



Friendship and co-operation: the 1976 Basic Treaty between Australia and Japan

Moreen Dee



Australian Government

Department of Foreign Affairs and Trade



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FRIENDSHIP AND CO-OPERATION:
THE 1976 BASIC TREATY BETWEEN
AUSTRALIA AND JAPAN

MOREEN DEE

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Foreword

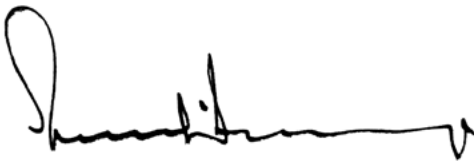
A defining characteristic of engagement between Australia and Japan has been the ability of our policy makers to agree on a common vision for the future of the bilateral relationship.

In 1957, political leaders in Australia and Japan had the foresight to conclude a Commerce Agreement that underwrote a subsequent dramatic growth in trade and economic integration between the two countries. By the late 1960s Japan had become Australia's largest export market, a status it has held ever since.

A desire to broaden Australia–Japan relations beyond a natural economic partnership lay behind the negotiation of the 1976 Basic Treaty of Friendship and Co-operation. This monograph shows how negotiation of the treaty addressed and overcame potential difficulties and how Australia and Japan were able to agree to a treaty that formalised the 'enduring peace and friendship between the two countries and their peoples'.

To understand the relevance of these words to contemporary Australia–Japan relations, one need only look at the success and importance of the 2006 Australia–Japan Year of Exchange, agreed to in 2003 by Prime Minister Howard and Prime Minister Koizumi to mark the 30th anniversary of the Basic Treaty. The Year of Exchange has already highlighted the extensive community and cultural links between our two countries and demonstrated beyond doubt a genuine mutual appreciation of each other's culture and society.

I welcome this monograph as an important contribution to the Year of Exchange and I look forward to the ongoing strengthening of the vital and dynamic relations between Australia and Japan.

A handwritten signature in black ink, appearing to read 'Michael L'Estrange', with a stylized, flowing script.

Michael L'Estrange
Secretary
Department of Foreign Affairs and Trade

Preface

This monograph is the third in the series *Australia in the World: The Foreign Affairs and Trade Files* prepared by the Historical Publications and Information Section of the Department of Foreign Affairs and Trade. The series is a set of ad hoc studies based on detailed historical research of Government files held in the National Archives of Australia and is designed to increase public understanding of Australia's role in international relations. The Minister for Foreign Affairs approves the choice of topics taking into account the recommendations of an Advisory Committee, which also ensures that the work has been written and edited according to scholarly and bipartisan practice.

Friendship and co-operation: the 1976 Basic Treaty between Australia and Japan is a 2006 Year of Exchange initiative to commemorate the 30th anniversary of the signing of the treaty in Tokyo on 16 June 1976. The author is grateful to Dr Ashton Calvert, Michael Cook and Garry Woodard, retired senior officers who were closely involved in the negotiation of the treaty, for their thoughtful remarks on the draft text, to Daniel Clery, Japan Section, for his contribution to the conclusion, and to Professor Peter Drysdale, Dr David Lee, Michael Wood and Michael Hogan for reading and commenting on the manuscript. The assistance of Ian Brown, Document Access and Freedom of Information Section, in declassifying the files utilised in this publication, and the generous support of Deborah Peterson, Japan Section, on behalf of the 2006 Year of Exchange Committee, are also acknowledged

Wilton Hanford Hanover prepared this monograph for publication. Special thanks go to Virginia Wilton (project manager), Kris Rodgers (editing), Andrew Bairnsfather (research, cover design and artwork), Les Brown (proofing and production) and Michael Harrington (index).

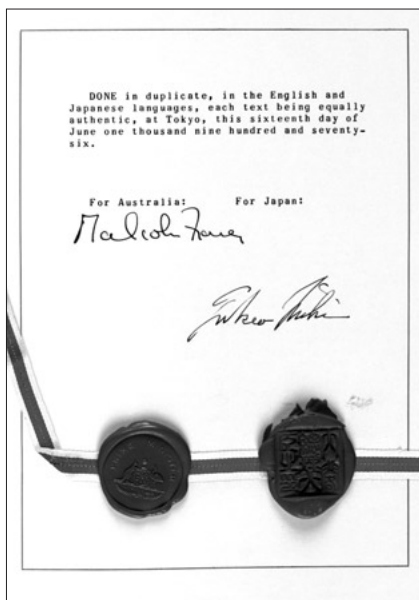
Special thanks also go to Akihiko Tanaka, Diplomatic Record Office, Japanese Ministry of Foreign Affairs, for assistance in identifying members of the Japanese negotiation teams; to Stephanie Boyle and John Schilling, National Archives of Australia, and to Dianna Psaila, Department of Foreign Affairs and Trade Photographic Collection, for their help in locating and reproducing photographs; and to Amelia McKenzie and Mayumi Shinozaki, Asian Collections, and Greg Power, Imaging Services, National Library of Australia, for their knowledgeable contribution to the cover design. For their kind permission to publish photographs from their collections, the author acknowledges the Shann family and the National Archives of Australia.

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Abbreviations

A/	Acting
AJBCC	Australia–Japan Business Co-operation Committee
DFA	Department of Foreign Affairs (Australia)
FCN	Friendship, Commerce and Navigation
GATT	General Agreement on Tariffs and Trade
ICJ	International Court of Justice
IDCJ	Standing Interdepartmental Committee on Japan
ILO	International Labour Organisation
MFN	most favoured nation
MITI	Ministry of International Trade and Industry (Japan)
MOFA	Ministry of Foreign Affairs, Gaimusho (Japan)
NAA	National Archives of Australia
n.d.	no date
PM&C	Department of the Prime Minister and Cabinet (Australia)

Introduction



The signatures to the Basic Treaty of Friendship and Co-operation of Australia's Prime Minister, Malcolm Fraser, and Japan's Prime Minister, Takeo Miki.
[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

Australia's relationship with Japan is its longest standing bilateral relationship in the Asia-Pacific region, reflecting the prominent place that Japan has held in the history of Australia's external relations. It is a multifaceted relationship between countries with vastly different political and cultural heritage.

After World War II, the economic pragmatism that had underpinned the relationship into the 1930s saw the establishment of a major Australia-Japan trading relationship that was formalised and sustained by the 1957 Commerce Agreement. In the face of the great political change within the region by the 1970s, however, both nations accepted the need to strengthen their increasingly recognised natural partnership by diversifying beyond the trade and economic policies that were serving them so well.

Negotiations on a treaty to extend and strengthen Australia-Japan relations and place them 'on an even closer and more concrete basis'¹ began with the advent of the Whitlam government in 1973. Japan's preference was for a treaty of friendship, commerce and navigation (FCN), which would provide formal assurances of its rights as an economic partner of Australia. Australia did not favour such treaties but the political will was strong to find a manageable alternative means to respond positively.

Over the next three years, Australian and Japanese officials worked closely to draw up an 'equitable and mutually advantageous' agreement that broadened the framework of the bilateral relationship by enhancing ties 'in the political, economic, trade, commercial, social, cultural and other fields'.² Declaring that 'the basis of relations between Australia and Japan shall be enduring peace and friendship between the two countries and their peoples', the Basic Treaty of Friendship and Co-operation was signed in Tokyo on 16 June 1976 and came into force on 21 August 1977.³ Building on the foundation of mutually complementary trade links, the treaty drew together all the threads of a longstanding and complex relationship that now sought to appreciate more fully its inherent differences so as to focus on and develop its commonalities and complementarities.

Genesis of a treaty



The Australian Trade Minister, John McEwen (front left), and the Japanese Prime Minister, Kishi Nobusuke, acknowledge each other at the signing of the Agreement on Commerce between Australia and Japan at Hakone, 6 July 1957.
[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

Discounting the calls in the first decades of federation for Australia to become associated with the United Kingdom's Treaty of Commerce and Navigation with Japan,⁴ the genesis of the negotiation of the Basic Treaty of Friendship and Co-operation between Australia and Japan goes back to Japan's request for Australia to consider such a treaty in late October 1955. At the time, Australia explained its traditional preference for not entering into such treaties on account of the difficulties in concluding them arising from Australia's federal system.⁵ Nonetheless, the Australian Government recognised the desirability of a trade

agreement, if not an FCN, given the importance of Australia–Japan trade (Japan had become Australia's second largest market) and the necessity to assure access and supply. The 1957 Australia–Japan Commerce Agreement guaranteed most favoured nation (MFN) treatment on tariffs, non-discrimination in trade, as well as access to Japanese markets for certain Australian products, and accepted necessary protectionist action. As such it was a keystone in Australia's economic growth in the late 1950s and throughout the 1960s.

The question of an Australia–Japan FCN treaty arose from time to time during the next fifteen years as Japan sought to have a number of the issues to which it attached particular importance—immigration, matters relating to entry of goods, tariffs, treatment of ships and exchange controls—dealt with individually. By the end of the 1960s, several of these questions had been resolved in individual agreements in addition to the 1957 Commerce Agreement.⁶

Treaties of friendship, commerce and navigation

Prior to the nineteenth century, there were many treaties of 'amity and friendship', 'mercantile intercourse' and 'peace and commerce'. In the nineteenth and early twentieth centuries, the term 'treaty of friendship, commerce and navigation' came to be used to describe treaties between the colonial powers and other independent nations throughout the world negotiated to safeguard the persons and activities of merchants and traders. There was considerable flexibility in the content of these treaties, which generally covered such issues as immigration entry and residence,

protection of property, taxation, exchange control, customs duties and import quotas, restrictive trade practices, shipping, civil liberties and the judicial process. The negotiation of an FCN treaty achieved equality of treatment between nationals of the beneficiary state and nationals of any third state.

As relationships between countries became more complex in the twentieth century, the wide scope and rather generalised provisions of these FCN-type treaties gave way after World War II to treaties with more specific provisions on particular subjects. By the 1970s, there were a number of multilateral treaties in existence that established the broad framework for international relations, such as the United Nations Charter and associated conventions, the General Agreement on Tariffs and Trade (GATT), the Vienna Conventions on diplomatic and consular representation, and the International Labour Organisation (ILO) Conventions. Together with customary international law, these multilateral arrangements reduced the need for generalised bilateral agreements between states. There were some FCN treaties negotiated after the war but drawing up these treaties had proved a formidable undertaking and required a considerable negotiation period.

As mentioned, Australia had never favoured FCN treaties. Initially, it preferred a pragmatic or ad hoc approach to bilateral treaty making on specific matters of mutual interest, at the request of other countries. And post-1945, it developed its own bilateral treaty practices on the basis of need in a particular field. This approach was a practical response to the outcome of the 1947 and 1970 considerations of an FCN treaty with the United States. The experience had shown the Australian Government that, however well disposed toward such a treaty ministers and officials had been at the outset, there were major difficulties in gaining consensus from among the different departmental and State views once detailed consideration of a possible treaty began. Japan, on the other hand, placed considerable importance on this type of treaty and regarded it as a prerequisite to the future conduct of stable relations. By late 1970, Japan had concluded FCN or similar agreements with twenty-six countries, although only eight had been negotiated since the end of the war.⁷ Despite its attachment to the FCN treaty, however, Japan had significant trading partners without this form of agreement, including Canada, China, Indonesia and the Republic of Korea. The first indications of a renewed Japanese interest in concluding an FCN treaty with Australia emerged in 1969; after a slow start, the issue became increasingly pressing over the next few years, and negotiations began.

Phase I

With Australia–Japan trade continuing its steady and rapid growth through the 1960s, stabilising the relationship between the two countries became a major issue, particularly for the Japanese. In May 1970, the Japanese delegation to the eighth meeting of the Australia–Japan Business Co-operation Committee (AJBCC) in Kyoto again requested that a general FCN treaty between Japan and Australia be closely examined. This followed a similar approach made at the same meeting the previous year. The AJBCC was a non-governmental group, but economic policy officers of the

Australian Department of Foreign Affairs (DFA) suspected that these approaches had strong Japanese governmental backing and might possibly be preparing the way for a more formal Japanese request.⁸ The steady and rapid growth in Australia–Japan trade in the previous decade had not ameliorated Australia’s traditional reservations about entering into treaties of friendship,⁹ nor the view that an FCN treaty with Japan would present difficulties for Australia by cutting across a whole range of established policies such as immigration, trade, national development, banking legislation as well as Commonwealth–State relations. For now, though, the only response was to decide that the implications of any such proposal would first require careful interdepartmental examination.¹⁰

The Japanese, however, appeared to regard the matter as more immediate and it was raised again in the more formal Australia–Japan Official Level Talks held in Tokyo on 29 and 30 October. While appreciating the Australian argument that the existing Commerce Agreement and other specific Australia–Japan agreements were sufficient, a senior Japanese official from the Japanese Ministry of Foreign Affairs (MOFA), the Gaimusho, believed it ‘highly desirable to go further in order to create an environment conducive to the stable development of a close and friendly economic relationship’. He argued that an FCN treaty would ‘complete the chain of friendly agreements’ already existing between Japan and Australia. Japan had concluded FCN agreements with all its major trading partners and therefore questioned ‘why in Australia’s case it was so difficult; why was it impossible?’¹¹

The Australian delegation believed the remarks were made in passing and there was no Australian response. But when the Japanese Ambassador in Canberra, Shizuo



H.E. Mr Shizuo Saito, Ambassador of Japan to Australia, 1970–1973.
[NAA: A6180, 20/10/72/37]

Saito, reaffirmed his country’s interest in an FCN treaty early in 1971 and asked that the issue be ‘seriously looked at’,¹² DFA thought it time to begin canvassing the views of other ‘key’ departments.¹³ The request was that the perceived difficulties of such a treaty be ‘examined against the political advantage of acceding to a request from a government with which the maintenance of the most friendly and co-operative relationship is of great importance’.¹⁴

When the matter was raised again at the next round of Australian–Japanese Official Level Consultations in July,¹⁵ a DFA representative this time explained that Australia was responsive to the political and symbolic aspects of an FCN treaty but there were ‘several practical difficulties’, as had been noted in Japan’s 1955 approach.

He stressed Australia's continued adherence to the tradition of not concluding such agreements, pointing to the rejection of a further US request for an Australia–United States FCN treaty the previous year. He also reasserted the difficulties for Australia arising from the division of Commonwealth–State responsibilities.¹⁶ In addition to these internal factors, from the Australian point of view, it was possible that the commercial aspects of an FCN treaty would reproduce obligations already contained in the GATT and other international agreements to which Japan and Australia were parties. Nor would it be necessary to supplement or reproduce existing Australia–Japan agreements and treaties by concluding a broad FCN treaty. As for other areas of particular interest to Australia, these could be covered just as effectively by similar specific agreements.¹⁷

In responding to DFA's request, the canvassed departments generally agreed that the problems outweighed the advantages of a wide-ranging FCN treaty but had no objections to the suggestion that Australia's current relationship with Japan was such that it might be time for 'a fresh look' at the question.¹⁸ All elected for the matter to be examined at the first meeting of the newly established Standing Interdepartmental Committee on Japan (IDCJ) on 31 August 1971.¹⁹ Treasury alone was firmly opposed to any consideration of a treaty, but its reply was not received until January 1972.²⁰ The most encouraging response came from the Department of Trade and Industry. With trade continuing to be the dominant element in Australia–Japan relations, the department had been exploring ways of extending the relationship to investment and other areas and had come to realise that the Japanese would be 'quite flexible on [the] content' of an FCN treaty with Australia; it was 'the existence of a treaty rather than its specific provisions' that was important to the Japanese. With this in mind, Trade and Industry had examined all Japan's commerce and navigation treaties with other countries in which accommodation had been reached on particular provisions governing areas that could pose problems. It now offered DFA a 'layman's draft' of an Australia–Japan treaty, drawn from the Japanese treaties, as a possible starting point for any interdepartmental consideration of the possibility of reaching an acceptable Australia–Japan agreement.²¹

A detailed examination of the Trade and Industry draft failed to alter the overall negative view of the departments towards the issue. While all agreed that Australia would gain general political goodwill from an FCN treaty with Japan, most still felt that the likely disadvantages outweighed the likely advantages. There were also concerns that the treaty would prejudice Australia's international position, particularly in relation to Australia's existing special relationships with other countries within the region.²² In early 1972, DFA incorporated the detailed comments made by each department in a report for the IDCJ, in which it sought 'to expose the main issues and indicate the options open to Australia' rather than provide 'hard and fast conclusions'.²³

In considering this report on 22 March 1972, the IDCJ also saw more disadvantages than advantages for Australia in concluding an FCN-style treaty with Japan at that time. In addition to the problems for Commonwealth–State relations in such matters



The Australian Minister for Foreign Affairs, Nigel Bowen (left), the Deputy Prime Minister and Minister for Trade and Industry, Doug Anthony, and the Japanese Minister for Foreign Affairs, Masayoshi Ohira, Canberra, 1972. [NAA: A6180. 20/10/72]

as regulation and disposal of interests in property and resources development, the committee felt that such a treaty 'would establish a precedent which would oblige [Australia]' to negotiate similar treaties with other countries. The committee also believed that a treaty 'touching on questions such as immigration, investment policy and shipping, would cause very considerable difficulty for Australia'. The advantages of political goodwill aside, there were 'substantial reasons for not pursuing proposals concerning such a treaty'.²⁴ The agreed recommendation, endorsed by Nigel Bowen, Minister for Foreign Affairs, and Doug Anthony, Minister for Trade and Industry, concluded that, while not excluding the possibility that Japan might wish to raise the question again in another forum or at another time, '[t]he present preference of Australia was to continue the existing approach of concluding, as necessary, separate agreements on individual matters of bilateral concern'.²⁵ The Japanese were notified of this decision during the next round of official level consultations in June.

