

Exhibit 2732

18

The Fourth Conversation in Tokyo Concerning  
the Question of Concluding a New Treaty of  
Commerce

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(At the official residence of the Minister, about one hour from 5:30 p.m., 22 December 1939.)

First of all Ambassador Grew stating that he appreciated the efforts on the part of Japan for the improvement of Japanese-American relations, and that, as to the proposal made by Japan during the last conversation, the United States Government had prepared a statement clarifying its standpoint for the information of the Japanese Government, handed over an unofficial document as attached hereto (see Appendix A) to Minister Nomura. This statement points out that the American Government considers the principle of equality of commercial rights and opportunity to be the fundamental condition for concluding a new commercial treaty, and that the establishment of such a principle is a prerequisite to the conclusion of a commercial treaty. In this connection, the statement declares not only the policies and practices of the other party, but also the treatment of Americans in third countries under its influence are called into question, and as at present there exist in territories under Japanese occupation various restrictions on commerce, residence, travel, etc. rendering inoperative the practice of equality of treatment for American commercial rights and interests, this constituted an obstacle to the conclusion of a new treaty.

Regarding the statement, the Ambassador added that he hoped various assurances given to the United States by former Foreign Ministers would be carried into effect. Then the Ambassador stated that as regards the conclusion of a provisional modus vivendi the American Government proposed that the question be left open for the time being, and that according to the views of the American Government it would be appropriate to continue the discussions which had been going on between Minister Nomura and Ambassador Grew concerning various questions to be considered in connection with the conclusion of a new commercial treaty or agreement (see Appendix B). The Ambassador stated further that with regard to the 10% ad valorem duties to be imposed as provided by the Tariff Act of 1913, on goods carried by Japanese ships which enter United States ports, the Treasury Department would soon instruct the customs collectors not to collect such

duties until further orders had been issued, and as to the levying of discriminatory tonnage dues on Japanese ships, the Department of Commerce would adopt similar measures (see Appendix C).

In reply to this, Minister Nomura said that although he appreciated the measure which the United States was going to take to keep Japanese-American trade in a normal condition in spite of the expiration of the treaty, a commercial treaty is not only concerned with foreign trade but also has a bearing on general relations; that from the viewpoint of stabilizing the relations between the two countries he desired the United States to reconsider the question of the conclusion of a provisional modus vivendi. As Ambassador Grew asked for an unofficial document, saying that he wished to transmit this correctly to his home government, the document as shown in Appendix D was sent to him afterwards.

Then upon Minister Nomura's question as to the American attitude towards the "right of establishment", Ambassador Grew replied that he was not in a position to answer the question.

Lastly, Ambassador Grew referred to the recent conversations between Yoshizawa and Dorman and, after saying that Washington knew of the fact that Japan had prepared a draft of a modus vivendi, promised to report the results of the conversation to his home Government.

As for the question of the press release, Ambassador Grew expressed his wish to publish only to the effect that the conversation had been continued with a constructive attitude for the improvement of Japanese-American relations and that some progress had been achieved, and to refrain from publishing the matter concerning the 10% ad valorem duties, tonnage dues, etc., to which Minister Nomura agreed.

Appendix A

Pro Memoria

(English text taken from "Foreign Relations of the United States - Japan, 1931-1941", Vol. II, Pages 190 - 192.)

1. The Government of the United States has repeatedly expressed its willingness to enter into commercial treaties or agreements with all countries on the basis of certain well-known principles and procedures which this government regards as fundamental to sound international relations.

2. The Government of the United States regards non-discriminatory treatment as the foundation principle of its commercial policy and considers the rule of equality of commercial rights and opportunity to be the only practicable and desirable basis for concluding commercial treaties or agreements. The history of the commercial policies of the leading trading nations of the world demonstrates conclusively that the negotiation of commercial agreements based upon any other principle leads invariably to friction and the taking of counter-measures by injured third nations, to the stifling of the legitimate trade of all nations, and to chaotic international commercial relations. In the past, when the principal restrictions on trade consisted of tariff duties, non-discriminatory treatment could usually be assured by mutual general pledges of equality of treatment, but in recent years new forms of trade restrictions, such as quantitative limitations, monopolistic instrumentalities, exchange control, and related measures affecting importation and exportation of goods and remittance of funds, have achieved such importance as methods of regulating trade that, to ensure non-discriminatory treatment, it has been found necessary to have new provisions supplementing the standard provision or rule of equality of treatment. For example, with regard to quantitative limitations on trade it has been found essential, in order that non-discriminatory treatment may be established beyond dispute, to have in force an expressly defined procedure assuring exporting countries an opportunity to supply fair shares in the total imports permitted. Similarly, with regard to exchange control, it is important that there be established a procedure providing for the supply of foreign exchange for trading and other purposes in such a manner as to ensure against discrimination. In the light of modern experience, the Government of the United States regards as a *sive qua non* of entering into negotiations with any country looking toward the conclusion of a commercial treaty or agreement, that it be

understood in advance that non-discriminatory treatment is to be made the basis for commercial intercourse and that there are to be established procedures designed to ensure non-discriminatory treatment.

3. In contemplating the negotiation of a commercial treaty or agreement with any country on the foregoing basis, it is naturally appropriate for the Government of the United States to examine not only the policies and practices of the country in question as they are applied within that country's territory but also the policies and practices of that country as they affect American trade with and in third countries. Substantial and continuing discriminations against the commercial interests of the United States brought about by the influence or by agencies of any country within the territory of a third country are obviously injurious to the United States. If such discriminations have been imposed in a third country against that country's wishes it is apparent that the discriminations can be removed most effectively and expeditiously by action on the part of the nation which imposes, or which causes the imposition of the discriminations. Such discriminations are at present in effect throughout large areas of China occupied by Japanese armed forces. These discriminations have been brought about by agencies which are directed by the Japanese Government or agents thereof and which exercise control over the economic life of such areas to the special advantage of Japanese interests through such instrumentalities as exchange and currency control, levies upon and restriction of exports and imports, monopolies, and restrictions upon navigation of China's waterways and upon travel and residence and trade in various parts of China.

