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The Non-Agreement in Action: Sino-Japanese Trade.

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Dear Mr. Nolte,

Westerners who for one reason or another have occasion to look closely at Chinese law, whether traditional or modern, are, as a rule, first struck by the apparent gaps in the legal system which confronts them. The exclusion of whole areas of social activity from legal regulation; pronounced looseness in the drafting of statutes applicable to other areas; absence of detailed prescriptions for civil or criminal procedure, or for the evaluation of evidence; reluctance to invoke formal processes where informal means of social regulation suffice; all these, and other, features of Chinese law give an impression of vagueness or "softness" when contrasted with the sharp definition which is theoretically desired and usually sought by Western lawyers.

It would be a great mistake, though, to associate with these characteristics a conceptual imprecision in the thinking of Chinese lawyers, or in the thinking of the Chinese about law. On the contrary, Chinese jurisprudence has always been characterized on occasion by exquisite subtlety and precision in definition and interpretation, which, when combined with the rich vein of latent ambiguity in the Chinese language, can produce remarkable results, when required. My recent, all-too-superficial, contact with the legal world of Japan suggests that this subtlety is at least matched, if not outshone, by the niceties of Japanese jurisprudence and the various societal requirements which underlie it. I was constantly reminded that for all the differences in their modern political and social life, the two countries are heirs to an overlapping legal tradition.

The question, what to leave out of a document, is familiar to draftsmen all over the world, but it is perhaps in the Far East that it is best understood. Together with a capacity for subtle definition and calculated imprecision, not to mention patient and tortuous negotiation, this skill was put to effective use by both sides in the recent Sino-Japanese trade negotiations, which concluded with the signing of a joint memorandum and communique in Peking on the 6th March. Both as the first major international transaction to which China has been a party since the upheavals of the Great

Proletarian Cultural Revolution (indeed, as a demonstration that a highly effective international bargaining mechanism could emerge unscathed from those upheavals), and also as a study in the resolution of common interests against mounting conflicts in a deteriorating relationship between the two countries, these negotiations and the arrangements to which they led deserve attention. In both the political and economic spheres, these arrangements were of great importance, if only because at the beginning of 1968 the prospects for agreement on semi-governmental trade seemed so bleak. The reasons for this situation can scarcely be understood without some account of the history of Sino-Japanese trade in recent years.

In the absence of recognition of the Chinese Government by Japan, there are of course no governmental relations as such between the two countries. Indeed, as the Chinese negotiators took the opportunity of reminding the Japanese at a particularly awkward moment in February, there is in the Chinese view still legally a state of war between China and Japan. Trade has therefore been carried out on an unofficial or non-governmental basis, but with the concurrence and covert participation of the Japanese as well as the Chinese Government.

Until 1958 trade was largely carried out by Japanese firms dealing directly with the Chinese import and export corporations, the first comprehensive agreement being signed in 1952 between the Chinese and Japanese "industrial and commercial circles". In terms of overall figures there was in this period a very substantial flow of trade, as might be expected between two natural trading partners. In March 1958, a new and much more elaborate agreement was signed, on the Chinese side by the China Council for the Promotion of International Trade (CCPIT) and on the Japanese side by three groups, the Japanese Parliamentary Group for Trade with China, The Japan Council for the Promotion of International Trade (JCPIIT), and the Japanese Sino-Japanese Import-Export Cartel. This agreement never came into effect, however, due, according to a succinct note in the 1958 volume of the Chinese official treaty series (in which, significantly, it was included in an appendix), to its "violation" by the Japanese Government. Two months after its conclusion China cut off all commercial relations with Japan following the "Nagasaki incident", when a Japanese rightist pulled down the flag of the People's Republic at a Chinese trade fair.

From 1960 onwards, trade between the two countries gradually developed. In the first years, China was willing to deal only with Japanese firms which were prepared to go through the motions, at least, of political sympathy with China, and those firms which have been designated by the Chinese authorities as "friendly" have continued to take a lion's share of the market. It is well-known that many of

these companies are "dummies", that is, subsidiaries, in fact if not in form, of the great Japanese industrial and commercial groups, founded for the express purpose of trading with China. Often the executives of these companies have left wing sympathies, and as some of them spend a good deal of their time in Peking (there are normally at least fifty more or less resident Japanese businessmen in China at any one time) this is doubtless a happy compromise, although the serious deterioration in relations between the Japanese Communist Party and the Chinese Communist Party in the last three years has had the effect of straining relations between the "friendly firms" and their hosts.

The friendly firms are linked to a central body, the JCPIIT, which negotiates certain matters connected with friendly firm trade with the CCPIT in Peking. (Whereas the CCPIT is a body, technically non-governmental, with many functions in respect of China's foreign trade as a whole, fulfilling the role of a chamber of commerce in a capitalist society, the JCPIIT appears to have no functions at all outside the China trade. In this it resembles a number of other such bodies established in various European countries, e.g. Britain, which also has its "friendly firms" in the Chinese trade, although they are firms which also trade with other countries).