Australia's Prime Minister, William McMahon, however, was not fully convinced by the IDCJ's arguments and questioned whether Australia might not take a more positive attitude to the Japanese proposals. When it appeared that the Japanese would raise the issue again at the Australia-Japan Ministerial Committee meeting in October, he suggested his ministers consider the question further.²⁶ But after looking at a number of alternatives, including a limited agreement stressing 'friendship' and 'culture',²⁷ the ministers found they all had disadvantages for Australia and ultimately decided to maintain their earlier position. When, in relatively low-key fashion, the Japanese Foreign Minister, Masayoshi Ohira, did raise the matter, Doug Anthony, also Deputy Prime Minister as well as Minister for Trade and Industry, reiterated Australia's preference to negotiate specific agreements as required and the doubts Australia held about an FCN treaty being the best way of promoting the bilateral relationship. Nothing further was said and the matter was left on the basis



*The Japanese Minister for Foreign Affairs, Masayoshi Ohira, and the Australian Prime Minister, William McMahon, with the Australian Ambassador to Japan, Gordon Freeth, in the background, Canberra, 1972.
[NAA: A6180, 20/10/72/5]*

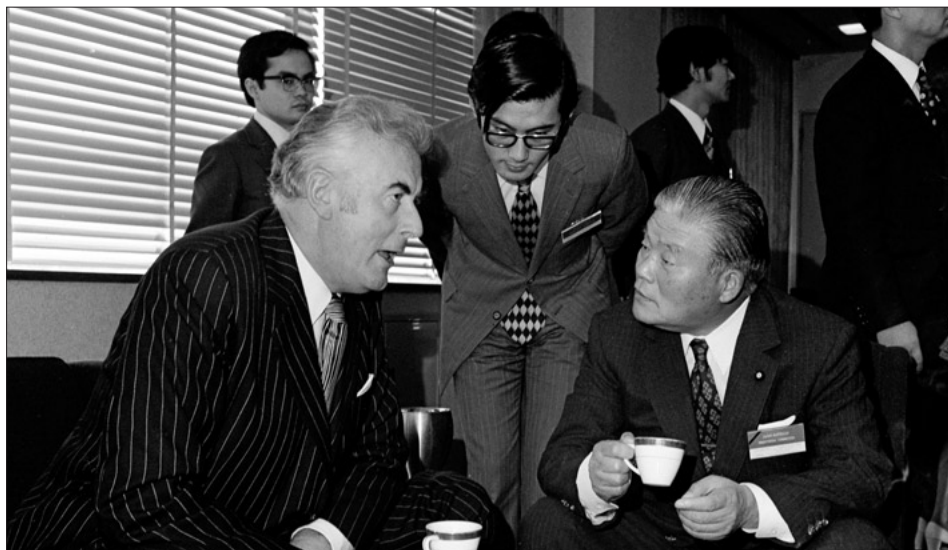
that it might be raised by either country at a future meeting of the ministerial committee if, after ‘further thought’, this appeared desirable.²⁸

In the meantime, the Australian Senate Standing Committee on Foreign Affairs and Defence had been inquiring into the Australia–Japan relationship. One witness was Sir John Crawford, an Australian National University academic, who had been deeply involved in the negotiation of the 1957 Commerce Agreement and who favoured a broad treaty between the two countries. Sir John argued before the Committee that Australia needed a ‘framework of principles’ on which to base negotiation of specific agreements; a ‘framework which combined a general understanding about [the] relationship with a recognition that in fact we are going to negotiate over a number of very specific things’. He believed that the current ad

hoc approach was ‘quite dangerous’ and that Australia could lose out in deals where short-term gain was the only criterion of decision. Such deals were no basis for the orderly, sustainable development of Australia’s industries, let alone for a major trading partnership. More important was the need to maintain and foster long-term interest between the two countries, which Sir John saw as occurring through a consultative machinery through which to discuss matters of mutual interest affecting bilateral relations as well as relations with third parties.²⁹ These arguments had the desired effect of gaining the Senate Committee’s support for a treaty but they also had a wider impact and set the direction that negotiations for a treaty would subsequently take.

Phase II

The question of just how long the approach decided at the October ministerial consultations may have been maintained became irrelevant with the change of government in Australia on 5 December 1972. The new Prime Minister, Gough Whitlam, also assumed the Foreign Affairs portfolio. He immediately declared that he had ‘no personal inhibitions’ about an FCN treaty with Japan and asked for a paper setting out the likely advantages and disadvantages of concluding such a treaty.³⁰ The IDCJ responded by setting up two subcommittees under the chairmanship of DFA: one to reappraise the IDCJ’s earlier recommendations on Australian policies towards Japan to integrate them with the policies of the new government; and the



The Australian Prime Minister and Minister for Foreign Affairs, Gough Whitlam, and the Japanese Minister for Foreign Affairs, Masayoshi Ohira, during Whitlam's visit to Japan in October 1973.

[NAA: A6180, 15/11/73/107]

other to re-examine the whole issue of FCN treaties and whether or not, as a matter of principle, it was in Australia's interests to conclude them.³¹

In all, fourteen departments were involved in this review, as were Australian missions in countries with which Japan had concluded FCN treaties.³² Although the 'starting point [may have been] the positive wish to improve the policy basis of the bilateral relationship and to seek out opportunities for forward-looking policies',³³ the two reviews prepared for the IDCJ, and endorsed in its report of 3 May 1973, showed no change in the earlier position of departments on an FCN treaty. The committee could only conclude that a traditional FCN treaty, 'even with extensive modifications, continues to present serious difficulties for Australia'.³⁴ Mindful of the new Prime Minister's acceptance of the importance of these treaties to the Japanese, and his view that 'we should not lightly continue to rebuff them',³⁵ the committee raised the possibility of a 'limited or "symbolic" treaty' that might avoid these problems. In their view, such a treaty, to be called a treaty of friendship and co-operation, would go beyond the concept of a simple treaty of friendship but would fall short of an FCN-type treaty. That is, it need not involve Australia in any new commitments, nor give 'any new assurances in trade, investment or immigration to the other party'. In short, it 'would do no more than give treaty form to arrangements already existing or in prospect'.³⁶

Whitlam, who wanted to see Australia 'more closely associated in international terms' with 'other middle-ranking powers in and around the region', was 'not entirely happy' with the two subcommittee reviews and found the IDCJ's report 'appalling'. He immediately passed the reviews (not the report) on to Sir John Crawford for comment.³⁷ Crawford agreed with Whitlam's view of the papers, finding them 'indecisive and unconvincing'. As he saw it, they had identified

‘problems and difficulties but [were] far from being conclusive about the policy to be followed—whether in general political terms or in economic terms’. Before the Australian Government could determine the feasibility of a treaty that would serve Australian interests, Crawford believed, the IDCJ needed to ‘examine more deeply a treaty designed to meet our interests and then to explore what sort of price we might have to pay in terms of Japan’s interests’.³⁸

Whitlam responded immediately, instructing DFA to compile another report on the lines suggested by Crawford, emphasising that he did not want another report ‘which will again negotiate compromises’. He also directed that ‘it be put in the hands of one man who will seek such advice from inside and outside the Public Service as he needs’.³⁹ There were no doubts within DFA now that Whitlam was inclined to accept an FCN-style treaty with Japan, if that was what Japan particularly wanted, and that he saw any such treaty as being oriented towards a more limited form of FCN agreement, rather than towards a detailed treaty with specific provisions. The task he set the department broke from the previous Australian practice of avoiding generalised bilateral treaties and concentrating on specific agreements. The language of the draft, therefore, would have to reflect the development of Australia–Japan relationships at the international, regional and national level as well as the political, economic, technological, communications and cultural relationships that had emerged.⁴⁰

A small team of three DFA officers⁴¹ immediately commenced work on a draft treaty and by mid-July had prepared a preliminary draft and an accompanying report. The draft contained a preamble, a number of general sections relating to the



Sir John Crawford (right), with Dr Peter Drysdale, speaking at the Australian National University just before the signing of the treaty in 1976. [NAA: A6180, 30/4/76/5]

fundamental matters underlying relations between the two countries, provisions for facilitating regular consultation (essentially the ministerial committee and a committee of officials), and a number of articles dealing in general terms with co-operation in such fields as trade and commerce, culture, science and the environment. The draft then set out some rather more specific, but still general, articles on expansion of trade, investments, resources, shipping, entry and treatment of persons, protection of property and the relationship of the proposed agreement to future bilateral agreements. While incorporating the usual inclusions of a comprehensive FCN treaty, it avoided the details that such treaties contained and limited itself to general statements that could be followed up in more detailed agreements on specific subjects.⁴²

In keeping with Whitlam's instructions to seek views from outside the Australian Public Service, Sir John Crawford was consulted on the broad shape of the draft and on the terms of the economic section. Comments were also sought from Dr Peter Drysdale (Australian National University), Peter Robinson (Editor of the *Financial Review*) and Max Suich (Editor of the *National Times*), given their understanding of the Japanese scene and views expressed in favour of a more formalised Australia–Japan relationship. It was only after this input had been provided that copies of the preliminary draft were circulated for comment to the relevant departments. They were also sent to Sir James Vernon, President of the Australia–Japan Business Co-operation Committee, and to Bob Hawke and Harold Souter, President and Secretary, respectively, of the Australian Council of Trade Unions. In general, the response to the draft showed reserved support, although Hawke saw little that would be worthwhile for Australia in a broad-ranging treaty and Treasury remained strongly opposed to the idea.⁴³

The accompanying report to the draft was not circulated. It was a more positive statement of the scope for concluding a general treaty that would secure the further development 'of a closer and deeper relationship with Japan'. It found there would be advantages for Australia in a 'broad-ranging Treaty of Friendship and Co-operation' that would 'establish a basis for broader co-operation between the two countries and reflect [their] willingness ... to co-operate together in resolving any major problem which might arise between them'. That is, an umbrella treaty that encompassed the operation of established agreements and, at the same, covered the negotiation of new specific agreements or the renegotiation of established agreements as required.⁴⁴

The question of what Japan wanted from such a treaty was more difficult to address. The report observed that, while the strength of Japan's interest in concluding a treaty



The Australian and Japanese delegations at the Australia–Japan Ministerial Committee Meeting, Tokyo, 1973.
[NAA: A6180, 15/11/73/133]

with Australia that guaranteed stability for the relationship was evident, Japanese references to their desire for a treaty had been couched in general terms and had not indicated precisely what was sought from such a treaty. Nor did the FCN treaties that Japan had concluded with other countries provide any sure guide to what Japan might want, as these treaties did not conform to any set pattern. Given that Australia already had a trade agreement with Japan, it was also significant that in no case had Japan concluded an FCN treaty as well as a trade agreement with any country. The report found that the Japanese 'would probably require more substance than a purely symbolic treaty', but nevertheless considered that 'agreement to negotiate a comprehensive treaty with Japan need not in itself involve giving the Japanese concessions that [Australia] would not want to give'. The point was made that, 'provided that it is carefully and precisely drafted, the treaty would afford mutual advantages by taking account of mutual interests'.⁴⁵ This conclusion would become the principal guideline throughout the subsequent drafting process.

Whitlam was pleased with the draft treaty and evidently felt that he had sufficient justification to proceed. Without consultation with either his ministers or permanent departmental heads, he announced to the press on 11 September:

I am myself very much attracted to ... a treaty ... I do believe ... that it would be appropriate for Japan and Australia, in a formal context, to acknowledge the very great interdependence they have on each other ... Australia should be assured that as Japan's prosperity continues ... our prosperity rises with hers. There are very few countries—other than adjacent countries—whose prosperity is so interdependent as that of Australia and Japan. We ought to acknowledge that position much more frankly and formally than we have. I do believe a treaty would be an appropriate way to do it.⁴⁶

The statement was well received in Tokyo and raised expectations that the matter would be raised at the forthcoming ministerial consultations scheduled there for 29–30 October.⁴⁷ Indeed, Whitlam did intend to take advantage of the ministerial meetings to indicate the Australian Government's willingness to negotiate an agreement, if the Japanese wanted one, and to put forward ideas about the nature of such an agreement. His plan was to proceed no further than that, at this stage, and leave the submission of a draft text for a later meeting among officials.⁴⁸

At the talks, Whitlam told the Japanese delegation that Australia saw 'a need for flexibility about a broad bilateral treaty, which would be essentially economic in content but which would set this in a broad framework that looked to the development of relations in general through enhanced co-operation'. Trade matters could include trade in natural resources, primary products and manufactured goods, the development of natural resources, investment and the flow of capital, shipping and commercial arbitration. Other matters not necessarily economic, but which had a bearing on the activities of nationals of the two countries, could include entry and stay, treatment in the courts and legal rights, protection of investments and property, scientific and technological development, conservation of the environment and educational, professional and person-to-person contacts.⁴⁹

In their Joint Communiqué at the end of the ministerial committee meetings, Whitlam and his counterpart, Masayoshi Ohira, ‘acknowledged that it was essential that a spirit of friendship and co-operation should continue to govern relations between the two countries in the economic and related fields, and it was therefore agreed that the two Governments would begin discussions on a broad bilateral treaty in these fields’.⁵⁰

Before Whitlam left Tokyo, Japan’s Prime Minister, Kakuei Tanaka, announced his support for a treaty and mentioned that it might be called the Treaty of Nara. This title, in fact, came from Whitlam, who thought it would be appropriate both for Japan, as commemorating the significance of Japan’s ancient capital and cultural centre, and for Australia, as representing a Nippon–Australia relations agreement.⁵¹ DFA officials would soon learn that Tanaka had done no more than politely acquiesce to Whitlam’s suggestion and that the Gaimusho, in particular, found it far from appropriate.⁵²



The Australian Prime Minister, Gough Whitlam, and the Japanese Prime Minister, Kakuei Tanaka, Tokyo, October 1973.

[NAA: A6180, 15/11/73/11]

First Australian draft

Despite the 'gratifyingly positive' response in Tokyo to the concept of a broad treaty, the Australian Ambassador in Tokyo, Gordon Freeth, sounded a note of caution. While Japan's interest in a concrete treaty, tied to economic benefits, and Australia's concept of a broad, general agreement were 'not necessarily completely inconsistent', there were 'still many difficult issues ahead', which would become apparent during negotiations.⁵³ DFA officers from their experience of previous unsuccessful treaty negotiations knew this only too well and, in the lead-up to the talks, had endeavoured to see that Australia enter any negotiations from a position of advantage. Conceding that Whitlam seemed 'to have made up his own mind' on the matter, they nevertheless believed that Australia's interests would be best served by a strategy that retained the initiative. The DFA view was that any negotiation of a broad bilateral treaty would get off to a 'negative rather than a positive start' if Japan precipitated matters by putting forward a draft of a traditional FCN treaty. Australia had 'to act decisively or the whole operation would risk falling into another morass as with the US and Japan in the past'.⁵⁴ The department subsequently recommended that Whitlam, in advising the Japanese that Australia was prepared to conclude a broad-ranging treaty that sought to establish a basis for wider co-operation, should also say that the treaty, 'rather than using the language of traditional FCN-type treaties to provide mutual rights and privileges, should afford mutual advantages by taking account of mutual interests'.⁵⁵ That is, a treaty that would stand on its own and offer advantages in its terms to both parties.

Whitlam agreed with his department's advice and work began immediately on amending the preliminary draft treaty that had earlier been circulated to the relevant government departments. In providing further detailed comments on and alternative wording for the preliminary draft, DFA stressed to the departments that they keep the language of the treaty in general terms: 'The objective that relations between Australia and Japan be governed by broad principles of friendship and co-operation should emerge simply and clearly from the treaty'.⁵⁶

With Whitlam committing Australia 'firmly, and publicly,' to provide a draft 'preferably by early December',⁵⁷ DFA worked quickly throughout November to co-ordinate all the other departmental comments on and amendments to its preliminary draft. A final draft was prepared for submission to Cabinet by the end of November. Couched in suitably low-key language, it consisted of a Preamble and twenty-seven articles in four parts, which set out in fairly specific terms the basis on which economic relations between the two countries would be conducted.

Part I set out the principles that were seen as essential to Australia-Japan relations in five articles, which covered mutual friendship and co-operation, support for the United Nations and its related agencies and the International Court of Justice

(ICJ), support for promoting the welfare of developing countries, particularly in the Asia-Pacific region, affirmation of the GATT, the IMF and the OECD,⁵⁸ and declared the treaty and existing agreements to be a basis for the further development of relations.

Part II concerned general co-operation and contained five articles relating to economic consultation through the Australia-Japan Ministerial Committee, social progress, scientific and economic co-operation, environmental co-operation and the promotion of mutual understanding through cultural, educational, sporting and professional contacts.

Part III related to economic co-operation and contained ten articles on international trade, international commodity agreements, trade with developing countries, expansion of bilateral trade, conduct of trade, mineral and energy resources, development of industry, flow of capital, shipping and the settlement of commercial disputes. The articles provided for MFN treatment—that is, ‘treatment no less favourable’—in the fields of investment and minerals and energy and they proposed fair and reasonable principles for bilateral trade and shipping.

Part IV related to human rights and the protection of nationals. Its seven articles covered human rights, diplomatic and consular privileges, entry and stay, treatment of nationals, legal co-operation, protection of property and a final clause setting out the enforcement period for the treaty. MFN conditions were applied in regards to entry and stay and the treatment of nationals.⁵⁹

Also included in the draft as an annex was a draft Exchange of Letters to cover the relationship between the proposed treaty and other existing and future bilateral agreements with Japan. The new Minister for Foreign Affairs, Senator Don Willesee,⁶⁰ submitted the draft to Cabinet for approval on 10 December.⁶¹ It was then passed to

the Japanese Ambassador in Canberra for transmission to Tokyo on 14 December.