4. It follows that so long as agencies and instrumentalities of the Japanese Government continue in fact to render inoperative the practice of equality of treatment for American commercial interests throughout large areas of China, there exists a serious obstacle to the conclusion by the United States of a new commercial treaty or agreement with Japan. Entirely apart from the question of existing treaty commitments and treaty rights, this obstacle to the conclusion of a new commercial treaty or agreement would be present by virtue of the discriminatory practices which at present thus prevail in the occupied area in China.

5. In giving consideration to the question of entering with any other country into a new treaty or agreement for the regulation of commerce, the Government of the United States, in both its executive and its

legislative branches, must and does take full account not only of the treatment accorded by the authorities of the other country, in areas under the control of those authorities, to American goods and American enterprises, but also of the treatment accorded by those authorities in such areas to American commerce as a whole, including American nationals, American firms, American investments, and American economic and cultural activities in general. The principle of equality of treatment is applicable in all areas and carries implicit within itself the principles of non-discrimination and fair treatment.

6. The government of the United States has set forth hereinbefore what it regards as important considerations bearing on the question of the concluding of a new commercial treaty or agreement between the United States and Japan. The government of the United States hopes that the Japanese Government likewise attaches importance to these considerations, and the Government of the United States will be glad to have evidence of the steps which the Japanese Government is taking toward giving practical effect to its attitude. Certain of these considerations have recently been discussed between the American Ambassador to Japan and the Japanese Minister for Foreign Affairs in informal conversations in Tokyo, and should the Japanese Government desire further information in regard to them the Government of the United States is of course ready to furnish it.

Appendix B

(English text taken from "Foreign Relations of the United States - Japan, 1931-1941, Vol. II, Pages 194-195.)

Oral Statement (22 December 1939)

The United States Government sincerely appreciates the efforts made by the Japanese Government to remedy the conditions which adversely affect Japanese-American relations and the indication of the intent of the Japanese Government to persist in those efforts.

With reference to the statement of the Minister of Foreign Affairs regarding the question of entering into negotiations for the conclusion of a new treaty, the United States Government has prepared a statement of its position on this question for the consideration and information of the Japanese Government.

With reference to the question of concluding a modus vivendi, the United States Government suggests that for the time being this question remain open.

The United States Government believes that it would be appropriate at this time for the discussions to be continued which have been going on between the American Ambassador in Japan and the Japanese Foreign Minister with reference to considerations bearing on the question of concluding a new treaty or agreement for the regulation of commerce between Japan and the United States.

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Appendix C

(English text taken from "Foreign relations of the United States - Japan, 1931-1941, Vol. II, Page 195.)

22 December 1939

In the near future the United States Treasury Department is issuing a communication to customs collectors and others concerned stating that upon the expiration of the treaty the 10 percent ad valorem discriminatory duties provided for in the Tariff Act of 1913 are not to be collected on goods which enter the United States in Japanese ships unless and until such time as further instructions shall be issued. The Department of Commerce has reached a decision similar in effect in regard to discriminating tonnage duties on ships.



Annex D

The Japanese Government appreciates very much the American Government decided to take necessary measures for continuing the commercial relations between both countries on normal basis even after the expiration of the Japanese-American Commercial Treaty, and thanks Your Excellency deeply for your effort to that end.

However, the question of the commercial treaty is not only a problem of commercial relations between the two countries; it has also important bearing on the relations between the nations in general. With the expiration of the treaty trade between Japan and the United States of America would be placed on a very unstable day-to-day basis when no agreement, even if provisional, is made, although the trade will be carried on normally, and this would create an impression as if the relations between both countries are very unstable. Therefore, the Japanese Government requests that deep consideration be given by your Government to the conclusion of modus vivendi from the viewpoint of improving the Japanese-American relations.

On the Japanese side a plan of modus vivendi was drafted as a result of considerations from this viewpoint, and was cabled to Ambassador Horinouchi in Washington, as stated by Director of Department Yoshizawa to Councilor Dooman. I should like to inform you that Ambassador Horinouchi was instructed to present this plan to the Department of State in case the progress of conversation in Washington warrants it.

Def. Doc. 1631

CERTIFICATE OF SOURCE AND AUTHENTICITY

Of the Archives and Documents Section, Foreign Office,  
hereby certify that the document hereto attached,  
written in Japanese, consisting of 1  
entitled "The Fourth Conversation in Tokyo Concerning  
the Question of Concluding a New Treaty of Commerce",  
is an exact and authorized copy of an official document  
in the custody of Japanese Government (Foreign Office).

Certified at Tokyo,  
on this 15th day of May 1947

Hayashi, Yacru (seal)

I hereby certify that the above signature and seal  
were affixed hereto in the presence of the Witness.

At the same place,  
On the same date.

Witness: Satoh, Takegoro (seal)

9

Def. Doc. 1631

TRANSLATION CERTIFICATE

I, William E. Clarke, of the Defense Language Branch, hereby certify that the foregoing translation described in the above certificate is, to the best of my knowledge and belief, a correct translation and is as near as possible to the meaning of the original document.

(signed) William E. Clarke

Tokyo, Japan

Dated: 28 May 1947