plan of any sort for the establishment of a tobacco monopoly.

Concerning the return of American citizens to the occupied ares, in North China there is no restriction on their returning, except in special cases where the personal safety of those who return would be endangered. Your Excellency is aware that in the Yangtze Valley large numbers of Americans have already returned. The fact that permission to return has not yet been made general is, as has been repeatedly communicated to Your Excellency, owing to considerations of the danger involved on account of order not yet being restored, or because of the impossibility of admitting nationals of third Powers on account of strategic necessities such as the preservation of military secrets. Further, the various restrictions enforced in the occupied areas concerning the residence, travel, enterprise and trade of American citizens, constitute the minimum regulations possible consistent with military necessities and the local conditions of peace and order. It is the intention of the Japanese Government to restore normal conditions as soon as circumstances permit.

at the allegation that there exists a fundamental

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difference between the treatment accorded to Japanese in America and the treatment accorded to Americans in Japan. While it is true that in this period of emergency, Americans residing in this country are subject to various economic restrictions, these restrictions are, needless to say, imposed not upon Americans alone but also equally upon all foreigners as well as upon Japanese subjects. A statement of the views of the Japanese Government concerning the opinion as set forth in Your Excellency's note, regarding the treatment of Japanese subjects in American territory, is reserved for another occasion.

"While the Japanese Government with the intention of fully respecting American rights and interests in China, as has been frequently stated above, has been making every effort in that direction in view of the fact that military operations on a scale unprecedented in our history are now being carried out in East Asia, I am of the opinion that the Government of Your Excellency's country also should recognize the fact that occasionally obstacles arise hindering the effecting of the intention of respecting the rights and interests of Your Excellency's country.

"At present Japan devoting its entire energy to the establishment of a new order based on genuine

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international justice throughout East Asia, is making rapid strides toward the attainment of this objective. The successful accomplishment of this purpose is not only indispensable to the existence of Japan, but also constitutes the very foundation of the enduring peace and stability of East Asia.

Government that now, at a time of the continuing development of new conditions in East Asia an attempt to apply to present and future conditions without any changes concepts and principles which were applicable to conditions prevailing before the present incident does not in any way contribute to the solution of immediate issues and further does not in the least promote the firm establishment of enduring peace in East Asia.

have any intention of objecting to the participation in the great work of the reconstruction of East Asia by Your Excellency's country or by other Powers in all fields of trade and industry, when such participation is undertaken with an understanding of the purport of the above stated remarks; and further, I believe that the regimes now being formed in China are also prepared to welcome such participation.

2	"I avail myself		
		"HACHIRO ARITA"	
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The reply is numbered 1153, dated Tokyo,
December 30, 1938. (Reading):

"TXCELLENCY: Acting under the instructions of my Government I have the honor to address to Your Excellency the following note:

"The Government of the United States has received and has given full consideration to the reply of the Japanese Government of November 18 to this Government's note of October 6 on the subject of American rights and interests in China.

"In the light of facts and experience the Government of the United States is impelled to reaffirm its previously expressed opinion that imposition of restrictions upon the movements and activities of American nationals who are engaged in philanthropic, educational and commercial endeavors in China has placed and will, if continued, increasingly place Japanese interests in a preferred position and is, therefore, unquestionably discriminatory in its effect against legitimate American interests. Further, with reference to such matters as exchange control, compulsory currency circulation, tariff revision, and monopolisitic promotion in certain areas of China the plans and practices of the Japanese authorities

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imply an assumption on the part of those authorities that the Japanese Government or the regimes established and maintained in China by Japanese armed forces are entitled to act in China in a capacity such as flows from rights of sovereignty and further in so acting to disregard and even to declare non-existent or abrogated the established rights and interests of other countries including the United States.

"The Government of the United States expresses its conviction that the restrictions and measures under reference not only are unjust and unwarranted but are counter to the provisions of several binding international agreements, voluntarily entered into, to which both Japan and the United States, and in some cases other countries, are parties.

"In the concluding portion of its note under reference, the Japanese Government states that it is firmly convinced that in the face of the new situation, fast developing in Asia, any attempt to apply to the conditions of today and tomorrow inapplicable ideas and principles of the past neither would contribute toward the establishment of a real peace in Fast Asia nor solve the immediate issues and that 'as long as these

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points are understood Japan has not the slightest inclination to oppose the participation of the United States and other Powers in the great work of reconstructing East Asia along all lines of industry and trade.