At the beginning of January, the incoming Secretary, Alan Renouf, entrusted the handling of discussions about the draft with the Japanese to Lewis Border, Deputy Secretary, with the instruction: ‘This is a *political* question and we *must* have a Treaty’.⁶² Border, in turn, set up a small departmental working group, headed by Michael Cook, Head of the North and West Asia Division, to handle the negotiations.⁶³ By now Whitlam had indicated that he wanted a treaty to sign by the end of the year, if not during Prime Minister Tanaka’s visit to Australia, which at that time was planned for August 1974.



The Australian Minister for Foreign Affairs, Senator Don Willesee (left), and the Australian Prime Minister, Gough Whitlam.
[NAA: A8746, KN12/11/74/33]

For the next four months, however, Australian officials could do little more than await the Japanese counterproposals. They utilised this time to develop their tactics and techniques for future negotiations in response to the reports of informal Japanese reactions being received from Tokyo. These initial reactions indicated that Japanese officials believed that the Australian draft ‘amounted to a declaration of political intention rather than a document setting out legal rights’. There was ‘some perplexity and disappointment at the generality of the provisions and at the lack of more precise terminology creating legal rights and duties in matters of economic substance’, especially in areas such as shipping, mining and land rights. Overall, there appeared to be a very real concern that there was no precedent for the form of treaty Australia proposed.⁶⁴

During this period also, Cook met with Gaimusho officers in Tokyo on 2 April and learned that the Japanese strongly opposed the word ‘NARA’ appearing in the heading or text of the treaty on the grounds that the use of geographical titles for treaties was reserved for Japan’s most historically significant treaties.⁶⁵ But, mindful that the name of the ancient city’s inclusion in the title had Australian and Japanese prime ministerial public support, they suggested ‘NARA Treaty’ might be the ‘agreed “nickname”’.⁶⁶



*Australia’s Ambassador to Japan, K.C.O. (Mick) Shann (left), meeting with Japan’s Minister for Foreign Affairs, Masayoshi Ohira, c. March 1974.
[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]*

Japan's response

The formal Japanese response to the Australian draft was officially handed over on 6 May 1974 by Sadakazu Taniguchi, Director, Oceania Division, MOFA, during a visit to Canberra. (He had previously passed an unofficial 'tentative' draft to the Australian Embassy in Tokyo on 25 April.)⁶⁷ While in Canberra, Taniguchi also met informally with representatives of a number of the departments involved in the preparation of the Australian draft to provide supplementary explanations of the Japanese counter-draft.

Maintaining the view that the text of the treaty should be 'limited to essential points', the Japanese draft was concise and MOFA officials considered it reflected a 'Magna Carta' approach.⁶⁸ It was in two parts, containing only twelve articles. There were four subsidiary documents that elaborated or qualified several of those articles and, to some extent, also contained substantive provisions.

After opening with a Preamble, Part I related to friendship and co-operation and included three articles covering basic principles of peace and amity, general principles of co-operation in the international community and measures of co-operation in bilateral fields. The Japanese believed that these articles, in varying degrees, corresponded to Articles 1–2, 7–9, 21 and 25 of the Australian draft.

Part II was devoted to trade and economic relations. The nine articles covered international economy, bilateral trade, natural resources, interchange of technology skills and capital for industrial development, treatment of nationals and companies, shipping, consultations, validity of existing agreements,⁶⁹ and a final clause. These were said to correspond to Australia's Articles 11, 14–19, 23 and 27.

The subsidiary documents covered specific matters involving rights and obligations. They included a Protocol, Exchange of Notes on the Japan–Australia Ministerial Committee, Exchange of Notes on the Implementation of the Treaty, and an Exchange of Notes on Entry, Departure and related matters.⁷⁰

Although the Australian draft had been criticised as being too general, the Japanese draft, too, in all but one article, was written in broad 'best endeavours' terms. These bound the two countries simply to 'endeavour to co-operate' with each other in defined respects or to 'develop mutual understanding' in certain areas. Its aims were clear. The treaty should reflect a free market philosophy, the MFN provisions in the entry and stay field should be comprehensive and MFN should be interpreted unconditionally. The draft eliminated much of the banal sentiment and advantageous specificity in the Australian draft. This did not concern the DFA working group, who saw the Australian draft as representing Australia's maximum position and accepted that it was unrealistic to expect the proposed basic treaty 'to be a vehicle for furthering the self-interest of either of the parties'.⁷¹ Nor were they

surprised at the inclusion of FCN-type guarantees in regard to entry and stay and business activities connected with investment shipping, given Japan's demonstrated preference for this type of treaty. More helpful, in their view, was the general nature of much of the language in the Japanese counter-draft and the fact that the reduced number of articles cogently drew together most of the subjects from the Australian draft. All in all, the group considered that 'conceptually the Japanese appear to have adopted an approach similar to our own'.⁷²

Nonetheless, there were general concerns within DFA about the overemphasis on the economic aspects of the bilateral relationship, seemingly in contradiction of the October 1973 communique,⁷³ and about differing legal constructions of some phrases and clauses. It was also 'fairly apparent' that Australian departments would have 'major problems' with certain aims of the Japanese draft. Much of the treaty was on a 'best endeavours' basis but the provision of MFN treatment in the articles on treatment of nationals and companies and shipping (Articles VIII and IX) provided for specific guarantees and 'were unacceptable as they stand' for Immigration and Transport.⁷⁴ While Article IX in the Japanese draft ran counter to Australia's objective in its draft to increase the proportion of Australia-Japan trade carried by Australian vessels, it did seem possible that a more acceptable formula might be negotiated. On the other hand, the Japanese Article VIII, expressly proposing MFN treatment (and in some cases national treatment also) in all matters relating to entry and stay and to rights, privileges and activities of nationals and companies of one country in the other, was more problematic. One difficulty was the preferences accorded to the United Kingdom in Australian laws and policies regarding, for example, entry and stay and employment in the public service. These 'British preferences' extended into State legislation and into the rules governing membership of some professional bodies. Acceptance of the Japanese article as it stood would require that Japanese nationals and companies be accorded these same preferences. Another difficulty was the obligation under the article of MFN or non-discriminatory treatment for taxation, which was contrary to a basic principle of Australia's taxation policy.

Other articles of particular concern were those on the flow of resources (Article VI) and of technology and capital (Article VII), which seemed to be infused with the philosophy of free flow of capital and free operation of market forces in conflict with existing Australian policies.⁷⁵ While these articles themselves were expressed in general language, the Exchange of Notes on the Implementation of the Treaty imported into them MFN treatment and a principle of 'maximum benefits'. This could be read as requiring Australia to allow Japanese participation in the development of Australia's mineral resources, whatever Australia's national policies on that score. As Cook later told Crawford, the Japanese draft 'had sought to create rights and obligations in certain areas in language which if accepted would have given Japan treaty grounds for complaining of Australian Government policies on such things as capital imports, foreign investment and mineral resources'.⁷⁶ (In the wake of the 1973 oil shocks, Japan, sensitive to the notion of resource diplomacy, was seemingly concerned at the Australian Labor Government's advocacy of resource

nationalism.) Overall, members of the DFA working group saw the differences in approach stemming from the fact that the Japanese regarded the treaty as a foundation rather than an umbrella, as Australia envisaged.⁷⁷

Generally, though, the Japanese draft was considered ‘well worth working on’ and ‘an encouraging step forward’.⁷⁸ The reasons for this view were that the draft was simple and accounted for Australian perspectives, making it an attractive proposition as a working text. Officially, however, DFA still regarded the Australian draft as ‘being “on the table”, in the sense that we have not abandoned the thoughts and formulations in it’.⁷⁹ The task now facing the treaty working group was to produce a draft revision of the Japanese draft in preparation for an informal and exploratory exchange of views with their Japanese counterparts in Tokyo in late July.

Various departmental difficulties emerged during the subsequent interdepartmental meetings held to review the progressive drafts. Most seemed negotiable but three proved to be substantial obstacles. Trade opposed the trade and economic flavour of the Japanese draft, as it was anxious to ensure that the proposed treaty did not diminish the status of the 1957 Commerce Agreement. The department resisted DFA efforts to include references to continuity of supply—a principal purpose of the treaty in the Prime Minister’s mind and the most attractive element of a treaty for the Japanese Government in their bid for alternative energy sources after the oil shock—as an Australian *quid pro quo* for assured access to Japanese markets. Trade also resisted Minerals and Energy’s insistence that a separate article on natural resources, giving Australia ‘ownership and control’ of its resources, be maintained in the draft. The third major difficulty was with Immigration, which was reluctant to have an MFN article covering residence. Its view was that Australia should offer the Japanese no more than reciprocity on *all* immigration matters, that is, Australia

and Japan would each treat the nationals of the other in exactly the same way.⁸⁰

‘By dint of hard work and persuasion and occasionally knocking heads together’ (including the intervention of Whitlam’s special adviser, Graham Freudenberg), the DFA working group reached agreement with the departments on a ‘reasonable revision’ of the Japanese draft, which was forwarded to Tokyo on 17 July. This second Australian draft attempted to marry the Japanese ‘Magna Carta’ approach with the policy provisions contained in the first Australian draft. Trade and Minerals and Energy accepted a paragraph on continuity of supply and access, albeit with qualifications, and Immigration accepted reference to permanent migration and



Michael Cook, a senior Australian negotiator until 1975.

[NAA: A6180, 3/2/75/57]

abandoned their insistence on reciprocity. Cook hoped the revised draft would 'meet most of Japan's objectives', and he and a small Australian team went to Tokyo for supplementary talks on 25 and 26 July with representatives of the Gaimusho, headed by Hideo Kagami, Deputy Director-General, European and Oceanic Affairs, and a number of other ministries.⁸¹

Preparing to negotiate

Given that the Japanese team had had only a few days to consider the Australian revision to their draft, a degree of natural caution in their response was understandable, but the Australian delegates returned to Canberra with a 'dominant impression ... of Japanese resistance' to the Australian changes. They did not believe that this should be interpreted as a loss of interest on the part of the Japanese but rather a tough tactical stance for future negotiations. The indications were that the Japanese were committed to a treaty and were 'genuinely working for something worthwhile'. Nevertheless, it had been quite clear that Japan's aims were to use the treaty to make inroads into Australian policies it opposed; to avoid the use of language that could imply acceptance of those policies, or even recognise that they existed; and to resist any Australian suggestions that might, even marginally, affect Japanese interests.⁸² Japan's attachment to the notion of an FCN-type treaty was proving difficult to dislodge.

Clearly, further progress was necessary but, with the two sides in broad agreement on the desirability of concluding a treaty, the problem now was to resolve the 'quite deep differences' that still remained. If the aspirations of both countries were to be reconciled and an agreed official draft formulated, it was inevitable that compromises would have to be made. Main problem areas remained those relating to capital flows, foreign investment, resources policies and entry and stay. The Japanese found it difficult to accept Australia's desire to make explicit references to national policies,⁸³ and Australia found it difficult to give the Japanese all the assurances they wanted on entry and stay matters.

Cook and his team in Canberra were aware of Japan's stalling negotiating tactics and advised that Australia needed to maintain a firm position wherever necessary. However, one particular difference in view to be taken into account was that Australia's perception of Japan's main attraction to the treaty—an assurance of continuity of supply of raw materials (balanced on the Japanese side with similar assurance about access to markets)—did not appear to the Japanese 'to be much of an attraction if it is to be obviously hedged around, as it is in the Australian revision, with far reaching qualifications'.⁸⁴ A slightly worrying feature here was that, within the framework of existing policies, there appeared to be few areas remaining in which significant concessions could be made.⁸⁵

The next round of talks, to be held in Canberra 'in a month or so', were to be true negotiations. In the meantime Japan, after studying the Australian revision of the Japanese draft and supplementary explanations, was to produce a 'working paper' for prior consideration by Australia. The tentative mid-September timing was very optimistic, given the time needed not only for Japan to produce its working paper but also for Australia then to develop a negotiating response and to have that

response cleared by a committee of relevant ministers. This being the case, it was also clear that the treaty was not going to be ready for signature during Mr Tanaka's visit to Australia commencing on 31 October.⁸⁶ The visit was, nonetheless, 'a useful pressure point for progress' towards being able to make favourable reference to the state of negotiations in the prime ministers' communique at its conclusion.⁸⁷

At Japan's suggestion, 24–27 September was set down for the first round of negotiations in Canberra. The revised Japanese draft, however, was not received by DFA until 6 September. DFA was taken aback by this seeming attempt to rush Australia into finalising its negotiating position, given that the Japanese had taken six weeks to produce their new draft and Australia now had less than three weeks to consider the revision and obtain ministerial approval of Australia's response. Whitlam agreed that this was an impossible task and that Australia should instead offer negotiations in November after ministerial consideration in mid-October.⁸⁸ The Gaimusho appreciated Australia's difficulties with the 24–27 September date but still considered it desirable, 'for political reasons', to hold 'some kind of substantial exchange of views', or 'preliminary negotiations' without commitment, in early October before Mr Tanaka's visit.⁸⁹ DFA agreed to this suggestion and arranged for talks to be held on 2 and 3 October.

The Australians looked forward to hearing the Japanese explanations of their second draft, which had been received with great disappointment in Canberra. Japan had virtually reverted to its original draft and had made only minor concessions on points in the second Australian draft, so that there remained basic differences to be resolved, particularly in Articles V–VIII. Articles V and VI of the Japanese draft (covering trade and resources development) were identical to those in their first draft, despite the substantial changes Australia had inserted in the hope of safeguarding its position. Articles VII and VIII (flow of capital and treatment



Senior Japanese negotiators, Tadayuki Nonoyama and Hideo Kagami at the January–February 1975 negotiation round. Left to right: Tadayuki Nonoyama (MOFA), Muneoki Date (MOFA), Hideo Kagami (MOFA), Tsuneko Oyake (MOFA), Hiro Kinoshita (MITI), Ukinori Shizamoto (Ministry of Agriculture and Forestry), Masaji Takahashi (Embassy of Japan, Canberra).

[NAA; A6180, 3/2/75/59]

of persons) were almost identical to those in the original. Tadayuki Nonoyama, the recently appointed Director of the Gaimusho Oceania Division, provided some insight into the probable cause for the lack of change during his visit to Canberra in mid-September to finalise preparations for Prime Minister Tanaka's visit. Nonoyama told DFA officers that it had been difficult for the Gaimusho 'to persuade other Ministries to change their positions substantively' in response to the July talks in Tokyo. The reason for this was that the talks had been explanatory and exploratory and, while the Australian approach 'was aimed at progressively narrowing differences through the exchange of draft text', the Japanese ministries considered that 'changes of substance should be left for full negotiations'.⁹⁰

Not surprisingly then, there were only a few minor agreed amendments reached during the Canberra talks, although there were numerous undertakings, from both sides, to reconsider and redraft. The Japanese officials, again led by Hideo Kagami, also 'expressed a keen interest ... in having differences resolved as smoothly as possible'. The positive aspect of the talks for the Australian delegation was that they facilitated 'a frank, clear description of Japan's difficulties with Australia's second draft in a very cordial atmosphere'. There remained much work to be done, particularly with regard to Article VIII.⁹¹

In seeking MFN provisions for the treatment of nationals and companies, Japan still wanted concrete assurances relating to entry and stay, residence and business activities. The Japanese believed, in particular, that Australia's adherence to Commonwealth preferences on these matters was outdated.⁹² At the talks, however, Kagami did say that, because of the historical background to this situation, Japan was prepared to consider any Australian draft covering the issues. For Australia, it was not only the preferences given to British subjects that raised difficulties. There was also the possible conflict between federal and State legislation, given the broad nature of Japan's bid for MFN treatment with respect to all types of commercial, industrial, financial and other business activities under Article VIII. Additionally, there was some concern in Canberra that this article was more strongly worded than any other article in the Japanese draft.⁹³

Following the talks, the various departments continued working with DFA on a third Australian draft in preparation for the first formal negotiation round to take place in Tokyo on a date in November yet to be decided upon. After 'many long meetings', DFA had a draft treaty that it believed was a 'considerable advance' on both the Australian and Japanese second drafts.⁹⁴ In a bid to overcome Australia's difficulties in giving 'unfettered MFN treatment' to Japan in matters of entry and stay, Article VIII was divided into two separate articles—one on entry and stay and one taking up Japan's points on the treatment of persons and companies.⁹⁵ In submitting this Australian response to the Japanese second draft for ministerial consideration, the department highlighted that the new draft brought out the 'umbrella' nature of the treaty more satisfactorily; it included for the first time specific reference both to the importance of each country being a stable and assured supplier to and market for the other, and to the general principle of non-discrimination in trade; and it

included for the first time the general principle of non-discrimination in entry and stay matters. It was felt that the ‘magnitude’ of this last point would ‘not be lost on the Japanese ... nor on the Australian public’.⁹⁶ As Cook told Willesee:

Indeed, what is being done in the treaty is entirely novel in Australia’s history—an *international* legal obligation in the form of a binding treaty commitment, not just a policy statement which can be changed at any time, and changed unilaterally; a treaty commitment, moreover, which will bind not just this Government but future governments also; a treaty commitment with Japan, but having obvious implications for many other countries too.⁹⁷

In its recommendations to ministers, DFA set out Australia’s ‘preferred’ position at the negotiation table but also included alternative ‘last resort’ positions for those articles with which it was anticipated problems would arise. Ministers were asked to agree that these texts should represent the negotiating strategy for the Australian team: aim for a text as close as possible to the former and not accept one that went beyond the latter without ministerial approval. In light of the manifest political will to conclude this treaty as soon as possible, the submission also cautiously (and indeed presciently) pointed out that the ‘timing is less important than securing a good treaty’.⁹⁸



The Prime Minister of Japan, Kakuei Tanaka (centre), enjoys an informal moment during his Australian visit, October–November 1974.
[SHANN FAMILY]

A Committee of Ministers (subsequently known as the ‘Tokyo’ ministers) considered the submission on 28 October and decided that the Australian negotiators ‘should endeavour to be accommodating’ and ‘be encouraged to negotiate a useful and meaningful Treaty and not shy at shadows’.⁹⁹ A few days later, during his Australian visit, Prime Minister Tanaka spoke of his hope that the treaty would be ‘successfully concluded as soon as possible’. Both prime ministers also agreed that officials ‘be encouraged to take a more positive and constructive approach’.¹⁰⁰ The directions for Australia’s negotiating approach were clear and encouragement was taken from a report that Mr Tanaka ‘attached great importance to the Treaty and emphasised that its basic aim was to provide the foundation for friendship and co-operation between [the] two countries’.