In November 1962, China reached another agreement with a more broadly based segment of the Japanese economy. In the absence of diplomatic relations between the countries, the agreement consisted of a number of non-governmental transactions, but it was clearly designed to perform the same functions as the ordinary bilateral trade agreements which China concludes with other countries on the diplomatic level, and in several respects the Liao-Takasaki Agreement, as the whole arrangement came to be called, followed the pattern of other Chinese trade agreements. The unofficial character of the agreement deserves to be qualified in several important aspects. The basic document, an agreement in outline, was a "memorandum" signed by Liao Cheng-chih, a Cantonese born and educated in Japan, on the Chinese side, and by Tatsunosuke Takasaki, a Liberal-Democratic Party member of the Diet, on the Japanese side. A more detailed agreement, described in Chinese as a "protocol", was signed a month later by the President of the CCPIT on the one hand, and representatives of the JCPIIT and of the Japan-China Trade Promotion Council on the other. On both sides, despite the unofficial appearance of the signatories, the negotiation and contents of the agreements were subject to close governmental control, and the offices established in accordance with their terms, in Peking and Tokyo respectively, known as the Liao Cheng-chi Trade Office (in Peking, with a Tokyo branch) and the Takasaki Trade Office (in Tokyo, with a branch in Peking), were in substance though not form government offices. In the context of Chinese political life this

will come as no surprise; all unofficial bodies are subject to a fairly high degree of governmental supervision (though we perhaps ought not to overestimate it, for the supervision may not always be very close). The extent of governmental control over foreign trade in Japan, however, is possibly less well known, but it is both real and effective. The Chinese might well agree with an American business man who, referring to the minute supervision of every detail of foreign transactions maintained by the Ministries of International Trade and Industry and of Finance, said that "when you negotiate with any Japanese company, you're dealing with Japan, Inc.".

As with the abortive 1958 agreement, the initiative for the negotiations which led up to the Liao-Takasaki Memorandum and the Protocol signed in accordance with it came from an interview given to a prominent Japanese parliamentarian and member of the ruling Liberal-Democratic Party named Kenzo Matsumura by Premier Chou En-lai, during which the Premier laid down three political principles and three principles of trade which he said would have to be followed in Sino-Japanese relations. The former were: (1) the Japanese Government must not be hostile to China; (2) it must not follow the lead of the United States in creating a "two Chinas" plot; and (3) it must not obstruct the development of Sino-Japanese relations in the direction of normalization. The principles of trade were to be (1) governmental agreement, (2) privately negotiated contracts, and (3) special terms to be agreed in special cases - apparently a reference to long term credits. The Premier also emphasized the inseparability of politics from economics - i.e. trade.

Mr. Matsumura's acquiescence in these principles - he did not expressly accept them all - apparently satisfied the Chinese for the time being. Since that time he has occupied a special place in the ruling Liberal-Democratic Party, as leader of a special "faction" of Diet members who favour the normalization of Sino-Japanese relations. Although he holds no state office, he is in effect virtually a minister for Sino-Japanese relations, and especially trade. To what extent the group led by him within the predominantly conservative Liberal-Democratic Party are really sympathetic to China is, of course, highly doubtful; but the device of a special pro-China party "lobby" to handle Sino-Japanese relations on behalf of Japan's rulers, without involving the Government in any official way, is a convenient one for both sides. From time to time, therefore, groups of Liberal-Democrats go to Peking, where they patiently listen to Chinese attacks on the leaders of their own party while hammering out the details of trade agreements or **arranging** the visits of journalists from one country to the other; and the Chinese know that they are dealing, however obliquely, with the Japanese Government.

The Liao-Takasaki Agreement provided for trade in accordance with its terms for a period of five years, starting in 1963. Each year an over-all total for L.-T. trade (as it is usually called) in particular commodities was agreed between the Liao and Takasaki offices, and an agreement was signed for that year, much after the fashion of the annual trade protocols concluded by China with the governments with which she has commercial treaty relations. Within the framework of these annual agreements as to over-all quantities and prices, detailed contracts were made between the Chinese state trading corporations on the one hand and the Japanese firms on the other. In practice, however, a particular Japanese industry would normally negotiate as a whole through its own association, splitting up the orders among its members after reaching agreement with China, but this was not always the case, particularly when big orders were involved.

During the five years of trading in accordance with the L.- T. arrangements, both sides had on the whole good reason to be satisfied, from the commercial point of view. The value of the trade was considerable, reaching a peak of US\$200 m. in 1966, the last of a series of years in which Japan, supplanting the Soviet Union, was China's largest foreign trade partner. L.- T. trade never played such an important role in Sino-Japanese trade as friendly firm trade, however; in 1966, for example, the friendly firms did over US\$300 m. worth of business, for example, and in 1967, when Sino-Japanese trade as a whole fell off, they still captured a larger share of the market.

