

Exhibit 2799

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The Japanese Ambassador (Horinouchi) to the
Secretary of State

No. 2

Washington, January 6, 1940

Sir: I have the honor to state that, as the result of a communication through a circular letter of July 1, 1938, addressed by the Department of State to manufacturers and exporters of aircraft and aircraft parts, in which it was mentioned that "the Department of State would with great regret issue any licenses authorizing exportation, direct or indirect, of any aircraft, aircraft armament, aircraft engines, aircraft parts, aircraft accessories, aerial bombs or torpedoes to countries the armed forces of which are making use of airplanes for attack upon civilian populations," it has virtually become impossible for Japanese firms to import any airplanes and airplane parts of American make.

As repeatedly stated by my Government, military operations of the Japanese air forces in China have been directed solely against warlike organizations and establishments of the Chinese. No bombing or machine-gunning has been resorted to against civilian population as such. The Japanese Government, therefore, cannot but take exception to any treatment of Japan as a country "the armed forces of which are making use of airplanes for attack upon civilian populations."

The above-mentioned measures employed by the Department of State, which, in view of the great influence that can be wielded by a central government upon private manufacturers and exporters, have the effect of a discriminatory export embargo. My Government considers that such measures applied to Japan are in derogation of the provision of Article V, paragraph 3 of the Treaty of Commerce and Navigation between Japan and the United States of February 21, 1911, and at variance with the general purposes of the Treaty as a whole.

While my Government was keenly alive to the unfortunate consequences of the said communication to American exporters, it did not relinquish the hope that the United States Government, in harmony with its fair and just trade policy, would before long retract it.

However, on December 16, 1939, another letter was addressed by the Department of State to manufacturers and exporters to the effect that the Department hoped that it would not receive any application for a license to authorize the exportation, direct or indirect, of articles enumerated in the letter of July 1, 1938, and, in addition thereto, of aeronautical equipment of all kind and materials essential to airplane manufacture. In order to point out that molybdenum and aluminum should be included among such materials, a letter was addressed by the Department to all producers of these two materials.

Still further, it was announced on December 20, 1939, from the Department of State that the decision had been reached that there should be no further delivery to certain countries of plans, plants, manufacturing rights, or technical information required for the production of high quality aviation gasoline and that this decision had been communicated to the interested American oil companies. The announcement cited the decision as an extension of the United States Government's policy in regard to the sale of

airplane, aeronautical equipment, and materials essential to airplane manufacture to countries the armed forces of which were engaged in unprovoked bombing or machine-gunning of civilian populations from the air.

Of late there occurred a number of cases in which the purchase of certain articles and materials under negotiation between Japanese firms and interested American companies has been rendered impossible as the result of the Department of State's letters.

To cite one of the most outstanding cases, a memorandum of a contract was drawn and initialed August 19, 1938, by representatives of Japan Gasoline Company on the one part and Universal Oil Products Company on the other.

It was stipulated that Universal Oil Products Company, which since 1928 had maintained close business connection with Japan Gasoline Company, should grant a license in Japan covering their polymerization processes for the production of iso-octanes and rights under all of their processes in the entire petroleum field, in return for which Japan Gasoline Company should pay \$1,000,000 United States funds to Universal Oil Products Company.

It was understood that, during the progress of the negotiations in connection with the above agreement, the representatives of Universal Oil Products Company approached and laid the pertinent facts before the Department of State, which made no objection to the transaction.

Under the terms of the agreement Japan Gasoline Company paid to Universal Oil Products Company a sum of \$300,000 on October 30, 1938, and \$400,000 on July 8, 1939. It was agreed that further payment of \$100,000 was to be made at the time of delivery of plans and specifications for a plant and a final payment of \$200,000 upon completion and test of such a plant. In essence, Universal Oil Products Company was bound to guarantee, within the limit of the money it was to receive in payment, complete working of the plant in Japan under polymerization processes.

Recently Universal Oil Products Company proposed that a final agreement should be made along the lines of the provisional agreement, and accordingly the two parties continued their negotiations.

On December 19, 1939, however, Universal Oil Products Company informed the representatives of Japan Gasoline Company that they had received a letter from the Department of State which left no alternative for them but to withhold further fulfillment of the terms of the contract.

The consummation of this contract, under which the greater part of the payment involved has already been made and other obligations required have been completely fulfilled by one of the parties, has for all practical purposes been frustrated.

Entertaining the belief that steps taken by your Government, causing a situation not dissimilar in effect to that which might obtain under an export embargo discriminating against Japan, are in contravention to the provisions of Article V, paragraph 3, of the Treaty of Commerce and Navigation between Japan and the United States and at variance with the spirit of the Treaty as a whole and fearing that the continuation of such measures may affect the present earnest efforts of Japan and the United States for the improvement of mutual friendly relations through the maintenance and promotion of commerce between the two countries, my Government greatly deploras the herein referred to actions of the authorities of the United States Government.

I avail myself (etc.)

Kensuke Horinouchi

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