Within the relevant departments, the remark was seen as being in line with Australia’s original concept of what the treaty should be and as taking the ‘Japanese position a great deal further towards meeting our own’. Nevertheless, officials ‘could not be confident that Japan would be as eager as we for rapid progress or that Japan would not sit back waiting for us to make concessions in our anxiety’.¹⁰¹

The negotiation round was now due to begin in Tokyo on 28 November. Given both prime ministers' commitment to bring the treaty to an early conclusion, DFA, in handing over the third Australian draft to the Japanese, included a detailed commentary on the changes that had been made, to assist in making the talks productive. Both countries appeared to be moving towards accommodation of each other's position and the department believed that, overall, the current Australian draft had reconciled Japan's preference for an FCN-type treaty with Australia's wish for a broader treaty.¹⁰²



During his visit to Australia, the Japanese Prime Minister, Kakuei Tanaka, watches as the Australian Prime Minister and Acting Minister for Foreign Affairs, Gough Whitlam, signs the Australia–Japan Cultural Agreement in Canberra on 1 November 1974. The Japanese Ambassador to Australia, H.E. Kenzo Yoshida (out of picture), signed the agreement for Japan.

[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

First negotiation round: November–December 1974

A ten-member Australian delegation led by Michael Cook met with a twelve-member Japanese delegation headed by Hideo Kagami from 28 November to 4 December.¹⁰³ After an opening two days of unproductive discussions, the negotiations made substantial progress. By the end of the talks, both delegations felt that the next round, tentatively set down to take place in Canberra from 30 January to 5 February 1975, should result in the initialling of a treaty. That was not to say there were not differences of substance still to be resolved, along with a number of technical, legal and drafting difficulties. Nonetheless, the Australian team felt that these issues could 'be settled expeditiously, though not entirely on Australia's present terms'. The answer lay in finding ways of taking account of Japanese concerns with the current wording of Articles V–VII, 'without giving way on the essentials of our position'.¹⁰⁴ The positive aspect for the Australians was that the resulting treaty would be 'better in substance and form' than the first Japanese draft.¹⁰⁵

Surprisingly, while there had been much discussion relating to Articles VIII and IX during the talks, at the end of the round there were few concerns about these two items. The Australian delegation believed that, even though Australia still had to meet a number of Japanese conditions pertaining to Article VIII, there was 'no basic problem' and the article 'should be quickly agreed' at the next round. The contentious point in Article IX had been that Japan wanted national as well as MFN treatment in respect of the protection and security of persons and property and access to courts, administrative tribunals and agencies. While the delegation could see no substantial difficulty in this for the Australian Government, State legislation still needed to be consulted.¹⁰⁶

Troublesome shifts

It was in a quietly confident mood that Cook and his team worked with the departments (now known as the Nara departments) to prepare a final Australian draft treaty for submission to Cabinet around 20 January. This was passed to the Minister on 15 January, together with a draft Cabinet Submission recommending that the Australian delegation be authorised to ‘do whatever else is necessary to secure agreement on a complete draft Treaty ... subject to consultations with relevant Ministers on any important new matters of principle’; and at the end of the negotiation round, initial ‘a draft Treaty which is consistent with this Submission’.¹⁰⁷

The first indication that the second round of negotiations might not go as smoothly as expected came with the receipt of further Japanese ‘tentative’ drafts of the economic articles (IV to VII) on 16 January, followed by a set of ‘definitive’ new drafts on 22 January. DFA regarded the first set as ‘unhelpful’ and the second, which differed in some respects from the first, as ‘even less helpful’. Despite these differences, the Nara departments decided against any further changes to the amendments they had made to the treaty draft and Cabinet Submission on receipt of the first, tentative drafts and which had already been circulated to their ministers for consideration.¹⁰⁸



The Australian Minister for Minerals and Energy, Reginald (Rex) Connor.
[NAA: A6180, 15/11/73/112]

The second indication came from within, when Rex Connor, Minister for Minerals and Energy, advised the Prime Minister that he considered ‘the tenor and the tactics’ recommended in the submission as ‘mistaken’ because they underestimated the strength of Australia’s negotiating position. Connor pointed out the dangers, which DFA had always recognised, of a ‘self-inflicted deadline for completion’ of a treaty, arguing that this weakened Australia’s otherwise strong negotiating position and that Australia should not ‘suffer any departure from [its] policies for this purpose’. He was particularly opposed to further concessions, as recommended in the submission, being made in regards to Article VI (mineral resources) in a bid to overcome Japan’s difficulties with Australia’s safeguarding clauses for its

foreign investment and mineral development policies. If further concessions had to be made, Connor argued, the article 'should be deleted entirely'.¹⁰⁹

The Australian negotiating team accepted that their Japanese counterparts would continue to work for wording in the treaty that would give Japan legal leverage to make inroads into Australia's foreign investment and mineral development policies. Australia's defence against this had been to insist on the safeguarding clauses, which, as concessions to the Japanese, were moved down, first from Articles VI and VII themselves to an Exchange of Notes, and then down again (at the Tokyo negotiations) to an Agreed Minute (an 'agreed' Agreed Minute). Both countries regarded these two documents as legally binding. Whether or not Australia should stand firm on the Tokyo position, the DFA working group believed, rested on 'how quickly Australia want[ed] a treaty'. It had been on the assumption that Australia wanted an early agreement on a treaty that the latest Cabinet Submission had put to ministers another 'last resort' position, that of having an Agreed Minute in the form of an Australian statement that the Japanese side noted (a 'noting' Agreed Minute). While this form could not be taken as binding both governments, DFA argued that it would still leave Australia with adequate safeguarding clauses, albeit not as strong as that agreed in Tokyo. The view was that a 'noting' Agreed Minute 'would make clear the understanding on which the Treaty was entered into and should provide Australia with sufficient safeguards against any future Japanese attempt to argue that we had agreed that Nara overrode our minerals policies'.¹¹⁰

Ministers did not consider the submission until 28 January, the first day of the Canberra negotiation round. As leader of the Australian delegation, Cook felt that the decisions taken by Cabinet 'were neither clear nor comprehensive' on the tactics to be employed in the talks, particularly in regards to the agreed minutes question. He immediately asked that this and other specific points relating to Articles IV–VII be given further consideration.¹¹¹ Following deliberations the following day, ministers agreed that the delegation should 'press the Japanese strongly to agree to an "agreed" agreed minute' on Articles VI and VII but, if that 'proved absolutely impossible', it was authorised to proceed to a 'noting' agreed minute.¹¹²

Second negotiation round: January–February 1975

When the second negotiation round began in Canberra on 28 January 1975, both delegations anticipated that agreement would be reached and the final draft of the treaty ready for initialling within a few days. This was not the case, but such was the commitment to achieving this end that the Japanese delegation rescheduled its return to Tokyo three times and discussions continued for eight consecutive days. With agreement reached on the inclusion of a clause safeguarding Commonwealth preferences in a Protocol accompanying the treaty, and with Australia's concession that any reference to its sovereignty over its natural resources or resource policies be relegated to an Exchange of Notes or Agreed Minute, for a moment it appeared that initialling would be achieved. But, by the eighth day, three substantive problems remained. These related to Japan's efforts to prevent Australia expropriating only the foreign, and not the Australian, element in an industry; Australia's requirement for the economic Articles V–VII to be subject to Australian ownership and control policies; and, more seriously, the widely divergent interpretations of the meaning of MFN treatment as it applied to the proposed treaty.

The last matter only came to light in discussions late on the evening of the seventh day. The Japanese interpretation had retroactive and preferential connotations that seemed to infer that Japan could claim benefits under policies that were no longer operative and that this retroactivity would apply to changes in policy occurring after the treaty entered into force. To the Australian team, it appeared as if the Japanese viewed the MFN commitment in the proposed treaty as establishing a legal right for Japan to override Australia's current policies, particularly on foreign investment and minerals. That is, Japan seemed to be saying that, because these policies were now more restrictive than past, relatively open-door policies, its companies were in a disadvantageous position compared with, say, American competitors who had established themselves in Australia under the earlier policies.¹¹³ The MFN provision in the treaty, as the Japanese saw it, would give them the legal right to redress this situation by establishing themselves in Australia now under the same conditions as applied under the old policies. Australia's interpretation was that MFN commitments operated prospectively and that Australia was only bound to offer those benefits being accorded at the time of application.¹¹⁴

As much as it was desirable to negotiate a draft for initialling at the end of these talks, an air of suspicion, each of the other, now surrounded the talks. The difficulties over the Japanese retroactive interpretation of MFN acted as a catalyst to stiffen the resolve of the Australian delegation. In advising Willesee of the impasse in the negotiations, Cook told the Minister bluntly that the delegation considered that 'to give in now to the Japanese on the three points ... [was] out of the question'.¹¹⁵ The talks were suspended and the Japanese delegation returned to Tokyo on the

evening of 4 February with agreement outstanding only on these three issues. Clearly worried by the turn events had taken, before leaving Canberra the Japanese pressed for agreement to another round of negotiations in Tokyo towards the end of February. Australia would not commit to this. The position was 'that another round of negotiations would be pointless if there were no prior agreement on the substance of the three remaining issues'.¹¹⁶ The arrangements in place for Whitlam and the new Japanese Prime Minister, Takeo Miki, to sign the treaty in Nara in the last week of February were cancelled.

The Australian negotiators were now determined to stand firm on these three major issues and delegated K.C.O. (Mick) Shann, now the Australian Ambassador in Tokyo,¹¹⁷ to reinforce this attitude to the Gaimusho. In a move to assist the Japanese, Elihu Lauterpacht, QC, an international lawyer and law academic recently appointed as legal adviser to DFA, was directed to prepare a paper setting out the legal aspects of Australia's position on MFN treatment. In the meantime, the Japanese provided redrafts of the contentious areas, which they believed conceded Australia's position on expropriation, on retrospectivity and to some extent also on prospectivity. In handing the documents to Shann, Masatada Tachibana, Director-General, European and Oceanic Affairs, said the Japanese side 'was extremely anxious to reach agreement at an early date' and that the concessions had been agreed 'after considerable interdepartmental difficulty'. Japan was now looking to have the treaty signed in late March.¹¹⁸



The Japanese and Australian delegations at the second negotiation round, 28 January – 4 February 1975. The Australian delegation (left to right): E. Burtmanis (top), R.W. Whitelaw (Customs and Excise), A.H. Body (Attorney-General), D.M. McAlister (Minerals and Energy), M.F. Cook (DFA), J.C.G. Lloyd, (Overseas Trade), G.F. Taylor (Treasury) and H.J. Grant (Labor and Immigration). At left, foreground, is Toshikazu Kato (Ministry of Finance) of the Japanese delegation. For the remainder of the delegation, see photograph p. 21. [NAA: A6180, 3/2/75/58]

Talks in Tokyo: March 1975

While appreciating 'Japan's efforts to move the treaty forward',¹¹⁹ Cook and the Nara departments believed that 'most of the proposals were either unclear or did not go far enough' to meet the Australian position.¹²⁰ Whitlam agreed with these views and subsequently told Cabinet that the 'nature and importance of the three issues do not in my view give Australia scope to make further concessions to Japan'. He recommended that Australia accept those concessions helpful to its position, seek clarification of those that were unclear and point out to the Japanese where their concessions fell short of Australia's minimum positions.¹²¹ In a bid to maintain momentum and acting on advice from Tokyo that Japan's remaining problems were centred around 'purely legal aspects', Whitlam then offered to send Cook and Lauterpacht to Tokyo for discussions, if the Japanese believed such a visit would be helpful—an offer Tachibana readily accepted.¹²²

The talks, which began on 4 March, followed the same pattern as the January negotiations in Canberra. At first, steady progress saw plans being made for a signing ceremony anytime between mid- and late-March. Australia accepted Japan's requirement for national as well as MFN treatment for compensation for expropriation and, after much 'circular discussion', the question of the manner in which references to Australian ownership and control policies were made seemed to have been resolved by their less formal inclusion outside the body of the treaty document.¹²³ But, as the days wore on, the talks not only became further and further bogged down on the differing Australian and Japanese interpretations of the meaning of MFN treatment, they also shifted from its application in the economic articles (IV–VII) to its application in Articles VIII and IX (entry and stay and treatment of nationals and companies).

The Australian delegation was most concerned at the Japanese negotiation tactics. Japan now seemed to have retracted its earlier withdrawal of retroactivity and returned to its position that 'treatment no less favourable' and 'non-discriminatory treatment' were in effect identical. This interpretation required that Japan enjoy the same treatment as any other most favoured third nation, regardless of the possibility that that treatment may have been begun under policies now terminated—that is, the same end result. In the discussions on investment matters in the economic articles, however, the Japanese accepted that this position was irreconcilable with Australia's position and had suggested a new concept, 'on the basis of non-discrimination'. This notion, they explained, was tantamount to Australia's concept of 'treatment no less favourable'—that is, the end result could be different provided it had been arrived at by the application of the same objectively framed rules or criteria.¹²⁴

Australia was willing to accept this second interpretation of 'treatment no less favourable' as applicable to investment matters in Australia; however, Japan was

not prepared to accord this interpretation to non-investment business or industrial matters covered in Article IX or to the immigration matters covered in Article VIII. Here, they wished to have the first interpretation of ‘treatment no less favourable’ as ‘non-discriminatory treatment’ applied, meaning that in the matters covered in these articles, Japan could not only claim privileges under past laws but, if Australia’s laws changed after the signing of the treaty, it could continue to claim all the benefits of those laws as they existed at the date of signature.¹²⁵ Australia could not accept this proposition and the talks adjourned so that Japan could consider whether it could replace ‘treatment no less favourable’ in Articles VIII and IX with ‘on the basis of non-discrimination’.

With so many other issues resolved to both countries’ mutual satisfaction, clearly, the outstanding problem lay with finding appropriate wording within an interpretation of MFN treatment that did not contain any implications for retroactivity and prospectivity. But by now, discussions between the two delegations had become decidedly tense as the Australians grew increasingly frustrated by the need for the large Japanese delegation to adjourn often and for long periods in order to reach agreement among themselves.¹²⁶ The Japanese side seemed unable to move from their view that Australia was unfairly asking them to accept existing restrictive policies while it was permitting other countries to enjoy the benefits of earlier, more open, policies. The Australian side, for their part, became hamstrung by a distrust of what was seen to be a Japanese negotiating tactic of declining to put Japan’s interpretative views on the contentious points in writing.

Cook later reported to Renouf that, on arrival in Tokyo, ‘it was quickly confirmed that the differences between Australia and Japan [were] substantive, not legal, and in [his] view anyway incapable of being papered over’. As he saw it, Japan wanted to use the treaty to change what it saw as an existing unfair situation in Australia. Australia, on the other hand, saw the treaty as ‘simply enshrining’ a ‘perfectly fair’ existing situation—that is, using the treaty to turn the principle of non-discrimination, which was a matter of standard Australian practice, into an international legal commitment. Cook did not doubt Japan’s desire to conclude the treaty but, realistically, he thought that only when Japan ‘put its thoughts in writing’ could Australia address Japan’s concerns with confidence. It would be then, and only then, that further face-to-face negotiations have any chance of success.¹²⁷

Frustration and confusion

The Japanese response came on 3 April in the form of a new set of proposals, which appeared to concede on retrospectivity and prospectivity in MFN treatment. The essence of the new proposals was that, in Articles VIII and IX, ‘treatment no less favourable’ be replaced by two things: the concept of ‘fair and equitable treatment’ and the concept of ‘non-discrimination’ between one contracting party and any third country. The former was seen to deem the treatment accorded other countries as irrelevant, when considering whether treatment was ‘fair and equitable’; and the latter as defining treatment in comparison with treatment accorded third countries.¹²⁸

The Nara departments saw a number of difficulties in these concepts and concluded that the time required, first to clarify Japan’s intentions, and then to negotiate on them in detail, did not offer either a quick or a promising avenue to agreement on a treaty. Furthermore, the new proposals also included the deletion in some cases, and the reopening for discussion in others, of matters already ‘laboriously agreed’.¹²⁹ Overall, the new phraseology introduced in the Japanese proposals did little to dispel the view that Japan still seemed to be seeking international legal treaty grounds for claiming preferential treatment in Australia. Disturbingly, as there was no authoritative interpretation of the new formula, it could be argued, for example, that treatment that was ‘non-discriminatory’ might not be ‘fair and equitable’ or that ‘fair and equitable’ treatment could, at the same time, be ‘discriminatory’.

