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## The Contemporary China Research Base

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**Editorial Committee:**

Hirashima Kenji  
Yamazaki Yukiko

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the World Wide Web at:  
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**All inquiries to:**

*Social Science Japan*  
Institute of Social Science  
University of Tokyo  
Hongo 7-3-1, Bunkyo-ku  
Tokyo 113-0033 JAPAN  
Tel +81 3 5841 4931  
Fax +81 3 5841 4905  
Electronic mail:  
[ssjinfo@iss.u-tokyo.ac.jp](mailto:ssjinfo@iss.u-tokyo.ac.jp)

**Cover Photo**

Memorandum-signing ceremony in  
Beijing  
(From left: Yuan Gangming,  
research professor of the  
Underdeveloped Economic Center  
of CASS; Liu Shucheng, director of  
the Institute of Economics at CASS;  
Komorida Akio, director of ISS; and  
Tajima Toshio, director of the  
Contemporary China Research Base  
at ISS)  
Photo by Kajima Jun (ISS)

**Editorial Notes***Personal Names*

All personal names are given in  
the customary order in the  
native language of the person  
unless otherwise requested.  
Hence in Japanese names, the  
family name is given first, e.g.  
Toyotomi Hideyoshi, and in  
Western names the family  
name is given second, e.g.  
George Bush.

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This issue of *Social Science Japan* focuses upon the Contemporary China Research Base, founded in the Institute of Social Science (*Shaken*) in 2007. The Base is a product of collaboration between the University of Tokyo and the National Institutes for the Humanities (NIHU), an Inter-University Research Institute Corporation in Japan. The Contemporary China Research Base was established to explore China's economic growth and stability.

The Base consists of two main research groups, each of which is composed of three sub-groups (please read the "Aims of the Contemporary China Research Base" for more details). This issue of *SSJ* carries six articles from scholars involved in the research activities of the Base.

First, Professor Tajima Toshio, director of the Base, describes the achievements and future plans of the Economy Subgroup and the Rural Issues Subgroup.

In the next article, Professor Tanaka Nobuyuki reflects on the activities of the Law Subgroup. He indicates a strong desire to study the transformation of the legal system in China, examining the processes and problems involved.

Professor Suehiro Akira and his colleagues represent the Trade Subgroup and examine trends in Asia's intra-regional trade. They found that Asia's increase in intra-firm trade and vertically specialized trade (especially surrounding China) underlies the region's growth in intra-regional trade.

Professor Marukawa Tomoo explains the research focus and findings of the Industrial Agglomeration Subgroup. The discovery of Chinese industrial agglomeration is a recent development and the Subgroup aims at analyzing the factors involved.

Professor Kawashima Makoto reports on the work of the ODA Subgroup in 2007. The Subgroup conducted field research on China's aid programmes in Africa to clarify how they are being undertaken.

In the final of the six articles for our theme issue, Project Research Associate Kajima Jun's article introduces the organization of the Beijing Research Base and how it operates.

Since last year, we have all of course heard much about China due to the poisoned dumpling incident, the massive earthquake in Sichuan Province and the (as of this writing) ongoing Olympic Games in Beijing. These major events attract a somewhat longer media attention than the usual 24-hour news cycle. But even then, the coverage soon fades and rarely gets beyond stereotypes. The articles in this issue remind us that it is important to approach China with a broader and much longer-term focus.

For more detailed information on the Base, please see:  
<http://web.iss.u-tokyo.ac.jp/kyoten/index.html> (Japanese only)

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# Aims of the Contemporary China Research Base, Institute of Social Science, the University of Tokyo

## Contemporary China Research Base Steering Committee

The Contemporary China Research Base was established in the University of Tokyo's Institute of Social Science (ISS) in April 2007 to conduct research on Economic Growth and Stability in China. The Base is a collaboration between the University of Tokyo and the National Institutes for the Humanities (NIHU), an Inter-University Research Institute Corporation in Japan.