There were serious causes of friction in the L.- T. relationship, mostly of a quasi-political character. In the Chinese view, the Japanese Government, particularly under the present Prime Minister, Mr. Sato, have consistently and increasingly disregarded the three principles enunciated by Premier Chou En-lai in 1962. For present purposes I need do no more than mention the main points of Japanese foreign policy which have particularly irked China. Continued diplomatic intercourse and growing economic ties between Japan and Taiwan has been perhaps the most glaring symbol of Japan's "anti-China" posture. To this may be added the consistent Japanese emphasis on close political and economic relations with the United States; failure to denounce American policy in Vietnam; continued provision of naval and military facilities for American forces, including those with nuclear armaments; failure to press vigorously for the return of the Bonin and Ryukyu Islands (the latter themselves perhaps the subject of Chinese territorial nostalgia, if not actual ambition, for they were once tributaries of China); and Japanese reluctance to grant entry visas to Chinese dignitaries on a number of occasions; all this in the face of the vociferous protests of the Japanese left wing, both Communist and non-Communist. To make matters worse, China's ideological split with the Soviet Union has been reflected in splits within the Japanese Communist Party, the main part of which has

broken with the Chinese Communist Party since the start of the Cultural Revolution, while the Japanese and Soviet Governments have been seriously, though still unproductively, discussing the possibility of Japanese cooperation in the development of Siberia, much of which is subject to Chinese territorial claims.

In the more strictly economic sphere there have been difficulties, too, though they have not been without a political tinge. Japanese success in what the Chinese bitterly denounce as the re-colonization of South East Asia is a continuing reminder of China's still slow and uneven economic progress. More specifically, Japanese policy has put serious obstacles in the way of large scale trade. Most important of these has been the "Yoshida letter". At a time of strain in Japan-Taiwan relations, the Japanese Prime Minister had written to President Chiang Kai-shek, assuring him that the funds of the Government-financed Export-Import Bank of Japan would not be used to give long term credits to China, since such credits were viewed by Taiwan as a form of aid, going beyond the ordinary course of trade. The resulting restrictions had effectively prevented the conclusion of a number of important Japanese sales to China, including such items as whole plants and ships. Other restrictions on trade have been Japanese adherence to the American-inspired embargo on the sale of certain "strategic" goods to China, the refusal of Japanese shipowners (doubtless on Government instructions) to send their ships, under charter to China (probably their biggest single customer), to North Vietnam ports, and Japanese refusal to import Chinese meat on grounds of animal hygiene.

These difficulties have been compounded since the beginning of the Cultural Revolution, so that with the general heightened militancy in China's conduct of her foreign affairs and the widespread deterioration in her relations with the rest of the world, Japan has come under particularly heavy fire. To make matters worse, it was to a great extent the Japanese journalists in Peking who were responsible for the interpretation - or misinterpretation, in Chinese eyes - of the early stages of the movement to the outside world; in all probability the Chinese authorities attribute their exceptionally bad world press to these journalists, several of whom have been expelled. Meanwhile, Japanese businessmen were arrested on several occasions for espionage.

Although the effects of the Cultural Revolution on China's foreign trade in general were far less drastic at first than many observers had predicted (large reserve stocks of export commodities may have accounted for this), by the end of 1967 there was a marked downward trend in her exports of many commodities, some of them important in Sino-Japanese trade. Japanese industry watched the Germans, backed with long term credit facilities and credit guarantees, inch

their way ahead to become the largest exporters to China, and the prospect of selling multi-million dollar whole plants to China receded. Worse, Japanese supremacy was challenged in 1967 even in the field of chemical fertilizers, a bulk export which supported a large sector of the Japanese chemical industry, and in respect of which geographical propinquity had always been an overwhelming advantage; a group of European manufacturers, under the name Nitrex, were able to offer China such low prices as to undercut the Japanese industry even after the closure of the Suez canal substantially raised freight rates.

Meanwhile, serious complaints began to be heard in late 1966 about late or uncertain delivery by Chinese exporters. In the autumn of that year, the Japanese shipping industry suffered very heavy losses during the first of the major port hold-ups in China which were attributed to the Cultural Revolution. At Shanghai, where labour unrest produced a 6-8 week delay in the turn-round of ships, it was said that the Chinese authorities had deliberately discriminated against Japanese ships in allocating berths to incoming ships, taking advantage of the favourable rates of demurrage (i.e. penalties for delay) given them by Japanese owners.

With the end of 1967, then, Japanese businessmen were taking a bleak view of their prospects in China. In one trade, at least, soya beans, importers had felt it necessary to cover themselves against the possibility of a breakdown in trade with China by placing substantial orders elsewhere for 1968. There was certainly little encouragement from China as the L.- T. agreement approached its expiry date, and a Japanese correspondent reporting from Peking last December said that a deadlock had been reached, though it appeared that the Liao and Takasaki offices would be left open as a "channel of communication". The last months of the year were particularly miserable for Japanese exporters, for trade with China had always been conducted in sterling, settlement being made in London or Hong Kong. Yet with the fate of their future trade in the balance, they could scarcely afford to discontinue deliveries after devaluation of the pound, though China made no adjustments. At a time when Japan's far larger trade with the United States appeared likely to suffer severely from American monetary troubles, and with an expected trade deficit of the order of US\$350 m. for 1968, the idea of a halt in trade with China was particularly unwelcome.