Rather than returning a negative answer, however, the departments decided on a more constructive course, which they believed ‘should be acceptable’ to Japan. Australia’s alternative proposal was handed to the Gaimusho on 24 April. It involved minimum change to the agreed texts and built on Japan’s proposal in the March Tokyo talks to substitute ‘on the basis of non-discrimination’ for ‘treatment no less favourable’.¹³⁰ In applying the Japanese definition of the former used in these discussions, the Australian team believed they had provided ‘a reasonable solution which had real advantages of substance’ for both investment and non-investment matters.¹³¹

But in its response to Australia’s counterproposals, received 19 May, Japan urged that Australia accept the retention of the ‘concept of “fair and equitable treatment” beside that of “non-discrimination” in Articles VIII and IX’ and set out a number of points on the concepts and their combination.¹³² The message only left doubt in Canberra ‘as to where Japan now stands on certain central issues’. In a bid to gain clarification, Australia’s response set out the Nara departments’ understanding of the current Japanese position and stated that Australia now required ‘a clear answer as to the correctness’ of this understanding before it could give the matter further consideration.¹³³ Within days, Australia’s frustration and confusion with the state

of play was further strained when the Australian embassy reported that subsequent talks with Gaimusho officials appeared to suggest that Japan was asking Australia to disregard the latest proposals Japan had sent on 3 April and 19 May.¹³⁴



The Australian Minister for Foreign Affairs, Senator Don Willesee, and the Japanese Minister for Foreign Affairs, Kichichi Miyazawa, at the Australia–Japan Ministerial Committee Meeting in Canberra, May 1975.
[NAA: A6180, 8/5/75/33]

The tide turns

The situation was retrieved by another meeting in the Gaimusho a few days later between Tadayuki Nonoyama, a key member of the Japanese negotiating team, and Ashton Calvert. Both spoke of being ‘disheartened at the lack of progress’ and the need ‘for moving the negotiations forward’. Talking ‘informally and without commitment’, the two argued their respective country’s positions strongly on what appeared to be the ‘main sticking point’: Australia’s wanting to have spelt out, whereas Japan did not, that ‘treatment’, regardless of its form, meant ‘treatment at the time of executing policies and applying laws and regulations’. Calvert stressed that ‘this point was very important to Australia because the commitments made in the treaty had to match what Australia could do in practice’. Nonoyama, in turn, was adamant that ‘concern over “treatment” was now irrelevant’ and that Japan’s concern was with the time stipulation of the formula. Japan could not accept the words ‘at the time’, which ‘suggested that Australia could change its policies on an hourly basis just to discriminate against Japan’.

With the essence of each side’s difficulties clear, the two devised an approach covering the ‘expressions’ of MFN treatment where applicable throughout the treaty. Basically, what both promised to refer to their treaty negotiating teams was that the expressions ‘fair and equitable treatment’ and ‘provided in no case such treatment is discriminatory on the basis of nationality’ be used in Articles VIII and IX; and that a statement that the provisions of Articles VIII and IX did not infer preferential treatment, and a further statement removing the notion of retroactivity from any expression of MFN treatment, be used in the Agreed Minutes. The last statement was seen as applicable to Articles VIII and IX and to the Exchange of Notes on Articles VI and VII.¹³⁵ The importance for Canberra of what had been devised here was that, if the Japanese accepted the approach, it would remove Australia’s doubts that Japan ‘was still seeking treatment that would have retroactive and prospective application’ and allay Japan’s concerns about ‘quixotic changes in Australian policy’.¹³⁶ With some clarification on the first point, the agreement reached here would essentially be incorporated in the final treaty.

Quibbling and change in Canberra

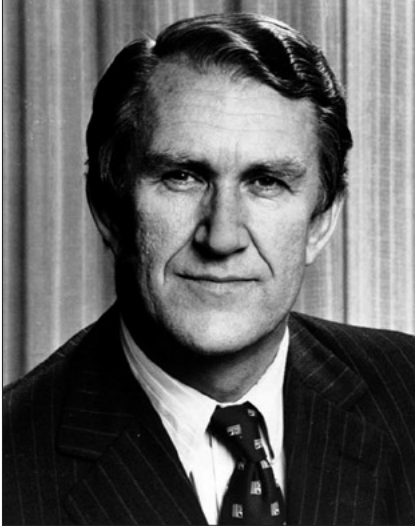
Calvert met again with Nonoyama on 14 July and learned that the Gaimusho at least (other ministries had yet to be consulted) did accept the approach with only a minor amendment that did not affect the substance.¹³⁷ In Canberra, Cook, who to Whitlam's 'dismay' was about to leave his position on the negotiation team to take up a posting to London as Deputy High Commissioner, was delighted to have what he believed had been the 'principal problem for many months' resolved. For him, Australia and Japan were 'at the point of break-through'. Cook still thought it would be a few months before a treaty would be ready for signature, given that Australia still needed to reach agreement on a number of other points, but, in his view, none of these were as important or as difficult as the 'non-discrimination' issue had been.¹³⁸

With Cook's departure, it fell to his replacement, Garry Woodard, to deal with the interdepartmental haggling over defining generalisations such as 'fair and equitable' in the treaty that ensued in the following months. Such was the nature of the interchanges that one member of the DFA treaty working group asked in frustration of the department's legal adviser: '[I]s it not the case that, no matter how hard we try to iron out potentially hostile interpretation from terms used, there would always be scope for argument about the meanings to be attached to them?'¹³⁹ In Tokyo, Shann was sufficiently disturbed at this apparent 'suspicion and distrust of Japan's intentions and motives' to suggest that Australia was doing little to alleviate Japanese officials' concerns that the continuing deadlock over the treaty was the result of 'a crisis of confidence' among the Australians.¹⁴⁰

This atmosphere also surrounded discussions of other substantive matters such as the implications of the new wording in Articles VIII and IX, as well as the settling of outstanding detailed wording matters. Progress was painstakingly slow but helped by Tachibana's attendance at the Australia–Japan Official Level Consultations in Canberra in early September. During his brief visit, he met informally with Woodard, Lauterpacht, other members of the treaty working group and representatives of the Nara departments. In addition to providing welcome explanations of the Japanese view of the problematic phrases, the discussions resulted in an oral acceptance of Australia's redrafting of Article XII to provide for consultations as the sole method of settling differences arising from the operation of the treaty.¹⁴¹ After subsequent consultations in Tokyo, MOFA would amend Australia's draft to accommodate Japan's wish not to renounce *de jure* its right to resort to the International Court of Justice by working out 'a formula which would have the effect of removing any dispute from this orbit'.¹⁴²

With consensus among the differing departmental views on the 'fair and equitable' question still a distant prospect, DFA decided the best course was to prepare a draft treaty text that reflected the various departmental positions for submission to Cabinet while Whitlam was currently Acting Minister for Foreign Affairs.¹⁴³ As Prime Minister and Minister, he could then 'handle any lingering problems' that the departments might have.¹⁴⁴ In the event, the submission with attached draft treaty proved more difficult to prepare than anticipated and was passed to Willesee on 17 October. Unable to resolve the practical difficulties that a number of departments, particular Labor and Immigration, saw in undertaking to accord 'fair and equitable' treatment to Japan, DFA offered Willesee three alternative courses of action with appropriate safeguards for his consideration. The options put forward were (a) in effect limiting and defining 'fair and equitable' as 'non discriminatory treatment on the basis of nationality'; (b) examining whether it was worth continuing if the foregoing proposal for definition was rejected by the Japanese; or (c) accepting the Japanese formula of 'fair and equitable' and 'non-discriminatory'.¹⁴⁵ Willesee forwarded the submission to the Prime Minister one week later with his recommendation that Australia 'should be prepared to accept the Japanese formula ... and proceed with the further negotiations necessary to lead to conclusion of a treaty'. Willesee particularly wanted to avoid a breakdown of negotiations on this, the only outstanding major issue. He pointed out to Whitlam that, if this occurred, it 'could not be satisfactorily explained' by a country seeking to present itself 'as a tolerant, co-operative and enlightened nation'.¹⁴⁶ Whitlam's letters to the ministers of the Nara departments endorsing Willesee's views were prepared for his signature on 5 November but remained unsigned as domestic political developments brought a change of government in Australia on 11 November.¹⁴⁷

New leadership and final negotiations



The Prime Minister of Australia, Malcolm Fraser.
[DEPARTMENT OF FOREIGN AFFAIRS AND
TRADE]

The future of the treaty negotiations was not in limbo for long. Australia's new Prime Minister, Malcolm Fraser, was soon seen to be as firmly committed to the treaty as his predecessor. Responding to Prime Minister Miki's congratulatory message following the general election on 13 December, in which he expressed his desire for an 'early conclusion' of a treaty, Fraser told the Japanese Prime Minister to 'be assured' that his 'wish' would be given 'full consideration'.¹⁴⁸ That same day, he instructed that the treaty should be concluded on the basis of the current draft.¹⁴⁹ Within weeks, he had also directed that Australia should maintain its acceptance on those articles already agreed and accept the Japanese

formula in relation to Articles VIII and IX. The latter was under the proviso that Japan accept Australia's safeguard clauses and that matters related to the treaty be removed from the compulsory jurisdiction of the ICJ.¹⁵⁰ Fraser's decision overcame the reservations about proceeding with the treaty held initially by Andrew Peacock, the new Minister for Foreign Affairs, who from this point was fully committed to concluding the treaty as soon as possible.¹⁵¹

Philip Lynch, the new Treasurer, however, was inclined to maintain Treasury's cautious approach and called for the matter to be re-examined before being taken to the new Cabinet.¹⁵² Fraser strongly opposed this notion, telling his Treasurer that 'the issues surrounding a treaty have been thoroughly examined over many months' and that to defer taking an early decision was 'undesirable and unnecessary'. Such a decision was essential, not only to maintain momentum in the negotiations, but also to ensure that Australia-Japan relations were not 'unnecessarily strained by an apparent prevarication' on the part of the new Government.¹⁵³ This imperative for affirmative action on the issue reflected not only the new Prime Minister's regard for the promptness with which the Prime Minister Miki had written to him of Japan's expectations about a treaty, but also the perceived political value of Deputy Prime Minister Doug Anthony's impending visit to Japan.¹⁵⁴

Cabinet considered the matter of a Basic Treaty of Friendship and Co-operation between Australia and Japan on 30 January and, in agreeing to Fraser's initial

directions noted above, directed that DFA should take 'urgent action' to bring negotiations to a 'satisfactory conclusion'. Cabinet also agreed that, subject to Japanese concurrence, all references to 'Nara' be removed from the treaty.¹⁵⁵ Woodard, with the added benefit in Canberra of Calvert's experience of the Tokyo end of the negotiations, believed that Australia now had 'a reasonable package'. He entertained the 'wild' hope that it would be accepted by the Japanese and that there would be no need for further negotiations. The outstanding points, he expected, could be cleared through normal diplomatic channels.¹⁵⁶ From Australia's point of view, an ideal occasion for the signing of the treaty now appeared to be Fraser's planned visit to Japan from 16 to 20 June.¹⁵⁷

Australia's revised text of the treaty, together with explanatory notes and an introductory message explaining the background to parts of the treaty and treaty documentation still to be agreed, was passed to the Gaimusho on 17 February. An early Japanese response indicated that, although a further round of formal negotiations would not be required, Australia's proposals on safeguards were causing 'considerable difficulty'.¹⁵⁸ The formal response, passed to Shann on 22 March, either accepted or noted 'minor and documentary amendments' of most of Australia's proposals. But it also contained counterproposals covering those points in the safeguard clauses (particular in the Protocol and Article XII) about which the Japanese had strong reservations. These, they believed, were 'reasonable and appropriate for such a Treaty'.¹⁵⁹

In Canberra, the 'substantial document' from the Japanese was regarded as 'rather less helpful' than had been hoped for.¹⁶⁰ Furthermore, they had also set a firm



The Secretary, Department of Foreign Affairs, Alan Renouf (left), talking with the Minister for Foreign Affairs, Andrew Peacock.

[NAA: A6180, 5/1/76/1]

deadline of 30 April for the completion of the treaty, if it was to be signed during Fraser's visit in June. Japan's responses, in fact, did not meet Australia's position fully on any of the safeguard clauses. Nevertheless, it was recognised that they did contain positive elements, which would make it possible to consider further Australian concessions.¹⁶¹ But the main cause for concern was Japan's proposed rewording in the two mandatory articles of the treaty on entry and stay matters and the conduct of business and professional activities. As it stood, the rewording would have the effect of upgrading treatment to be accorded under these articles.¹⁶² Further interdepartmental consultations took place over the following weeks to prepare another submission for Cabinet by early April. These went some way to resolving the outstanding issues but another round of face-to-face negotiations would be necessary to obtain clarification on the points where Japan appeared to have moved away from earlier agreed text.¹⁶³

Although he had only the previous month again directed that 'this whole matter should proceed with all speed', Fraser supported the departments' position on this. He agreed that Australia should not negotiate under the disadvantage of the deadline of his upcoming visit to Japan.¹⁶⁴ With both countries recognising the obvious mutual advantage in the treaty being signed during the visit, he decided to send a personal message to Tokyo enlisting Prime Minister Miki's support for further discussions between Australian and Japanese officials as soon as possible.¹⁶⁵ He himself then used the Foreign Affairs and Defence Committee of Cabinet's consideration of the latest submission on 6 April to ensure that his ministers, too, understood the need for immediate and purposeful negotiations. Highly critical that there was still 'too much bureaucratic and legal nit picking', and declaring that 'negotiating at arm[']s length by cable' was 'an odd way of doing business', Fraser reminded ministers of Cabinet's earlier direction on 'urgency' and directed that 'all future negotiation should be face to face'.¹⁶⁶

Australia's position now was that 'given positive and flexible attitudes and a sense of urgency on both sides there appears to be no fundamental reason why agreement should not now be reached on a satisfactory text'.¹⁶⁷ The Australian response to Japan's responses of 22 March was passed to the Gaimusho on 7 April and it was finally agreed that talks would take place in Canberra from 3 to 5 May. In the meantime, DFA agreed to a Japanese proposal that Ashton Calvert should go to Japan for 'clarifying' discussions.¹⁶⁸ Although not a senior officer within DFA, Calvert's long association with the negotiation of the treaty in both Tokyo and Canberra made him the ideal emissary to move matters forward and was an added insurance that progress would be achieved at the formal talks. The discussions with MOFA officials on 26 and 28 April met all expectations and included Japan's acceptance of Australia's interpretation, for the purposes of this particular treaty only, that MFN treatment would not have retroactive effect and that the treaty could not therefore be used to change Australian policies or override future changes.¹⁶⁹ This was a real concession on Japan's part in order that the treaty could be concluded. (In principle, Japan still held to its own interpretation of MFN as having retroactive and



The final negotiation round 3–6 May 1976. Left to right around table: T. Arai (MITI), H. Owada, M. Tachibana and T. Nonoyama (MOFA), unidentified delegate, K. Heydon (PM&C), H. Grant (Immigration), A. Page (Minerals and Energy), G. Taylor (Treasury), Ashton Calvert, Garry Woodard and Elihu Lauterpacht (DFA). [DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

prospective effect.) DFA considered that Australia now had the basis for conclusion of a treaty that could be signed during the Prime Minister's visit.¹⁷⁰

The five-member Japanese delegation, led again by Tachibana, met in Canberra with the Australian negotiators, this time with Secretary Alan Renouf in attendance, from 3 to 6 May. This time, both sides came to the table with the intention of reaching agreement and, although there was hard bargaining, the atmosphere was never other than friendly, co-operative and businesslike.¹⁷¹ With the talks beginning at the point reached at the end of the previous week's clarifying discussions in Tokyo, all outstanding issues of substance were soon settled. There remained only a number of editorial matters to be agreed. On the Japanese delegation's return to Tokyo, these were addressed with Nonoyama through Australian embassy staff in Tokyo, on 7 and 10 May, and later with officials of the Japanese Embassy in Canberra who acted on instructions from Tokyo. The outcome of these discussions was a draft treaty that represented the agreed text as at 14 May 1976. These texts, which were subject to possible minor editorial changes that might be required by ongoing scrutiny of Japan's Cabinet Legislative Bureau, were exchanged through the Japanese Embassy on 18 May.

After two and a half years of negotiations, Prime Minister Malcolm Fraser and Prime Minister Takeo Miki signed the Basic Treaty of Friendship and Co-operation between Australia and Japan in Tokyo on 16 June 1976: 'an occasion born of goodwill and mutual interests'.¹⁷²

The treaty



The delegation leaders, Masatada Tachibana (MOFA) and Garry Woodard (DFA), following the successful conclusion of negotiations, Canberra, 6 May 1976.
[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

The Basic Treaty of Friendship and Co-operation between Australia and Japan comprises a Preamble and 14 Articles. There are various related instruments attached to the treaty, which all have the same legal effect but which differ in presentational status in accordance with their contents and purpose. These include a Protocol, two Exchanges of Notes and Agreed Minutes. The final attached document is a Record of Discussion, which is not part of the Agreement.

The Preamble and Articles I–IV describe the basic principles underlying the Australia–Japan relationship and express the spirit in which the treaty was concluded.

The Preamble notes the interdependence of the two countries and the need to continue this mutually advantageous

relationship. It also draws attention to the mutual interest that Japan and Australia have in the prosperity and welfare of other countries, particularly those in the Asia–Pacific region.

Article I defines the treaty’s purpose of promoting understanding and developing co-operation on all matters of mutual interests. It sets out the objective of an umbrella treaty, foreshadowing the possibility of Australia and Japan concluding new agreements to govern their relations in specific fields, so long as they are consistent with the objectives of the treaty.

Article II describes the general principles for Australia–Japan co-operation in the international political arena and expressly confirms the two countries’ acceptance of the Principles of the Charter of the United Nations.

Article III lists various areas in the bilateral relationship in which the two governments undertake to encourage co-operation and understanding by promoting consultations and appropriate exchanges.

Article IV lays down the general principles for Australia–Japan co-operation in the general area of international economic relations, expressing support of the various organs that regulate international trade such as the GATT, IMF and OECD.

Article V enunciates the general principle of behaviour related to Australia–Japan economic relations—co-operation on the basis of mutual benefit and trust—contained in a number of important statements, including an undertaking that those relations will be developed on the basis of mutual benefit and trust. This article also recognises the two countries’ mutual interest in each being a stable and reliable supplier to, and market for, the other in respect of their bilateral trade.¹⁷³

Article VI emphasises the importance of trade in mineral resources and of co-operation, in accordance with Article V, in the trade and development of those resources.

Article VII covers co-operation, in accordance with Article V, in the exchange of capital and technology.