"The Government of the United States in its note of October 6 requested, in view of the oft reiterated assurances proffered by the Government of Japan of its intention to observe the principles of equality of opportunity in its relations with China and in view of Japan's treaty obligations so to do, that the Government of Japan abide by these obligations and carry out these assurances in practice. The Japanese Government in its reply appears to affirm that it is its intention to make its observance of that principle conditional upon an understanding by the American Government and by other governments of a 'new situation' and a 'new order' in the Fer East as envisaged and fostered by Japanese authorities.

"Treaties which bear upon the situation in the Far East have within them provisions relating to a number of subjects. In the making of those treaties, there was a process among the parties to them of give and take. Toward making possible the

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carrying out of some of their provisions, others among their provisions were formulated and agreed upon: toward gaining for itself the advantage of security in regard to certain matters, each of the parties committed itself to pledges of selfdenial in regard to certain other matters. The various provisions agreed upon may be said to have constituted collectively an arrangement for safeguarding, for the benefit of all, the correlated principles on the one hand of national integrity and on the other hand of equality of economic opportunity. Experience has shown that impairment of the former of these principles is followed almost invariably by disregard of the latter. Whenever any fovernment begins to exercise political authority in areas beyond the limits of its lawful jurisdiction there develops inevitably a situation in which the nationals of that government demand and are accorded at the hands of their government, preferred treatment, whereupon equality of opportunity ceases to exist and discriminatory practices, productive of friction prevail.

"The admonition that enjoyment by the nationals of the United States of non-discriminatory treatment in China--a general and well established right -- is henceforth to be contingent upon an admission by the Government of the United States of the validity of the conception of Japanese authorities of a 'new situation' and a 'new order' in East Asia, is, in the opinion of this Government, highly paradoxical.

"This country's adherence to and its advocacy of the principle of equality of opportunity do not flow solely from a desire to obtain the commercial benefits which maturally result from the provisions of that principle. They flow from a firm conviction that observence of that principle leads to economic and political stability, which are conducive both to the internal well-being of nations and to mutually beneficial and peaceful relationships between and among nations; from a firm conviction that failure to observe that principle breeds international friction and ill-will, with consequences injurious to all countries, including in particular those countries which fail to observe it; and from an equally firm conviction that observance of that principle promotes the opening of trade channels thereby making available the markets, the raw materials and the manufactured products of the community of nations on a mutually and reciprocally bene-

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"The principle of equality of economic opportunity is, moreover, one to which over a long period and on many occasions the Japanese Government has given definite approval. It is one to the observance of which the Japanese Government has committed itself in various international agreements and understandings. It is one upon observance of which by other nations the Japanese Government has of its own accord and upon its own initiative frequently insisted. It is one to which the Japanese Government has repeatedly during recent months declared itself committed.

"The people and the Government of the United States could not assent to the establishment at the instance of and for the special purposes of any third country of a regime which would arbitrarily deprive them of the long established rights of equal opportunity and fair treatment which are legally and justly theirs along with those of other nationals.

"Fundamental principles such as the principle of equality of opportunity which have long been regarded as inherently wise and just which have been widely adopted and adhered to, and which are general in their application are not

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subject to nullification by a unilateral affirmation.

Japanese Government's note that the bonditions of today and tomorrow'in the Far East call for a revision of the ideas and principles of the past, this Government desires to recall to the Japanese Government its position on the subject of revision of agreements.

"This Government had occasion in the course of a communication delivered to the Japanese Government on April 29, 1934, to express its opinion that 'treaties can lawfully be modified or be terminated, — but only by processes prescribed or recognized or agreed upon by the parties to them'.

"In the same communication this Government also said, 'In the opinion of the American
people and the American Government, no nation
can, without the assent of the other nations concerned, rightfully endeavor to make conclusive its
will in situations where there are involved the
rights, the obligations and the legitimate interests of other sovereign states'. In an official
and public statement on July 16, 1937, the Secretary of State of the United States declared that
this Government advocates 'adjustment of problems

in international relations by processes of peaceful negotiation and agreement.

"At various times during recent decades various powers, among which have been Japan and the United States, have had occasion to communicate and to confer with regard to situations and problems in the Far East. In the conducting of correspondence and of conferences relating to these matters, the parties involved have invariably taken into consideration past and present facts and they have not failed to perceive the possibility and the desirability of changes in the situation. In the making of treaties they have drawn up and have agreed upon provisions intended to fecilitate advantageous developments and at the same time to obviate and avert the arising of friction between and among the various powers which, having interests in the regions under reference, were and would be concerned.