The first break in the clouds came when, once again, a remark of Chou En-lai to a visiting member of the Diet, Mr. Hisao Ishino, indicated that the Chinese were willing to meet the Liberal-Democrats once more. Mr. Ishino, himself a Socialist, was asked to convey the message to his Liberal-

Democrat colleague Matsumura (described as "the senior member in charge of L.- T. trade"). The Chinese themselves selected the delegation, to be headed by Mr. Yoshimi Furui, and it was indicated that no invitation would be issued unless he expressed his willingness to come to Peking. It was made clear, at the same time, that there would be no "negotiations to renew the L.- T. agreement", but only a discussion of the political situation surrounding the trade - a point underlined by the fact that the L.- T. offices were not used to convey the message, as might have been expected.

While exchanges of telegrams over the next twelve days finally secured Chinese "authorization of the visit in order to facilitate political contacts concerning L.- T. trade" (as the Chinese put it - this was the only "invitation" actually issued), an emergency meeting of the sixteen industrial and commercial organizations which comprise the Japan China Comprehensive Trade Liaison Council, the governing body for L.- T. trade in Japan, was called to consider strategy. It immediately issued a statement calling for the removal of barriers to trade with China, in particular for the abrogation of the Yoshida letter, the expansion of the list of items not subject to the strategic embargo, an increase in the import of Chinese rice, and the removal of the ban on Japanese meat.

It is not my object to try to give a blow-by-blow account of the negotiations, although the coverage given them by the Japanese press would make it possible to reconstruct them in some detail. Rather, I shall try to analyse the way in which the negotiations were conducted, in the hope that some characteristic patterns of negotiating policy may emerge.

It is tempting, but dangerous, to try to estimate which country had the most to gain from an agreement, or the most to lose from a breakdown in trade. The voices of Japanese industrial and commercial interests, particularly the steel and fertilizer industries, were loud enough to ensure that great prominence was given to Japan's desire to maintain the trade, but how far this was calculated to give an impression of eagerness to the Chinese is hard to say. One is certainly justified in assuming that very little is said or done in the whole field of Sino-Japanese relations without calculation. On the other hand, there were solid grounds for the anxieties of the fertilizer men; in 1967 it had taken almost four months to hammer out an agreement under L.- T. auspices.

The principal evidence for the anxiety of the Chinese to resume the trade comes from the very fact that agreement was eventually reached. Inasmuch as China's trade with her principal non-Communist partners had apparently risen by as much as 20% in 1967 as against 1966 (according to a Japanese estimate), she might at first sight have had less to lose by refusing to make an agreement. She might well have regarded



the loss of one sector of her trade with Japan (the smaller sector) as a not unreasonable price to pay for the presumably agreeable gesture of refusing all further dealings with Mr. Sato's party. However, by turning so obviously away from trade with Japan in 1968, she might have seriously weakened her bargaining position vis-a-vis the European exporters, and she would certainly have suffered from the increased cost of shipping to Europe. While theoretically sterling devaluation (from which China is thought to have profited quite considerably) would have enabled her to make cheaper purchases in Britain, a dramatic upturn in trade with Britain in the wake of the still unresolved Hong Kong situation might have been even more politically unpalatable than a compromise with Japan.

Probably the decisive factor for China is the suitability of Japan as a market for some of her most important agricultural bulk exports. Just as Japan has a steel and chemical lobby, so the Chinese Government must be under constant pressure to find outlets for the country's rice and soya beans, and the greatly reduced foreign exchange balance in Hong Kong in 1967 must have increased this pressure. Significantly, despite the extensive manoeuvring on the issue of the Export-Import Bank credits, much of the bargaining that eventually followed the initial political discussions concerned quantities of rice and soya beans.

Before the actual trade discussions started there were three weeks of somewhat one-sided debate on the "political issues involved" in which, according to the Japanese delegation, the Chinese evinced a "very harsh, cold attitude", although the talks were described as "warm" in atmosphere. As luck would have it (and here it would be far-fetched to regard the timing as other than coincidental) the Japanese were on somewhat slippery ground as Liberal-Democrats, for their Government had just permitted, against the strongest left wing opposition yet encountered, a visit by the nuclear carrier U.S.S. Enterprise to the port of Sasebo. And to add insult to injury, the Government had referred explicitly to the Chinese nuclear threat and had emphasized the need to overcome the "nuclear allergy" of the Japanese people.

Not surprisingly, the Japanese delegates took no message from the Government with them. Instead, they turned the situation to the best advantage they could by saying that they had the support of "the Japanese people as a whole" for the continuation of L.- T. trade, thus in a sense by-passing the question of Government attitudes. Mr. Furui told the Chinese delegation at the first meeting that he regretted the present strain in Sino-Japanese relations, but pointed out that continued trade formed part of the "foundation for the phased process of normalization of relations between the two countries".

