality, character, value, description, condition or fitness for use thereof, it is understood that if a material disparity is found to exist between the property transferred to the Philippines hereunder and the consideration given therefor by the Philippines hereunder, the two Governments will consult together to fix an appropriate adjustment in the price paid.

ARTICLE 5. Consideration.

a. That a portion of the property sold and granted hereby, together with the property heretofore sold under Contracts Nos. W-ANL(PA4)-206, "W-ANL (PA-D-1611, and W-ANL(PA-1)-3811, having an agreed fair value of