Articles VIII and IX are the core clauses of the treaty and incorporate significant undertakings for each side to provide specific treatment to the nationals of the other as regards entry and stay and to the nationals and companies of the other as regards business and professional activities, including investment activities. In particular, paragraph 1 of Article VIII and paragraph 3 of Article IX provide in this regard for ‘fair and equitable treatment ... provided that in no case shall such treatment be discriminatory between nationals of the other Contracting Party and nationals of any third country’.¹⁷⁴



The Australian Prime Minister, Malcolm Fraser (seated left), and the Japanese Prime Minister, Takeo Miki (seated right), sign the Basic Treaty of Friendship and Co-operation in Tokyo on 16 June 1976, watched by the Australian and Japanese Ministers for Foreign Affairs, Andrew Peacock and Kiichi Miyazawa.
[DEPARTMENT OF FOREIGN AFFAIRS AND TRADE]

Article X contains general commitments for shipping between the two countries to be developed on a fair and mutually advantageous basis.

Articles XI–IV are the general machinery provisions allowing for representations and consultations on the implementation of the treaty and describing the details of the treaty’s ratification and entry into force.

The Protocol is considered an integral part of the treaty and contains various qualifications to the commitments made in the treaty proper. It excludes from the scope of the treaty commitments special privileges such as those granted by either country to developing countries, those granted under taxation agreements, those granted by Australia to Commonwealth countries and those granted by Japan to persons from its former colonies.

The Exchange of Notes Relating to the Non-Metropolitan Areas of Australia confirms that the undertakings given by Australia shall not apply within Australia's non-metropolitan areas such as Cocos Islands, Christmas Island and Norfolk Island.

The Exchange of Notes Relating to Article VIII contains supplementary provisions relating specifically to the treatment of businessmen temporarily resident in the territory of the other country.

The Agreement Minutes list various understandings and interpretations concerning the provisions of the treaty and the other related instruments. Paragraph 1 confirms that the standard of treatment laid down in the operative Articles VIII and IX is, in effect, MFN treatment, and paragraph 3 defines the ambit of business and professional activities covered in Article IX. The remaining paragraphs cover minor definitional points.

The Record of Discussion records Japan's acknowledgment of Australia's position as regards its aspirations towards ownership and control of its resources and industries.¹⁷⁵

The instruments of ratification were exchanged in Canberra between the Australian Minister for Foreign Affairs, Andrew Peacock, and the Japanese Ambassador to Australia, Yoshio Okawara, on 22 July 1977, and the treaty entered into force on 21 August 1977.



*The Australian Minister for Foreign Affairs, Andrew Peacock (seated right), and the Japanese Ambassador to Australia, Yoshio Okawara, exchange the instruments of ratification in Canberra, 22 July 1977, watched by Lawry Herron, Head, Treaties Section, DFA.
[NAA: A6180, 22/7/77/15]*

Conclusion

The Basic Treaty of Friendship and Co-operation between Australia and Japan was the first of its kind that Australia had concluded with any country. None of Australia's other treaty commitments at the time, including the ANZUS Treaty with the United States and New Zealand, the Commerce Agreement with Japan and the Trade Agreement with New Zealand, was as comprehensive. For Japan also, the Basic Treaty had unique aspects in that its scope and purpose were broader than those of Japan's treaties of commerce and navigation with more than a dozen other countries, including the United States and Britain.

The treaty enshrines in formal and symbolic terms the friendship, community of interests and interdependence that exist between the two countries and establishes a broad framework for further co-operation, including new agreements, in specific areas. It also recognises the two countries' mutual interest in each being a stable and reliable supplier to and market for the other and prescribes, on a mutual basis, specific standards of treatment to be accorded to nationals and companies as regards their entry and stay and business and professional activities.

On Australia's part, the treaty was a political imperative of the two prime ministers at the time—Gough Whitlam, who initiated the process, and Malcolm Fraser, who gave priority to its successful conclusion. Both recognised that Australia–Japan relations were at an important stage in their development and that, given the special significance of formal treaty undertakings to Japan, it was now in Australia's interests to have an umbrella treaty that recognised the special nature of Australia–Japan economic interdependence and under which this relationship could be broadened and deepened.

While there are mutual advantages in every article, the treaty did not introduce any new substantial advantages on either side for nationals and companies of either contracting party. The significance of the treaty is that it provides assurances that a high standard of treatment will not be changed and that there will be no discrimination against either party. These assurances may well have essentially reflected the status quo for Australia at the time, but Australia had never before given solemn undertakings of this kind to any other country. In addition to the symbolic undertakings intended by the two governments set out above, the treaty is also important because it broke new ground in the wording of a standard equivalent to MFN treatment while recognising that this must be within the context of existing national policies.

That the negotiation of the treaty was a long and often difficult process was not surprising. In the first place, there was never any indication of the type of treaty either country envisaged at the Australia–Japan Ministerial Committee in 1973. A

political commitment was simply entered into by the Australian and Japanese prime ministers. For both negotiating teams, it was a learning process to resolve the unique set of problems that confronted them. To some extent, the Australian team was feeling their way, particularly in the early stages, as they negotiated Australia's first treaty of this kind. For its part, the Japanese team, despite Japan's great experience of FCN treaty making, was faced with new elements in a treaty more comprehensive than any negotiated before. But throughout, both sides remained committed and genuinely worked to establish a set of guiding principles that would have lasting relevance. In announcing the successful conclusion of negotiations to the Australian Parliament on 6 May, Prime Minister Fraser put on record 'the strong spirit of mutual accommodation which has made the treaty possible', and paid tribute 'to the officials of both countries who have helped the governments of both countries bring this to a successful situation'.¹⁷⁶

In the thirty years since the signing of the Basic Treaty, relations between Australia and Japan have continued to expand and become more closely aligned—an outstanding example of positive interaction between two nations with markedly different cultural heritages. That it has been achieved so harmoniously is testament, in no small way, to the mutual trust and confidence fostered by the treaty's unambiguous statement of goodwill and friendship and formal assurance of non-discriminatory treatment. Australia–Japan relations are now stronger and more vital than seemed likely twenty years ago and the scope of the relationship has become more encompassing. The declaration that 'the basis of relations between Australia and Japan shall be enduring peace and friendship between the two countries and their people'¹⁷⁷ has proven, and continues to prove, a dignified and genuine statement of intent.

The Basic Treaty of Friendship and Co-operation continues to symbolise the commitment of the Australian and Japanese Governments to the bilateral relationship and will underpin future efforts to strengthen it. The question of how the Australian and Japanese economies can be even better linked to promote mutual prosperity and growth into the future is at the core of the ongoing feasibility study into a bilateral free trade agreement agreed to by Prime Minister John Howard and Prime Minister Junichiro Koizumi in April 2005. Similarly, a shared interest in the prosperity and welfare of other countries in the Asia–Pacific is as strong as ever in the current security environment. As the Australia–Japan relationship continues to evolve, the treaty guarantees that it will continue to develop on the basis of a high degree of trust and mutual confidence.

Notes

- 1 Preamble, Basic Treaty of Friendship and Co-operation between Australia and Japan, http://www.dfat.gov.au/geo/japan/japan_treaty.html
- 2 Ibid.
- 3 Ibid.
- 4 The first approach was made in 1895, with Queensland the only colony to accede to the UK–Japan treaty (an arrangement terminated in 1909). Other unsuccessful approaches were made in the mid-1910s, -1920s and -1930s.
- 5 The Commonwealth–State division of powers in Australia makes it extremely difficult to ensure consistency between domestic legislation and treaty obligations. These problems became evident during the unsuccessful negotiations for an Australia–US Treaty of Friendship, Commerce and Navigation, which the US had sought in 1947.
- 6 Other agreements included the Civil Aviation Agreement of 1956 and the Visa Agreement and Fisheries Agreement, both concluded in 1969. By the time of signing of the Basic Treaty of Friendship and Co-operation in June 1976, Australia and Japan had also concluded the 1970 Double Taxation Agreement, the 1972 Atomic Energy Agreement and the 1975 Cultural Agreement.
- 7 United States (1953), Norway (1957), India (1958), Malaysia (1960), Argentina (1961), United Kingdom (1962), Romania (1969) and Bulgaria (1970). A treaty had also been negotiated with the Philippines but had not been ratified. The US shared the same degree of attachment to an FCN-type treaty as Japan and at this stage had concluded 24 such treaties.
- 8 Minute, Harold Marshall, A/Assistant Secretary, Economic Relations Branch, to Laurence Corkery, A/First Assistant Secretary, Division III, 21 May 1970, National Archives of Australia (NAA): A1838, 759/1/9 part 2.
- 9 At this time Australia was considering entering into a treaty of friendship with Nauru sui generis given the particular relationship between Australia and Nauru flowing from Australia's previous responsibilities in respect of the island. Existing treaties of friendship, commerce and navigation that were applicable to Australia, however, had been negotiated by Britain, either in the period before Federation in 1901 or with only limited applicability to Australia. Shortly after the Kyoto approach, interdepartmental consideration decided against Australia's accepting the latest in a number of US approaches for a similar treaty (first raised in 1947). Minute, Corkery to William McMahon, Minister for External Affairs, 28 July 1970, *ibid.*
- 10 Minute, Marshall to Corkery, 21 May 1970; and draft paper, 'Australia–Japan General Treaty of Friendship, Commerce and Navigation', n.d., *ibid.*
- 11 Mr Arita, Director-General, European and Oceanic Affairs Bureau. Summary record, Australia–Japan Official Level Consultations, Tokyo, 29–30 October 1970, *ibid.*

- 12 Record of conversation, K.C.O. (Mick) Shann, Acting Secretary, and Shizuo Saito, Canberra, 20 January 1971, *ibid.* Ambassador Saito raised the matter again at the Australian–Japanese Official Level Consultations in Canberra, 26–27 July.
- 13 Minute, Allan Eastman, First Assistant Secretary, Division II, to Shann, 25 January 1971; and minute, Robert Robertson, Assistant Secretary, North Asia Branch, to Eastman, 29 January 1971, *ibid.*
- 14 Memorandum, ‘Possible Treaty of Friendship, Commerce and Navigation with Japan’, DFA to Attorney-General’s, Civil Aviation, Customs and Excise, Defence, Education and Science, External Territories, Health, Labour and National Service, Immigration, National Development, Primary Industry, Prime Minister and Cabinet (PM&C), Shipping and Transport, Trade and Industry and the Treasury, 23 July 1971, NAA: A1838, 759/1/9 part 3. The date of the memorandum was timely, given the number of press reports the previous week about MOFA’s support in its annual foreign policy Blue Book for ‘mounting requests in economic circles for the conclusion of a treaty of commerce and navigation with Australia’. See, for example, Gregory Clark, ‘Japanese ministry backs call for formal trade ties’, *Australian*, 14 July 1971; and cablegram 1333, Tokyo to Canberra, 15 July 1971, NAA: A1838, 759/1/9 part 2.
- 15 Held in Canberra, 26–27 July 1971.
- 16 Philip Flood, Assistant Secretary, Economic Policy Branch. See summary record of Australian–Japanese Official Level Consultations, Canberra, 26–27 July 1971, NAA: A2539, B1971/8. The main problems for Commonwealth–State relations were in regards to such matters as company legislation, judicial procedures, the establishment of corporations, regulation and disposal of interests in property, and resources development.
- 17 DFA draft paper, ‘Australia–Japan: proposed treaty of friendship, commerce and navigation’, n.d. [c. 20 July 1971], NAA: A1838, 759/1/9 part 2.
- 18 See, for example, memorandum, E. John Bunting, Secretary, PM&C, to Flood, 1 September 1971, *ibid.*
- 19 In April 1970, Cabinet approved the establishment of an ad hoc interdepartmental committee on Japan (which first met on 9 June 1970) and, on 26 July 1971, approved its reconstitution on a permanent basis as the IDCJ. At its first meeting, the IDCJ agreed to establish a special working group to study the question of negotiating an Australia–Japan FCN treaty once all the departments concerned had replied to the DFA memorandum of 23 July. See Standing Interdepartmental Committee on Japan, First Meeting, 31 August 1971, *ibid.*
- 20 Letter, R.J. Whitelaw, First Assistant Secretary, Treasury, to Flood, 21 January 1972, NAA: A1838, 759/1/9 part 3. Treasury felt that an FCN treaty could have ‘adverse repercussions’ for Australia in the longer term because it would restrict the scope of negotiations of future treaties or agreements; it would ‘inevitably conflict’ with sections of existing treaties; breaches could have ‘a detrimental effect’ on overall Australia–

- Japan relations; and it would not contribute towards a closer economic relationship and might even prove disadvantageous.
- 21 Letter, W.A. McKinnon, Deputy Secretary, Department of Trade and Industry, to Sir Keith Waller, Secretary, DFA, 1 September 1971, NAA: A1838, 759/1/9 part 2.
 - 22 See, for example, letter, C.W. Freeland, A/First Assistant Secretary, Sea Transport Policy Division, Department of Shipping and Transport, to Flood, 13 December 1971, NAA: A1838, 759/1/9 part 3. Shipping and Transport added that, until the IDCJ decided in principle that a treaty was to be negotiated, ‘the working details of the treaty remain[ed] of academic interest’.
 - 23 Record of interdepartmental meeting, 9 March 1972, NAA: A1209, 1974/6568.
 - 24 Record of 5th Meeting, IDCJ, 22 March 1972, *ibid.*
 - 25 Recommendation of the IDCJ, 22 March 1972, NAA: A1838, 759/1/9 part 5.
 - 26 Minute, Dr James Cumes, First Assistant Secretary, International Organisations Division, to Bowen, n.d. [c. 9–10 October 1972]; and minute, Michael Cook, Assistant Secretary, North Asia Branch, to Shann, Deputy Secretary, 22 August 1972, NAA: A1838, 759/1/9 parts 6 and 5.
 - 27 This concept had earlier been considered and rejected at the IDCJ meeting of 22 March. The idea was to have a more limited treaty which would concern rather ‘friendship’ and ‘culture’ and leave other matters for treatment by individual detailed agreements between the two countries. *Ibid.*
 - 28 See joint communique, Australia–Japan Ministerial Committee, 13 October 1972, NAA: A1838, 759/1/9 part 8; and background notes, Meeting of the IDCJ and representatives of the AJBCC, n.d. [c. 20–23 October 1972], NAA: A1838, 759/1/9 part 6. The notes also recorded Ohira’s comment to the press before coming to Australia that ‘the FCN [was] something to be pondered over—slept on’ and other Japanese comment that there was ‘no urgency’ surrounding the issue. They concluded: ‘In view of the relaxed Japanese attitude, we see no point at this stage in doing any further work on an FCN or on any substitute’.
 - 29 Senate Standing Committee on Foreign Affairs and Defence, *Japan*, 26 July 1972, pp. 990–3, in *ibid.*
 - 30 Minute, Robert Laurie, DFA assistant to the Prime Minister, to Waller, 7 December 1972, *ibid.* Laurie also reported that Whitlam did not intend to ‘rush’ consideration of the issue by the interim ministry he had in place but he did want the question examined by the full Cabinet when appointed.
 - 31 Record of 14th Meeting, IDCJ, 9 March 1973, NAA: A1838, 3103/10/17/2/4 part 12.
 - 32 Australian missions in countries with which Japan had concluded FCN treaties were also directed to provide additional information about the experience of those countries in negotiating the treaty and subsequently. Cablegram (multiple numbers), Canberra to Islamabad, Jakarta, Kuala Lumpur, London, Manila, New Delhi, Ottawa, The Hague, Tokyo, Wellington, 9 March 1973, NAA: A1838, 759/1/9 part 7.