It will be apparent that China had a much more positive political interest in the negotiations than Japan. The latter's attitude to her trade relations with China has been to keep them as far as possible out of the political arena altogether by maintaining the ingenious, if specious, principle of the separation of economics from politics. One major objective of the Chinese - short of the ultimate goal of bringing about a major change in Japanese policy towards the United States and Taiwan - has been the demonstration that this separation is false and untenable, and this point was pressed hard throughout this year's negotiations. Other, more tangible objectives, of course, have been the removal of what are essentially political barriers to Japanese exports - the credit ban and the embargo, but the inseparability of politics and economics is probably seen by the Chinese as the key to them. Japan is thus cast in a politically defensive role. China's position was especially strong in political terms because of uncertainty, in Japan as in the rest of the world, as to how far the politics of the Cultural Revolution would permit or require the abandonment of the catholic foreign trade policy which China has pursued in the last ten years. Japanese confidence on this score should not be overestimated. Accordingly, even when the stage of purely political negotiation had been passed, and the Chinese presumably felt that they had gone as far as they could in extracting political concessions, they were able to use political threats and pressures in the course of the trade discussions. It was significant from this point of view that the text of the joint communique on the political aspects of the negotiations was not finalized until after the conclusion of the trade agreement.

An atmosphere of uncertainty about the whole outcome was exploited by the Chinese. There were no formal meetings at all for six days after the Japanese arrived in Peking - with visas for a visit of one week. They were told to submit an agenda, which put them somewhat in the position of petitioners. When talks eventually started, after the agenda had been considered for some days, they were adjourned indefinitely at the end of the first morning by the Chinese, only to be resumed as suddenly the next day.

In this primarily political phase of the talks the Japanese did draw some advantage from the flexibility which their "unofficial" status gave them. Any major concession which they might make on a question of political principle was, so to speak, repudiated in advance by the Japanese Government. Thus on the sixth day of the political discussions they cabled home that the "three political principles" would have to be conceded by Japan if there was ever to be a trade agreement. The Chinese then apparently reversed their initial statement that it was "impossible under the Sato Cabinet to promote economic, cultural or personal exchanges" between the two countries, and a committee was appointed to draft the joint communique.

Furui and his colleagues stood firm, however, on the basic doctrinal question of the separation of politics and economics, as presumably they had been instructed to do, and they also made it clear that they would not sign any document explicitly critical of the Japanese Government. For several days there was a deadlock, finally broken when it was resolved that the trade talks should run simultaneously with the drafting of the political communique. At that point it became clear that L.- T. trade was to continue, but the Chinese retained the option of using the political issues at any point they chose as a persuader in the commercial negotiations.

During this preliminary period, the Japanese position over the more obviously commercial aspects of the whole situation had been made public in a series of official and semi-official statements, punctuated by the earnest pleas of the various industrial and commercial associations. Thus in anticipation of the negotiations a sort of public debate on the question of using Export-Import Bank funds and the status of the Yoshida letter had been going on. This form of "public diplomacy", very characteristic of modern Japan, was used extensively throughout the whole course of the negotiations. The discussion of the Yoshida letter affords a good example.

Before the Japanese delegation left for Peking, various members of the Government had said that the question of Export-Import Bank credits "transcended the Yoshida letter", and that the decisions to grant or withhold the loans were made on a case by case basis. This was not the first time this point had been made, though everyone knew that the policy of the Government had been consistently to refuse credits. On the 5th February, just as the talks seemed likely to start, the Japan Times, usually a faithful organ of Government opinion, revealed that Premier Sato and Mr. Miki, the Foreign Minister, had personally assured Furui before he left that they would not regard themselves as bound by the Yoshida letter. The newspaper itself, however, pointed out that the Premier had said nothing about the position a few days earlier in his important policy speech at the opening of the Diet, and commented that the Government's words were merely aimed at giving the impression of change, and that its policy remained as firmly opposed to the granting of credits as ever.

Thus, it seems as though the Japanese carefully went through the motions of preparing an apparent concession, and then revealing by a press leak that it was a sham, purely for the purpose of negotiations. As well as placating their allies, the United States and Taiwan, this enabled the Japanese to indicate to the Chinese a possible concession, without in any way whatever giving it away too soon. It also enabled Mr. Furui, just before he left, to state publicly that the Government's position did not in any way represent

a step forward, which put him in the light of one specially friendly to the Chinese position and anxious to urge it on his own principals (much as though Mr. Harriman had gone to Paris having just denounced President Johnson's position on de-escalation as inadequate for the impending negotiations).

It would be too great a task for present purposes to document further examples of this kind of diplomacy on the part of the Japanese, but they were not lacking. The technique is not available to the Chinese, of course, in quite the same form, since neither in the Chinese press nor in the speeches of Chinese leaders can there be the slightest overt departure from a position of monolithic solidarity. Accordingly, the flexibility would have to be introduced into the statements of the negotiators themselves, and these are not available to us in sufficient detail for the purpose.