"In the light of these facts, and with reference especially to the purpose and the character of the treaty provisions from time to time solemnly agreed upon for the very definite purposes indicated, the Government of the United States deprecates the fact that one of the parties

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to these agreements has chosen to embark -- as indicated both by action of its agents and by official statements of its authorities -- upon a course directed toward the arbitrary creation by that power by methods of its own selection, regardless of treaty pledges and the established rights of other powers concerned, of a 'new order' in the Far East. Whatever may be the changes which have taken place in the situation in the Far Fast and whatever may be the situation now, these matters are of no less interest and concern to the American Government than have been the situations which have prevailed there in the past, and such changes as may henceforth take place there, changes which may enter into the producing of a 'new situation' and a 'new order', are and will be like concern to this Covernment. This Government is well aware that the situation has changed. This Government is also well aware that many of the changes have been brought about by the action of Japan. This Government does not admit, however, that there is need or warrant for any one Power to take upon itself to prescribe what shall be the terms and conditions of a 'new order' in areas not under its swereignty and to constitute itself

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repository of authority and the agent of destiny in regard thereto.

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"It is known to all the world that various of the parties to treaties concluded for the purpose of regulating contacts in the Far East and avoiding friction therein and therefrom — which treaties contained, for those purposes, various restrictive provisions — nave from time to time and by processes of negotiation and agreement contributed in the light of changed situations toward the removal of restrictions and toward the bringing about of further developments which would warant in the light of further changes in the situation, further removals of restrictions. By such methods and processes, early restrictions upon the tarrif autonomy of all countries in the Far

East were removed. By such methods and processes 2 the rights of extraterritorial jurisdiction once enjoyed by Occidental countries in relations with countries in the Far East have been given up in relations with all of those countries except China; and in the years immediately preceding and including the year 1931, countries which still possessed those rights in China including the United States were actively engaged in negotiations -- far advanced -- looking toward surrender of those rights. All discerning and impartial observers have realized that the United 12 | States and others of the treaty powers have not 13 | during recent decades clung tenaciously to their socalled 'special' rights and privileges in countries of the Far East but on the contrary have steadily 16 | encouraged the development in those countries of in-17 stitutions and practices in the presence of which 18 such rights and privileges may safely and readily be 19 given up; and all observers have seen those rights and 20 privileges gradually being surrendered voluntarily 21 through agreement by the Powers which have possessed 22 them. On one point only has the Government of the 23 United States, along with several other governments, 24 insisted: namely, that new situations must have de-25 veloped to a point warranting the removal of 'special'

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safeguarding restrictions and that the removals be effected by orderly processes.

"The Government of the United States has at all times regarded agreements as susceptible of alteration, but it has always insisted that alterations can rightfully be made only by orderly processes of negotiation and agreement among the parties thereto.

"The Japanese Government has upon numerous occasions expressed itself as holding similar views.

"The United States has in its international relations rights and obligations which derive from international law and rights and obligations which rest upon treaty provisions. Of those which rest on treaty provisions, its rights and obligations in and with regard to China rest in part upon provisions in treaties between the United States and China and in part on provisions in treaties between the United States and several other powers including both China and These treaties were concluded in good faith for the purpose of safeguarding and promoting the interests not of one only but of all of their signatories. The people and the Government of the United States cannot assent to the abrogation of any of this country's rights or obligations by the arbitrary action of agents or authorities of any other country.

"The Government of the United States has, however, always been prepared and is now prepared to give due and ample consideration to any proposals based on justice and reason which envisage the resolving of problems in a manner duly considerate of the rights and obligations of all parties directly concerned by processes of free negotiation and new commitment by and among all of the parties so concerned. There has been and there continues to be opportunity for the Japanese Government to put forward such proposals. This Government has been and it continues to be willing to discuss such proposals, if and when put forward, with representatives of the other powers, including Japan and China, whose rights and interests are involved, at whatever time and in whatever place may be commonly agreed upon.

"Meanwhile, this Government reserves all rights of the United States as they exist and does not give assent to any impairment of any of those rights.

"I avail myself (etc.)

"JOSEPH C. GREW"

THE PRESIDENT: It is four o'clock now. That clock is slow, and you must be tired, Mr.

Hauxhurst. We will adjourn now until half-past nine tomorrow morning. (Whereupon, at 1600, an adjournment was taken until Tuesday, 10 September 1946 at 0930.)