- 33 Cablegram 1670, Canberra to Tokyo, 22 May 1973, NAA: A1838, 759/1/9 part 8.
- 34 IDCJ report, Treaties of Friendship, Commerce and Navigation, 3 May 1973, NAA: A1838, 3103/10/20/2 part 1.
- 35 Margin note, E.G. Whitlam, 19 March 1973, on minute, Shann to Whitlam, 16 March 1973, NAA: A1838, 759/1/9 part 7.
- 36 IDCJ report, Treaties of Friendship, Commerce and Navigation, 3 May 1973, NAA: A1838, 3103/10/20/2 part 1.
- 37 Minute, Robert Merrilees, Head, Policy Planning Branch, to Graham Feakes, Assistant Secretary, Policy Research Branch, 19 June 1973; and note, Whitlam to Waller, 20 June 1973, NAA: A1838, 759/1/9 part 8.
- 38 Letter, Sir John Crawford to Whitlam, 17 June 1973, *ibid.* Crawford believed the examination should be ‘in three parts: (a) asking what has Japan asked for? (b) what are the pros and cons of meeting their wishes in the terms so far suggested by them? (c) what sort of treaty would serve our interests and what sort of price might be sought for this?’
- 39 Memorandum, Whitlam to Waller, 20 June 1973, *ibid.* The seeking of external advice was an additional Crawford suggestion to overcome, as he saw it, the departmental constraints on individual members of interdepartmental committees ‘to prepare reports in which the debate [was] pursued to a clear conclusion’. Letter, Crawford to Whitlam, 17 June 1973, *ibid.*
- 40 Minute, Merrilees to Feakes, 19 June 1973, NAA: A1838, 759/1/9 part 8; and minute, Alan Brown, A/Assistant Secretary, Economic Policy Branch, to Flood, 28 June 1973, NAA: A1838, 759/1/9 part 9.
- 41 The team, headed by Alan Brown, comprised Trevor Wilson, Japan Section, and David Eastman, Commercial Policy Section.
- 42 Preliminary draft, Treaty of Friendship and Co-operation between Australia and Japan, 19 July 1973, NAA: A1838, 759/1/9 part 8.
- 43 Minute, Flood to Waller, 27 September 1973, NAA: A1838, 759/1/9 part 9.
- 44 DFA report, ‘Australia and Japan: A Possible Treaty of Friendship and Co-operation’, July 1973, *ibid.*
- 45 *Ibid.*
- 46 Cablegram 2796, Canberra to Tokyo, 11 September 1973, containing report of Whitlam’s weekly press conference that day, *ibid.*
- 47 Cablegram 2509, Tokyo to Canberra, 13 September 1973; and minute, Flood to Waller, 27 September 1973, *ibid.*
- 48 Note for file, ‘Treaty with Japan’, P.H. Bailey, Deputy Secretary, PM&C, 12 September 1973; and minute, Flood to Waller, 19 September 1973, *ibid.*

- 49 Extracts from Second Meeting, Australia–Japan Ministerial Committee, Tokyo, 29–30 October 1973, NAA: A1209, 1974/7435.
- 50 Text of joint communique, 30 October 1973, in cablegram 3046, Tokyo to Canberra, 30 October 1973, NAA: A1209, 1973/6986.
- 51 Cablegram 3065, Tokyo to Canberra, 31 October 1973, *ibid.* Whitlam proposed this title and gave these reasons for its appropriateness in a personal letter to Tanaka from Nara on 28 October 1973, prior to their meeting in Tokyo on the evening of 29 October. The original suggestion for the name had in fact come from one of Whitlam's staff, Graham Freudenberg. See letter, Whitlam to Tanaka, 28 October 1973, NAA: A1838, 759/1/9 part 10; and record of conversation, Whitlam and Kenzo Yoshida, Japanese Ambassador to Australia, 16 October 1973, NAA: A1838, 3103/10/20/1 part 1. Whitlam 'semi-jokingly' told Yoshida that 'he had not discussed this with the Department, whom he thought would not favour it'.
- 52 See p. 15 and note 66. See also p. 38.
- 53 Cablegram 3133, Freeth to Canberra, 6 November 1973, NAA: A1838, 759/1/9 part 10. Members of the drafting committee who accompanied Whitlam to Tokyo already knew one area of possible contention. Their Japanese counterparts had 'said quite bluntly that Japan's objective was to have the Agreement on Commerce made an integral part of the new treaty'. This was something to which the Department of Overseas Trade was firmly opposed. Minute, Flood to Waller, 6 November 1973, *ibid.* (In the Whitlam government's reorganisation of the departments soon after coming to power in December 1972, the Department of Trade and Industry (1963–72) became the Department of Overseas Trade (1972–77).)
- 54 Minute, Flood to Waller, 27 September 1973, NAA: A1838, 759/1/9 part 9.
- 55 Ministerial submission, Waller for Whitlam, 28 September 1973, *ibid.*
- 56 Letters, Waller to Permanent Departmental Heads, 28 September 1973, *ibid.*
- 57 Minute, Flood to Waller, 6 November 1973, NAA: A1838, 759/1/9 part 10.
- 58 International Monetary Fund; Organisation for Economic Co-operation and Development.
- 59 Draft Treaty of Nara, Cabinet Submission No. 813, D.R. Willesee, 30 November 1973, NAA: A1838, 759/1/9 part 11.
- 60 Whitlam relinquished the Foreign Affairs portfolio on 6 November 1973.
- 61 Cabinet Decision No. 1773, 10 December 1973, NAA: A1838, 3103/10/20/1 part 1.
- 62 Note, Alan Renouf to Border, 1 January 1974, *ibid.* Emphasis in original. Renouf was Acting Secretary, from 3 January 1974, becoming Secretary on 20 February.
- 63 The other members of the group were to be the Head of the Japan Section, and a representative from both the Economic Policy Branch and the Legal and Treaties Branch. In handling the negotiations, it was planned also that other departmental officers and other departments were to be called in to assist the group's work as matters

- of interest to the respective departments arose. It was also expected that Whitlam's senior adviser, James Spigelman, would attend from time to time.
- 64 Cablegram 35, Tokyo to Canberra, 8 January 1974; and record of conversation, Sadakazu Taniguchi, Director, Oceania Division, MOFA, and Hugh Gilchrist, Head, Legal and Treaties Branch, in Tokyo, 9 January 1974, NAA: A1838, 759/1/9 part 11.
- 65 For example, Treaty of Shimonoseki, Treaty of Portsmouth and the San Francisco Peace Treaty.
- 66 Notes of meeting, Cook, Tokyo, 2 April 1974, NAA: A1838, 3103/10/20/1 part 1. Other reasons given for opposing the inclusion of the word NARA were: it was 'most unusual, if not unprecedented, for a formal title to a treaty [such as this] to have a place name'; as NARA was an acronym for Nippon-Australia Relations Agreement, the title 'would incorporate a redundancy'; and an 'unfortunate pun' could be made on the word NARA in the Japanese language. DFA practice subsequently was to avoid the use of 'NARA Treaty' and to use instead, 'Treaty of Nara'.
- 67 Cablegram 1027, Tokyo to Canberra, 26 April 1974, NAA: A1209, 1974/6572.
- 68 Record of meeting, Treaty of Nara, 6 May 1974, *ibid*.
- 69 The Japanese provided an alternative to this article: relations of this treaty with existing agreements between the two countries. There was also an alternative provided for the article on consultations.
- 70 First Japanese draft, Basic Treaty between Japan and Australia on Friendship and Co-operation and on Economic Relations, 6 May 1974, NAA: A1209, 1974/6572.
- 71 'Comments on the Japanese draft', Brown, 3 May 1974, NAA: A1838, 759/1/9 part 12.
- 72 DFA paper, 'Treaty of Nara: Comments on Japanese draft and supplementary explanation', Egils Burtmanis, Head, Japan Section, 16 May 1974, NAA: A1838, 3103/10/20/1 part 2.
- 73 DFA officers believed that Whitlam and Ohira had agreed that the treaty should be 'significantly concerned with relations in the economic and related fields' and that this was implied in the concept of a 'broad bilateral treaty' accepted in the ministerial communique of 1973. Their view was that Australia–Japan economic relations were covered to a large extent in the existing Agreement on Commerce, which 'already provided substantial FCN-type provisions in that it provided for most favoured nation status in accord with GATT'. DFA draft paper, 'Treaty of Nara', n.d. [c. late August 1974], NAA: A1838, 3103/10/20 part 6. PM&C on the other hand considered the Japanese draft 'broader' and 'less contentious' than the Australian draft and 'more in line with the Prime Minister's concept of the Treaty'. Minute, D. Hyde, Assistant Secretary, External Economic Policy to D.J. Munro, Deputy Secretary, and I. Castles, First Assistant Secretary, Economic Division, 20 June 1974, NAA: A1209, 1974/6573.

- 74 Minute, 'Discussions with Japanese', Geoffrey Brady, Assistant Secretary, North Asia Branch to Border, 7 May 1974, NAA: A1838, 3103/10/20/1 part 1. In addition to the problems it posed for the various departments, Article VIII, as it stood, could also create problems with State laws in such areas as taxation, professional activities, tribunals and companies legislation.
- 75 Ibid; and summary record of interdepartmental meeting: Treaty of Nara, 31 May 1974, NAA: A1838, 759/1/9 part 12.
- 76 Notes on meeting with Sir John Crawford, Michael Cook, 12 August 1974, NAA: A1838, 3103/10/20/1 part 3.
- 77 See DFA paper, 'Treaty of Nara: Comments on Japanese draft and supplementary explanation', Burtmanis, 16 May 1974, NAA: A1838, 3103/10/20/1 part 2; and 'Comments on the Japanese draft', Brown, 3 May 1974, NAA: A1838, 759/1/9 part 12.
- 78 Minute, Cook to Willesee, 30 May 1974, NAA: A1838, 3103/10/20/1 part 2.
- 79 'Foreign Affairs brief for Tokyo talks on Treaty of Nara', n.d. [c. 24 July 1974], NAA: A1838, 3103/10/20/1 part 3.
- 80 There was no discrimination in the handling of Japanese applications for temporary or permanent residence, which were treated on the same basis as those from the nationals of other foreign countries, e.g. Germany and the US. In the administration of the immigration program, however, there was a weighting in favour of traditional (Commonwealth) migration sources, mainly to avoid the problems of recognition of professional qualifications.
- 81 Minute, Cook to Willesee, 15 July 1974; and personal letter, Border to Shann (now Ambassador in Tokyo), 15 July 1974, *ibid.* J.C.G. Lloyd, First Assistant Secretary, Trade Relations Division, Department of Overseas Trade, and James Humphreys, Assistant Secretary, Economic Policy Branch, accompanied Cook to Tokyo, where they were joined by two officers from the Australian Embassy, E.E. Adderley, Counsellor (Scientific) and Dr Ashton Calvert, Second Secretary. For a full list of the members of the Japanese delegation, see List of Delegations, p. 65.
- 82 Australian delegation report, Australian–Japanese discussions on the Nara Treaty, Tokyo, 25–26 July 1974, Cook, Lloyd and Humphreys, n.d., NAA: A1209, 1974/6708.
- 83 There was no Japanese objection in principle to any Australian aspirations in regard to the control and development of its resources and industry. Their objection was to the inclusion of such a clause in the treaty proper. This was on two grounds: first, Japan's domestic legislation prevented the government from carrying out such provisions in Japan; and second, in Japan's view, it was inappropriate to endorse formally national policies in a bilateral treaty. During later negotiations, Japan would suggest that the clause should remain in the treaty documentation but as a noting Record of Discussion. See draft DFA notes [prepared for background briefing], 'Basic Treaty', 10 June 1976, NAA: A1838, 3103/10/20/1 part 20.
- 84 Ibid.

- 85 Draft paper, 'Treaty of Nara', Political and Social Research Section, n.d. [filed late August 1974], NAA: A1838, 3103/10/20 part 6.
- 86 A number of dates had been considered for Mr Tanaka's visit during 1974 before it was scheduled for 31 October – 6 November.
- 87 Australian delegation report, Australian–Japanese discussions on the Nara Treaty, Tokyo, 25–26 July 1974, Cook, Lloyd and Humphreys, n.d., NAA: A1209, 1974/6708.
- 88 Ministerial submission, Cook to Willesee, 10 September 1974, NAA: A1838, 3103/10/20/1 part 4; and letter, Cook to relevant departments, 13 September 1974, NAA: A1209, 1974/6901. In addition to the necessary time required for the DFA working group to prepare a detailed negotiating text for submission to Cabinet, Australia's ability to be prepared by the suggested Japanese dates of 24–27 September was further hamstrung by Parliament's consideration of the Budget, 16–20 September, and the departure overseas of both the Minister and Prime Minister the following week. Whitlam was not due to return until mid-October after visiting North America and Fiji.
- 89 Note, Burtmanis to Brady, 16 September 1974, NAA: A1838, 3103/10/20/1 part 4.
- 90 Record of conversation, Nonoyama and Brady, 17 September 1974, NAA: A1838, 3103/10/20/1 part 7.
- 91 Note for file, K.E. Heydon, Economic Policy Branch, PM&C, 10 October 1974, NAA: A1209, 1974/7184. Other members of the delegation were Masaki Saito, Treaties Division, and Toshimi Fujita, Oceanic Affairs Division, MOFA; Hiroo Kinoshita, America & Oceania Division, Ministry of International Trade and Industry (MITI); Masaaki Miura, International Affairs Division, Ministry of Finance; and Masaji Takahashi, First Secretary, Embassy of Japan, Canberra. In addition to DFA, ten other departments were also represented at the talks.
- 92 See record of talks, Treaty of Nara, 2–3 October 1974, *ibid*; and Australian delegation report, Australian–Japanese discussions on the Nara Treaty, Tokyo, 25–26 July 1974, Cook, Lloyd and Humphreys, n.d., NAA: A1209, 1974/6708.
- 93 Note for file, Heydon, PM&C, 4 October 1974, NAA: A1209, 1974/7184.
- 94 Cook also advised Willesee that 'the wording in the latest Australian draft is as far as I could persuade the interested departments to go—and even that has taken me six months of constant pressure'. Ministerial submission, Cook to Willesee, 14 October 1974, NAA: A1838, 3103/10/20/1 part 5.
- 95 Summary record of interdepartmental meeting on the Treaty of Nara, 25 September 1974, NAA: A1209, 1974/6901; and ministerial submission, Cook to Willesee, 14 October 1974, NAA: A1838, 3103/10/20/1 part 5. The redraft of Article VIII was undertaken by representatives of Attorney-General's, Labor and Immigration and DFA.
- 96 *Ibid*; and submission, Willesee for Ministers, 14 October 1974, NAA: A1209, 1974/7184.

- 97 Ministerial submission, Cook to Willesee, 14 October 1974, NAA: A1838, 3103/10/20/1 part 5. The principle of non-discrimination in entry and stay matters was qualified in some specific respects in the Protocol to take care of existing British preferences and possible future preferences to Australia's external territories when they became independent. Emphasis in original document.
- 98 Submission, Willesee for Ministers, 14 October 1974, NAA: A1209, 1974/7184.
- 99 Summary record of discussions of a Committee of Ministers, Kirribilli House, Sydney, 28 October 1974, NAA: A1209, 1974/7435. In addition to Whitlam and Willesee, the ministers on the committee attending were Dr J.F. Cairns (Overseas Trade), R.F. Connor (Minerals and Energy), F. Crean (Treasurer), Sen. K. Wriedt (Agriculture) and Dr R. Patterson (Northern Development).
- 100 Summary record of interdepartmental meeting on Treaty of Nara, 4 November 1974, *ibid.* Cook also reported to the meeting that Whitlam had said that he would like the treaty signed in early 1975 (privately indicating his preference for February) and that he would go to Nara himself for that purpose.
- 101 *Ibid.*
- 102 Speaking notes (handover of third draft to Japanese Embassy, Canberra), 8 November 1974, *ibid.*
- 103 See List of Delegations, pp. 66 & 67.
- 104 Ministerial submission, Cook to Willesee, 6 December 1974, NAA: A1838, 759/1/9 part 14. Cook also told Crawford that Article V was 'not so much of a problem', but that the difficulty in Articles VI and VII was that Japan felt that 'it cannot wear some of our wording, because it is too much in Australia's favour, while we think our wording essential to offset Japanese wording which is too much in Japan's favour'. Letter, Cook to Crawford, 13 December 1974, NAA: A1838, 3103/10/20/1 part 6.
- 105 Letter, Cook to Shann, 13 December 1964, *ibid.* Cook, nonetheless, expressed his concern to Shann that it 'still will have a fairy floss character' and the Australian public might not necessarily regard its conclusion as 'a triumph'.
- 106 Summary record, Tokyo discussions, Nara Treaty, 28 November – 4 December 1974, NAA: A1838, 759/1/9 part 4.
- 107 Draft Cabinet Submission, Willesee for Cabinet, 15 January 1975, NAA: A1838, 3103/10/20/1 part 7.
- 108 Cablegram 3384, Tokyo to Canberra, 16 January 1975, NAA: A1838, 759/1/9 part 14; telex, Cook to Willesee, 21 January 1975, NAA: A1838, 3103/10/20/1 part 7; and ministerial submission, Cook to Willesee, 24 January 1975, NAA: A1838, 3103/10/20/1 part 8.
- 109 Letter, Connor to Whitlam, 23 January 1975, NAA: A1209, 1975/0172.
- 110 Ministerial submission, Cook to Willesee, 24 January 1975; and Cabinet Submission, Willesee for Cabinet, 15 January 1975, NAA: A1838, 3103/10/20/1 part 8.