The position eventually reached on the question of Export-Import Bank credits gives some indication of the toughness of the whole negotiations. As soon as the actual trade talks began, the Chinese discounted the possibility of a long term or large scale agreement in the current political situation. The following day they made their position clear: although the Japanese wanted a five year agreement, they said there could be no question of any arrangement for longer than a year without the issue of Export-Import Bank loans in respect of exports to China. Accordingly, it was agreed almost immediately that the agreement should be for one year. and should not involve the sale to China of any large scale equipment - to which, of course, long term credits would be particularly applicable. Some two weeks later, after the agreement had finally been concluded, the Foreign Office in Tokyo for the first time made an official statement on the Yoshida letter, making it quite plain that the Japanese Government did not regard it as establishing any binding obligation on the part of Japan towards the Nationalist Government, and that it would continue to deal with applications for credits for major exports on a case by case basis.

In view of the fact that Yoshida had been Prime Minister at the time he sent the letter to President Chiang, it was curious to find the Japanese Foreign Office spokesman stating that the letter was "quite unrelated to the Government, personal, and in no way binding on Japan". (After all, an oral assurance by a Norwegian Foreign Minister to the Danish Ambassador was held by the Permanent Court of International Justice in the Eastern Greenland Case to constitute a legally binding waiver of Norwegian claims to sovereignty in Greenland). It was further stated that the spirit of the letter had been followed not because it was binding, but because the decisions on credit on a case by case basis happened to coincide with it, though it was admitted that the purely coincidental quality of this relationship had only been made clear after the death of Yoshida in October,

1967. (It is fascinating to speculate just how far veneration for the great man did in fact play a part in the matter; it was almost certainly an important factor in the Prime Minister's case against the "China trade lobby" within his own party for delaying the clarification of policy).

A month later Mr. Nakasone, Minister of Transport, said the "the Japanese Government is making all efforts" to facilitate the export of Japanese freighters to China, but he made it clear that he was expressing a personal belief when he said that the Yoshida letter was "extinct". He thought it would prove necessary eventually for Premier Sato to state publicly that it had been nullified. Meanwhile, the Finance Minister was saying, somewhat elliptically, that it would be up to the Export-Import Bank "itself" (it is a state corporation under the direct control of the Ministry of International Trade and Industry) to decide whether to finance exports to China. The Hitachi shipyards had already revealed that they were planning to export ships to China on the assumption that seven years credit at 5.5% would be available for 70% of the price - the same terms as the Soviet Union gets - and there has been other evidence that ships will meet the Government's new criteria for granting credits. Even greater developments were foreshadowed by a statement by the Nichibo Company that it was hoping to start talks once more over the sale to China of a huge vinylon plant, previous negotiations having broken down over the lack of Export-Import Bank credits. It may be significant that the Chinese finally broke off negotiations which have been going on for two years with the German consortium Demag over the installation in China of a large steel complex a few days ago; a Japanese company has already spoken of making approaches to step into the gap.

Thus, while Japan made no concession of principle (and gained no concessions from the Chinese on this issue), it would seem that the Government's position on Export-Import Bank loans has changed significantly, although it would be wise to await the opening of the first credits before assuming that the change is complete. Differences of opinion within the ranks of the Liberal-Democrats are still reported, and they are doubtless genuine enough. Meanwhile the reactions from Taipei have not been as violent as might have been expected, presumably because no loans have yet been granted; the Nationalists may still have reason to hope that none will be forthcoming. It can be said that with a mixture of hesitation, inaction, legalism, bland disregard for legalities and tightrope walking, the Japanese Government has managed extremely well on this delicate issue; there is still enough room for manoeuvre for Mr. Sato to have been able to say on 15th April that there had been "no change" in the Government's position.

Of equal immediate importance - though its symbolic significance is less than the credits issue - was the volume

of trade to be envisaged by the agreement. Once again, the Chinese insisted at the outset on the maintenance of a balance between imports and exports, to which the Japanese necessarily agreed, in principle at least, for a balance is basic to the majority of China's trade agreements with foreign countries and has always been maintained by China as a negotiating principle. To the extent that there is an imbalance in China's trade with Japan, it mostly represents friendly firm trade.

The requirement of balanced trade raised an important and difficult point for the Japanese. Major Japanese imports from China normally consist largely of bulk commodities - rice, soya beans, salt, various kinds of grains and beans, iron-ore, and a variety of agricultural products. Rice and soya beans are both of crucial importance to the trade, and indeed one of the reasons why China imports so much wheat (for which she is already heavily committed for 1968) is to enable her to sell her much more profitable rice crop in other Asian countries. In the past Japan has theoretically maintained a limit of 60,000 tons per annum, although much larger amounts have been imported on occasion, 200,000 tons in 1967, for instance. It was made clear at a very early stage of the negotiations this year that the limit would have to be raised if trade was to expand; before the Furui mission left for Peking the chemical fertilizer industry had started to press the Government to increase the rice quota.

As soon as the trade discussions began the Japanese delegation sent a message home saying that the figure would have to be over 100,000 tons minimum. Mr. Shiina, Minister for International Trade and Industry, immediately promised that there would be an increase, regardless of the difficulties presented by the fact that the Japanese rice crop the previous year had been exceptionally good. In the event, a figure was never agreed, however. The Japanese, having made it clear, after a number of semi-conflicting statements by various ministers, that the final decision was Mr. Sato's, eventually made a firm offer, contained in an official Ministry statement, of 100,000 tons. However, it was rumoured that they had in fact advanced it in the negotiations to 120,000 tons, at the same time laying down certain conditions as to the quality and origin of the rice to be shipped. Evidently the Chinese agreed to come down from their reputed insistence on 200,000 tons, for an agreement of sorts was reached, enshrined in a formula whereby the joint communique would incorporate China's demand for imports of more than 100,000 tons, with a Japanese promise of "utmost efforts to meet the demand" and a further Japanese promise of future flexibility on the matter.

There was similar haggling over the other vital commodity, soya beans. Here the Japanese embarrassment arose

from the fact, to which I have already referred, that many dealers, in order to cover themselves against the serious possibility that the L.- T. trade would not be renewed, had placed large orders elsewhere in late 1967, making it rather hard for them to swallow the whole expected quantity of Chinese exports as well, particularly in view of the uncertainty prevailing about the fate of the agreement at the end of 1968.

The Chinese, possibly because of anxieties about their rice and soya exports, considerably heightened the tension behind the negotiations just as quantities were being discussed by arresting as a spy one of the Japanese businessmen who were living in Peking as representatives of the friendly firms. Masanobu Suzuki was not the first such trader to be detained in recent months, but the arrest, coming at such a time, had a special significance for the Japanese commercial world. The fertilizer and steel industries, in particular, while they feared that the outcome of the L.- T. negotiations might not be very favourable to themselves, were pinning their hopes on the probability that what they could not sell to China under the agreement they could sell through their friendly firms. It was now graphically indicated to them that the friendly firms - which depend on China for designation as such - were under suspicion and liable to come into serious disfavour.

The Japanese reaction to the news of the arrest was immediate and apparently unhesitating. While the Foreign Ministry in Tokyo said that it was investigating the matter, the JCPIT, which is responsible for friendly firm trade, forthwith made an unqualified and abject apology for Suzuki's activities, thus impliedly incriminating him.

The day after the agreement was finally signed, Premier Chou En-lai received the Peking representatives of the JCPIT and drove the point home with a statement about the political stand which the friendly firms would have to adopt if they were to continue in business. Subsequent developments have confirmed that the friendly firms are experiencing tougher conditions in China. Thus when negotiations began in Canton in April over purchases of Japanese steel (the steel industry did not do well out of the agreement and had to rely largely on friendly firm channels) each of the participating companies had to send its own negotiators, instead of allowing the friendly firm agents to represent them. It appears that the Chinese insisted on this to sound out the political attitudes of each steel firm concerned. Significantly enough also, the Daichi Trading Company, a friendly firm subsidiary for the giant Mitsui group, formed entirely for the purposes of trade with China (it once cornered 17% of the friendly firm trade) ceased operations altogether in April, on the ground that its representatives found it impossible to carry out their functions in Peking. Further arrests suggest the likelihood

of other firms coming to the conclusion that they might as well cut their losses by dropping out of the trade.

The eventual signing of the agreement was greeted, as might be expected, with considerable relief in Japan. The price paid for it was quite a heavy one, however. In the first place, the total trade called for, about US\$115 m, represented a considerable fall from the previous year's total of US\$150 m. for L.- T. trade. Such trade as would be done beyond that would have to go through the friendly firms, and promised to be subject to greater political pressure than ever before.

In the more obviously political sense, too, the price paid was a high one. In the political communique which was issued, it was stated that the Japanese delegation agreed that the three political principles for Sino-Japanese relations should apply to trade in future, and they also accepted the "principle of inseparability of politics and economics", with the concomitant that "improvement of political relations is the only means of developing economic relations between the two countries". The Japanese did not accept the Chinese view that all obstacles in the way of Sino-Japanese relations were caused by United States imperialism. and the hostile policy towards China pursued by the Sato Government, but they publicly recorded their "deep understanding" of this view.

On the day after the agreement was signed the Japanese Foreign Ministry pointed out **emphatically** that the Furui delegation, despite the presence of two Liberal-Democratic members of the Diet, represented neither the Government nor the Party, and had no authority whatever to bind the Japanese Government to these principles. Later, however, the Foreign Minister told the Diet that Japanese policy towards China was "not inconsistent with the spirit underlying the three political principles," but he said that the question of the separability or otherwise of politics and economics was still open to debate.

A further feature of the arrangement was the not unimportant change whereby the agreement was no longer to be called an Agreement but was, as it were, downgraded to Memorandum, with its connotation of greater informality, and its implication of a reduction in obligatory force. Further, the Chinese insisted on changing the names of the trade offices to make it clear that L.- T. trade was a thing of the past, torpedoed by Japanese foreign policy. "Liao-Takasaki Trade" is now correctly referred to as "Memorandum Trade".