- 111 Note, Gordon Bilney, Private Secretary, Minister for Foreign Affairs, to Willesee, 28 January 1975, NAA: A1209, 1975/0172.
- 112 Note, Bilney to Cook, 29 January 1975, NAA: A1838, 3103/10/20/1 part 8.
- 113 Conjecture at the time suggested Japan's attitude 'may have been in part an angry reaction to the restrictions imposed on the import of Japan's motor cars and in part an attempt to secure to Toyota and Nissan the same very generous financial incentives to undertake local manufacture as those offered by the Australian Government to General Motors immediately after World War II'. See D.C.S. Sissons, 'Japan', in W.J. Hudson (ed.), *Australia in World Affairs 1971–1975*, Allen & Unwin, Sydney, 1980, p. 259.
- 114 See message, Cook to Willesee, 4 February 1975, NAA: A1209, 1975/0172; and cablegram 4466, Canberra to Tokyo, 6 February 1975, NAA: A1838, 3103/10/20/1 part 9.
- 115 Message, Cook to Willesee, 4 February 1975, NAA: A1209, 1975/0172.
- 116 Cablegram 4466, Canberra to Tokyo, 6 February 1975, NAA: A1838, 3103/10/20/1 part 9. Kagami informally suggested 22 or 23 February to 28 February as the dates for the next talks.
- 117 See notes 12 & 26.
- 118 Cablegram 3642, Shann to Canberra, 22 February 1975, NAA: A1838, 759/1/9 part 15.
- 119 Cablegram 4712, Canberra to Tokyo, 27 February 1975, *ibid.*
- 120 Ministerial submission, Cook to Whitlam, Acting Minister for Foreign Affairs, 26 February 1975, NAA: A1838, 3103/10/20/1 part 9.
- 121 Cabinet Submission, Whitlam for Ministers, 26 February 1975, *ibid.*
- 122 Cablegram 3573, Tokyo to Canberra, 13 February 1975; cablegram 4712, Canberra to Tokyo, 27 February 1975; and cablegram 3689, Tokyo to Canberra, 28 February 1975, NAA: A1838, 759/1/9 part 15. See also, minute, Cook to Renouf, 14 March 1975, NAA: A1838, 3103/10/20/1 part 11.
- 123 Minute, Brady to Renouf, 11 March 1975, NAA: A1838, 3103/10/20/1 part 10.
- 124 Cablegram 3748, Cook to Canberra, 6 March 1975, NAA: A1838, 759/1/9 part 15.
- 125 Minute, Brady to Renouf, 11 March 1975, NAA: A1838, 3103/10/20/1 part 10.
- 126 See record of third round of Nara Treaty negotiations, 4–11 March 1975, *ibid.*
- 127 Minute, Cook to Renouf, 14 March 1975, NAA: A1838, 3103/10/20/1 part 11.
- 128 Cablegram 3992, Tokyo to Canberra, 3 April 1975. NAA: A1838, 759/1/9 part 15.
- 129 The departments' views were set out in a ministerial submission, Cook to Whitlam, 11 April 1975, *ibid.*

- 130 Ibid; and cablegram 4255, Tokyo to Canberra, 24 April 1975, NAA: A1838, 759/1/9 part 15; and cablegrams 5475 & 5476, Canberra to Tokyo, 24 April 1975, NAA: A9564, 228/6/7 part 8.
- 131 Ministerial submission, Cook to Willesee, 30 April 1975, NAA: A1838, 3103/10/20/1 part 11. Cook suggested to Willesee that it would be 'most useful' if he could raise this informally with his counterpart, Kiichi Miyazawa, during the Australia–Japan Ministerial Consultations in Canberra, which were due to commence the following day.
- 132 Cablegram 4477, Tokyo to Canberra, 19 May 1975, *ibid.*
- 133 The message was sent to Cook, who was in Tokyo en route to Seoul, for consideration before passing to the Gaimusho. In slightly amended form, it was handed over on 16 June. Cablegrams 6181 and 6182, Canberra to Cook (Tokyo), 13 June 1976; and cablegram 4685, Cook to Canberra, 16 June 1975, NAA: A1838, 3103/10/20/1 part 11.
- 134 Cablegram 4730, Tokyo to Canberra, 21 June 1975, *ibid.* Apparently, other Japanese ministries had believed that the Gaimusho would use both these documents 'merely as the basis of oral explanations and that the documents themselves would not be given to the Australian side'.
- 135 Cablegram 4776, Tokyo to Canberra, 27 June 1975, *ibid.* Subsequent departmental discussions resolved the need for an Exchange of Notes on Articles VI and VII to be included in the treaty. A number of DFA and other departmental officers were not impressed with Calvert's initiative, which had been undertaken with Cook's unofficial authorisation and Shann's approval. The Canberra detractors were quickly silenced and Calvert was subsequently instructed to 'accept any invitation from Nonoyama for another "informal chat"'. He was 'to listen to what Nonoyama has to say and undertake to report it without commitment'. Cablegram 6434, Canberra to Tokyo, 8 July 1975, NAA: A9564, 228/6/7 part 9. See also handwritten note, Brady to Cook, on cablegram 4776, 27 June 1975, NAA: A1838, 3103/10/20/1 part 11; and note for file, David Sadleir, Minister, Tokyo, 27 June 1975; record of telephone conversation, Shann and Cook, 1 July 1975; and letter, Renouf to Shann, 7 July 1975, NAA: A9564, 228/6/7 part 9.
- 136 See Garry Woodard, 'The Australia–Japan Treaty of Friendship and Co-operation: An Australian Perspective', Australia–Japan Research Centre, Pacific Economic Paper No. 172, June 1989.
- 137 Cablegram 4878, Tokyo to Canberra, 15 July 1975, NAA: A1838, 3103/10/20/1 part 11.
- 138 Minute, Cook to Willesee, 17 July 1975, *ibid.*
- 139 Minute, Brady to Lauterpacht, 28 August 1975, NAA: A1838, 3103/10/20/1 part 12.
- 140 Cablegram 5161, Shann to Canberra, 26 August 1975, *ibid.*
- 141 Letter, Woodard to Shann, 2 September 1975, *ibid.* Tachibana likened the treaty negotiation process to climbing Mt Fuji, which involves passing ten stations. The

- most difficult part of the climb is between the eighth and tenth stations. He saw the negotiations as having reached the ninth station. Record of informal Australian–Japanese meeting, Treaty of Nara, 1 September 1975, *ibid.*
- 142 Cablegram 5717, Tokyo to Canberra, 2 December 1975, NAA: A1838, 3103/10/20/1 part 14.
- 143 Having attended the conference of the foreign ministers of non-aligned countries in Lima as a guest, 25–29 August, Senator Willesee was travelling on to New York to address the Seventh Special Session of the UN General Assembly on 8 September, and the General Debate at the 30th United Nations General Assembly on 23 September 1975.
- 144 Letter, Woodard to Shann, 2 September 1975, NAA: A1838, 3103/10/20/1 part 12. Woodard would later tell Shann that he considered that ‘bureaucrats have now become too timid on this matter, perhaps as a result of being with it too long’. Letter, Woodard to Shann, 20 November 1975, NAA: A9564, 228/6/7 part 9.
- 145 Ministerial submission, Woodard to Willesee, 17 October 1975, NAA: A1838, 3103/10/20/1 part 13. In addition to Labor and Immigration, the other departments were Minerals and Energy, Agriculture, Treasury and Attorney-General’s. DFA also advised that Whitlam should consult the ministers of these departments in making his decision.
- 146 Letter, Willesee to Whitlam, 24 October 1975, NAA: A1838, 3103/10/20/1 part 14.
- 147 Minute, Brady to Woodard, 5 November 1975, *ibid.*
- 148 Messages, Miki to Fraser and Fraser to Miki, in cablegram 8131, Canberra to Tokyo, 16 December 1975, NAA: A1209, 1975/1252.
- 149 Margin note, Renouf to Woodard, 16 December 1975, on minute, Woodard to Renouf, 15 December 1975, NAA: A1838, 3103/10/20/1 part 14.
- 150 Minute, Brady to Woodard, 5 January 1976, *ibid.*
- 151 Letter, Woodard to Shann, 18 December 1975, *ibid.*
- 152 Letter, Lynch to Fraser, 15 January 1976, NAA: A1838, 3103/10/20/1 part 14. The previous Treasurer, Bill Hayden, in response to Willesee’s last submission to Whitlam on 24 October, had urged caution, stating that ‘in principle, there were a great many loose ends remaining’. See letter, Bill Hayden, Treasurer, to Whitlam, 29 October 1975, NAA: A9564, 228/6/7 part 9.
- 153 Letter, Fraser to Lynch, 21 January 1976, *ibid.*
- 154 Anthony was to visit Japan for ten days of talks, 5–15 February—the first overseas visit by a minister in the new government.
- 155 Cabinet Decision No. 140, 30 January 1976, NAA: A1838, 3103/10/20/1 part 15.
- 156 Letter, Woodard to Shann, 4 February 1976, *ibid.* Calvert had returned from Tokyo in late December and joined the Japan Section in early January.

- 157 Record of conversation, Woodard and Fumiya Okada, Charge d'Affaires, Embassy of Japan, 4 February 1976, *ibid.*
- 158 Minute, Robert Cotton, Counsellor, to Shann, Tokyo, 2 March 1976, NAA: A1838, 3103/10/20/1 part 16.
- 159 Cablegram 6373, Tokyo to Canberra, 22 March 1976; and letter, Tachibana to Shann, 22 March 1976, *ibid.*
- 160 Letter, Woodard to Lauterpacht (attending a conference at the UN, New York), 25 March 1976, *ibid.*
- 161 Cabinet Submission, Basic Treaty of Friendship and Co-operation between Australia and Japan, Andrew Peacock, 4 April 1976, NAA: A1838, 3103/10/20/1 part 17.
- 162 See cablegram 9036, Canberra to Shann, 26 March 1976, NAA: A1838, 3103/10/20/1 part 16; and letter, Woodard to John Menadue, Secretary, PM&C, 2 April 1976; minute, Woodard to Renouf, 2 April 1976; and ministerial submission, Woodard for Peacock, 4 April 1976, NAA: A1838, 3103/10/20/1 part 17. Woodard believed that there was 'some ... element of doubt as to whether Japan was aware of this implication of its counter-proposals'. Minute, Woodard to Michael Costello, Executive Secretary, 9 April 1976, *ibid.*
- 163 Letter, Woodard to Menadue, 2 April 1976, *ibid.*
- 164 Note, Renouf to Woodard, 30 March 1976, NAA: A1838, 3103/10/20/1 part 16. Renouf informed the Japanese Ambassador in Canberra, Yoshio Okawara, of Australia's position on 2 April, and Fraser reaffirmed the message the following week, NAA: A1838, 3103/10/20/1 part 17.
- 165 Message, Fraser to Miki, in cablegram 9124, Canberra to Shann, 5 April 1976, *ibid.*
- 166 See note, 'Basic Treaty: FADC [Foreign Affairs and Defence Committee] 6 April', Woodard; and letter, Woodard to Lauterpacht, 7 April 1976, *ibid.*
- 167 Brief for Prime Minister's meeting with Japanese Ambassador, 6 April 1976, *ibid.*
- 168 Teleprint message, Woodard to Peacock, 21 April 1976, *ibid.*
- 169 Cablegram 6634, Tokyo to Canberra, 28 April 1976, NAA: A1838, 3103/10/20/1 part 18.
- 170 Ministerial submission, Woodard to Peacock, 29 April 1976, *ibid.* In addition to Tachibana, the Japanese officials variously involved in discussions were H. Owada (Director) and Mr Saito, Treaties Division; and Nonoyama (Director), Makita (Deputy Director) and S. Hara, Oceania Division.
- 171 Summary of last round of negotiations: Basic Treaty, 3–6 May 1976, NAA: A1838, 3103/10/20/1 part 19.
- 172 Speech, Prime Minister of Australia, Basic Treaty Signing Ceremony, 16 June 1976, NAA: A1838, 3103/10/20/1 part 20.

- 173 The Basic Treaty of Friendship and Co-operation does not provide for specific treatment with regard to Australia–Japan bilateral trade, as this is set out in detailed terms in the Australia–Japan Commerce Agreement of 1957, as amended in 1963, and in the GATT, to which both countries are parties.
- 174 Paragraph 1 of the Agreed Minutes confirms that this standard of treatment will in effect be MFN treatment, where it is understood that there is no requirement to apply retroactively policies that have already become inoperative.
- 175 Japan had noted Australia’s position rather than subscribe to it, because existing Japanese legislation inhibited direct government intervention in the ownership and control of Japan’s resources and industries.
- 176 Ministerial Statement, Treaty of Friendship and Co-operation between Australia and Japan, Malcolm Fraser, *Commonwealth Parliamentary Debates (CPD)*, *House of Representatives*, 6 May 1976, vol. 99, p. 2053.
- 177 Preamble, Basic Treaty of Friendship and Co-operation between Australia and Japan, http://www.dfat.gov.au/geo/japan/japan_treaty.html

Biographical guide

Note: Where there is no reference in an entry to nationality, it is to be assumed as Australian. Similarly, for government officials, absence of reference to department denotes the Australian Department of Foreign Affairs.

Anthony, (John) Douglas	Deputy Prime Minister and Minister for Trade and Industry, 5 February 1971 – 5 December 1972
Border, Lewis Harold	Deputy Secretary, 1971 – 1975
Bowen, Nigel Hubert	Minister for Foreign Affairs, 2 August 1971 – 5 December 1972
Bilney, Gordon Neil	Private Secretary to the Minister for Foreign Affairs, 1973–1975
Brady, Geoffrey Vincent	Assistant Secretary, North Asia Branch, 1974–1976
Bunting, Sir (Edward) John	Secretary, Department of the Prime Minister and Cabinet, 1971–1974
Brown, Alan Dewane	Head, Commercial Policy Section, 1972–1974; Acting Assistant Secretary, Economic Policy Branch, 1974
Burtmanis, Egils	Head, Japan Section, 1974–1975
Calvert, Ashton Trevor	Third, later Second, later First Secretary, Tokyo, 1971–1975; Acting, later Head, Japan Section, 1976–1977
Connor, Reginald (Rex) Francis Xavier	Minister for Minerals and Energy, 1972–1975
Cook, Michael John	Assistant Secretary, North Asia Branch, 1971–1973; Ambassador, Saigon, 1973–1974; First Assistant Secretary, North and West (later North and South) Asia Division, 1974–1975; Deputy High Commissioner, London, 1975–1979
Corkery, Laurence	Acting First Assistant Secretary, Division III, 1970

Crawford, Sir John Grenfell	Vice-Chancellor, Australian National University, 1968–1973; Chairman, Board International Food Policy Research Institute; Governor, International Development Research Center, Canada, since 1970; Senior Agricultural Policy Adviser to World Bank, Washington; Chairman, Papua New Guinea Development Bank, 1972–74; Chairman, Technical Advisory Committee to Consultative Group on International Agricultural Research, 1971–1976; Director, Australian Japanese Economic Research Project; Chairman, Advisory Board Australian Development Assistance Agency, 1975–1977; Chancellor, University of Papua New Guinea, 1972–1975
Feakes, Graham Barton	Assistant Secretary, Policy Research Branch, 1972–1974
Flood, Philip James	Assistant Secretary, Economic Policy Branch, 1971–1974
Fraser, (John) Malcolm	Prime Minister, 11 November 1975 – 11 March 1983
Freeth, Gordon	Ambassador to Japan, 1970–1974
Freudenberg, N Graham	Speechwriter and Adviser to E.G. Whitlam, 1967–1977
Heydon, K.E.	Senior Adviser, International Trade Policy Section, Department of the Prime Minister and Cabinet
Humphreys, James Charles	Assistant Secretary, Economic Policy Branch, 1974–1976
Kagami, Hideo	Deputy Director-General, European and Oceanic Affairs Bureau, MOFA
Lauterpacht, Elihu	Fellow of Trinity College, Cambridge, since 1953; Lecturer in Law, University of Cambridge, since 1958; Legal Adviser to DFA, 1975–1977; Australian Delegation to UN General Assembly 1975–1977; Deputy Leader, Australian Delegation to UN Law of the Sea Conference, 1975–1977.

Lloyd, J.C.G.	First Assistant Secretary, Trade Relations Division, Department of Overseas Trade
McMahon, William	Prime Minister, 10 March 1971 – 5 December 1972; Minister for External Affairs, 12 November 1969 – 5 November 1970; Minister for Foreign Affairs, 6 November 1970 – 22 March 1971
Marshall, Harold Gordon	Acting Assistant Secretary, Economic Relations Branch, 1970
Menadue, John Laurence	Secretary, Department of the Prime Minister and Cabinet, 1975–1977
Merrilees, Robert Stuart	Acting, later Head, Policy Planning Branch, 1973–1975
Miki, Takeo	Prime Minister of Japan, 9 December 1974 – 24 December 1976
Miyazawa, Kiichi	Japanese Foreign Minister, 9 December 1974 – 15 September 1976
Nonoyama, Tadayuki	Deputy Director, Political Division, United Nations Bureau, to August 1974; Director, Oceanic Affairs Division, MOFA, from August 1974
Ohira, Masayoshi	Japanese Foreign Minister, 7 July 1972 – 16 July 1974
Okwara, Yoshio	Japanese Ambassador to Australia, 1976–1979
Peacock, Andrew Sharp	Minister for Foreign Affairs, 12 November 1975 – 3 November 1980
Renouf, Alan Philip	Secretary, 1974–1977
Saito, Shizuo	Japanese Ambassador to Australia, 1970–1973
Shann, Keith Charles Owen (Mick)	Deputy Secretary, 1970–1973; Ambassador to Japan, 1974–1977
Spigelman, James Jacob	Senior Adviser and Principal Private Secretary to the Prime Minister, 1972–1975
Tachibana, Masatada	Director-General, European and Oceanic Affairs, MOFA

Tanaka, Kakuei	Prime Minister of Japan, 7 July 1972 – 9 December 1974
Taniguchi, Sadakazu	Director, Oceania Division, MOFA
Waller, Sir (John) Keith	Secretary, 1970–1974
Whitlam, (Edward) Gough	Prime Minister, 5 December 1972 – 11 November 1975; Minister for Foreign Affairs, 5 December 1972 – 6 November 1973
Willesee, Senator Donald Robert	Special Minister of State and Minister assisting the Prime Minister, 1972–1973; Minister for Foreign Affairs, 6 November 1973 – 11 November 1975
Woodard, Charles Garrard (Garry)	First Assistant Secretary, North and South Asia Division, 1975–1976
Yoshida, Kenzo	Japanese Ambassador to Australia, 1973–1976

List of delegations

TOKYO, negotiations: 25–26 July 1974

Australia:

M.J. Cook	First Assistant Secretary, North and West Asia Division, DFA
J.C.G. Lloyd	First Assistant Secretary, Trade Relations Division, Department of Overseas Trade
K. Horton-Stephens	Minister (Financial), Australian Embassy, Tokyo
J.C. Humphreys	Assistant Secretary, Economic Policy Branch, DFA
E.E. Adderley	Counsellor (Scientific), Australian Embassy, Tokyo
A.T. Calvert	Second Secretary, Australian Embassy, Tokyo

Japan:

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S. Taniguchi	Director, Oceania Division, MOFA
T. Oyake	Director, First International Economic Affairs Division, MOFA
T. Nonoyama	Deputy Director, Political Division, United Nations Bureau, MOFA
H. Yushita	Deputy Director, Treaty Division, MOFA
M. Miura	Deputy Director, Second International Affairs Division, Customs and Tariffs Bureau, Ministry of Finance
H. Kinoshita	Director, America and Oceania Division, Trade Policy Bureau, MITI
Y. Shimamoto	Deputy Director, Trade and Customs Division, Agricultural Economic Affairs Bureau, Ministry of Agriculture and Forestry
H. Iwamoto	Director of International Co-operation Division, Atomic Energy Bureau, Science and Technology Agency

CANBERRA, talks: 2–3 October 1974

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G.F. Taylor	Assistant Secretary, Overseas Finance Branch, Treasury
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TOKYO, negotiations: 4 – 11 March 1975

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CANBERRA, informal talks: 1 September 1975

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CANBERRA, negotiations: 3–6 May 1976

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Y. Oka	Oceania Division, MOFA
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