Premier Chou En-lai, immediately after the signing of the Memorandum, said that the development of trade in accordance with its terms would depend wholly on what steps



Japan now takes, and Mr. Liu Hsi-wen, Deputy Vice-Minister for Foreign Trade in charge of the negotiations, rubbed the point in by emphasizing that the fight against the Sato Government's pro-American, anti-Chinese policy must be conducted by all Japanese trading circles, from Mr. Furui downwards, and not by the friendly firms alone.

All in all, the political aspects of the Memorandum were not particularly pleasant for the Japanese Government at a time when it was under considerable attack from the left wing on account of its nuclear policy. Nor were the economic benefits all that spectacular. The overall turnover of US\$115 m. was of importance, but the anticipated difference to Japan's balance of payments could not be very great, though it was improved when on 19th March the CCPIT and the JCPIT signed an agreement to double the 1967 total of friendly firm trade in 1968 - a result which doubtless owed much to Japanese acceptance of the earlier Memorandum. Moreover, the Chinese had neither made any gesture to help the Japanese firms which had suffered from devaluation of the pound, nor had they agreed to settlement in the future in any currency but sterling, though they had indicated that the question would be discussed later in separate talks. (Eventually they did agree, in May, to use French francs, though whether as a currency of settlement or merely as a currency of account is not known). This left the Japanese in an uncomfortable situation in March, when the gold crisis was gathering momentum.

China does not involve a very large sector of Japan's foreign trade as a whole, but to certain industries, particularly the chemical industry, it is critical. Moreover, it may well be that with even a limited recession on the country's trade elsewhere, pressure on the Government to develop trade with China is increasing, and likely to increase further. The shipbuilding industry, for example, already beginning to feel the competition of the newly-rationalized European shipyards, must find the idea of a China aided by Export-Import Bank loans a tempting one.

The Chinese, on the other hand, had good reason to congratulate themselves on the outcome of the negotiations. Politically, they had largely made the running, and their political preconditions for the agreement were to a great extent met. In this sense, with the introduction of a much greater degree of politicization into Sino-Japanese trade relations, the Memorandum and the joint communique which accompanied it could be looked upon as a triumph for the diplomacy of the Cultural Revolution.

At the same time, there is a remarkable degree of continuity with past policy discernible in the way in which China conducted the negotiations. The precedents of

1958 and 1962 were followed quite closely, and demands made then were revived and successfully pressed after the Japanese had been criticized for not complying with them. This continuity is interesting in the light of what has been suggested by some commentators about recent changes in Chinese foreign policy and even a possible decline in Chinese diplomatic acuity.

In the purely economic sense, little was given away. While China clearly is anxious to continue L.- T. trade (or Memorandum trade, as it now is), it may well suit her to reduce the amounts involved during a period when the economic disruptions are beginning to be seriously felt. At the same time, since the Memorandum, like its predecessors, only lays down outlines, leaving the detailed negotiation of particular contracts to be settled by the Japanese delegations from various industries and trades, there is still a good deal of leeway for bargaining. The Japanese trade organizations started selecting their representatives to go to China as soon as the Memorandum was signed, but it is significant that only four were invited to come in the first batch, representing the importers of rice, salt and soya beans and the chemical fertilizer manufacturers. Since they were invited together it is probable that their several negotiations were closely related.

By the increased politicization, change of nomenclature, and by their refusal to extend the agreement beyond 1968, the Chinese retained the maximum of initiative for future negotiations, with the added advantage that they could now much more easily attach political strings to economic baits. Moreover, Premier Chou's remark that the development of trade in accordance with the Memorandum depended on the steps taken by Japan, together with the change in the nomenclature of the agreement, suggests that the actual commitments for the coming year made by China may be regarded by the Chinese as conditional rather than binding, and subject to unilateral revision on political grounds at any time, if not outright cancellation as was the case in 1958. Quite apart from giving the Chinese the advantage of keeping the Japanese firms with which they deal in constant suspense, this aspect of the arrangement could be a very useful way of cutting down exports on China's part if she suddenly found herself unable to satisfy orders on account of internal troubles, for it would involve no awkward admissions and could indeed be turned to political advantage.

If this analysis of the conditional character of the obligations undertaken by China is correct, then the Memorandum would represent an important step by China away from legal obligation and economic security as a basis for international trade. The tendency would be towards economic relationships based entirely on variable political factors, or at best on vague conditions laid down by China and thus ex hypothesi subject to Chinese definition as and when

necessary. The abandonment of clear legal principles and the introduction of avowedly fluid political principles of variable content has all the appearances of a considerable extension of the thought of Chairman Mao into the field of foreign policy.

The fact that this uneasy and possibly unstable accommodation of conflicting interests was achieved at all is certainly a testimony that in China's continued desire to trade with Japan the two countries still share common objectives, however narrowly based. What will probably be more significant for the future pattern of Sino-Japanese trade, though, is China's evident lack of interest in making that trade secure, attractive or even profitable for her Japanese partners.

Yours sincerely,

A handwritten signature in cursive script, reading "Anthony R. Duke". The signature is written in dark ink and is positioned centrally below the typed name.

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