Paralleling the course of the Hu Jintao regime which came to power in the fall of 2002, the Chinese economy is now entering a transitional phase. The era of 'unlimited labor supply' from rural China, once the backbone of the country's growth, is now coming to an end. The market for younger labor is growing tighter in urban areas, while expanding economic activity is bringing environmental and resource constraints to the forefront. The issues of the adjustment of the urban-rural labor force distribution and the coordination between agricultural and non-agricultural sectors can no longer be avoided. To build a more stable society, and to adjust and manage resource allocation smoothly, improvements must be made to the social safety net, income distribution, the legal system and the regulation of areas such as ownership, governance and the environment. A more democratic political system will be required to safeguard these new institutions.

China's economic expansion is making a strong impact on the international community in both the political and economic spheres. Meanwhile, under multilateral frameworks such as the IMF and WTO, as well as intra-regional arrangements such as the China-ASEAN FTA, China itself is feeling pressure to improve foreign economic relations and achieve domestic change, such as better coordination among different industrial sectors and the development of more robust legal institutions.

The pursuit of area studies grounded in the social sciences has been a core mission of the ISS ever since its foundation in 1946, with scholars in eco-

nomics, law and political science engaging in Chinese Studies within their respective disciplines. The University of Tokyo signed an exchange agreement with the Chinese Academy of Social Sciences (CASS) in 1986. As the University's principal interface for this agreement, the ISS has used joint research projects, researcher exchange and visiting professor programs with CASS-affiliated institutes to develop an extensive track record of exchange activity and a diverse research network.

Building on these foundations, the ISS Contemporary China Research Base was launched with the aim of contributing to the development of Contemporary Chinese Studies, not only within the University of Tokyo, but throughout Japan and across the world. The Base envisages two major components of activity over its five-year period of operation.

### Research Group 1: Institutions, Policies and Economic Development (leader: Tajima Toshio)

Attentive to the challenges of structural adjustment and institutional reform in China's economic sector and the realignment of economic and legal institutions occasioned by China's membership of the WTO, this group will chiefly address issues concerning the domestic economy, institutions and policies, including: (a) macroeconomic policy and fiscal / monetary reform, and the relationship between government and private enterprise; (b) the development of systems of civil and commercial law / intellectual property law / environmental law, and issues of ownership and governance; (c) structural adjustment in the agricultural sector and land use / community self-government; (d) labor markets / labor force mobility / social security; and (e) economic ideology and perceptions of society and history, etc. Research activity is organized around three subgroups: (1) structural adjustment and economic policy (the 'Economy Subgroup'), (2) intensified reform / opening and reorganization of economic law systems (the 'Law Subgroup'), and (3) agri-



cultural and rural problems in a period of transition (the 'Rural Issues Subgroup').

## Research Group 2: Foreign Economic Relations and Industrial Structure (leader: Marukawa Tomoo)

From the standpoint of China's economic internationalization and increasingly apparent resource limitations, as well as economic partnerships and industrial adjustment in Asia, this group will chiefly address issues in China's industrial development and foreign economic relations, including: (a) trends of foreign trade and intra-regional economic partnerships in China and the Asian region; (b) foreign economic relations pertaining to investment, foreign exchange and intellectual property rights; (c) industrial agglomerations and international division of labor in Asia; (d) offshore development and the growth of outsourcing to China; and (e) resource constraints and development-and-import schemes / official development assistance (ODA) / resource diplomacy. Research activity is organized around three subgroups, focusing on: (1) the structure of trade in connection with China both within and outside Asia and possibilities for East Asian economic partnerships (the 'Trade Subgroup'), (2) industrial agglomeration in China and the Asian region (the 'Industrial Agglomeration Subgroup'), and (3) resource constraints in China and development-and-import schemes / ODA / resource diplomacy (the 'ODA Subgroup').

The two Research Groups and six Subgroups operate in a manner enabling cross-participation, with research activities and workshops conducted on a routine basis, as well as field survey and research exchange activities in China and elsewhere, and the publication of research findings. Research seminars are held roughly twice a month at the ISS or on the Komaba Campus, and are generally open to the public. Further information on research activities and seminars is posted regularly on our website: <http://web.iss.u-tokyo.ac.jp/kyoten/index.html>.

These research activities are supported by a secretariat, consisting of an Associate Professor sta-

tioned full-time in an administrative and research office in the ISS, as well as two Research Assistants responsible for the Hongo and Komaba area. In addition, a residential facility for field research in Beijing (and the rest of China) is provided by the ISS Beijing Research Base established in October 2007 within the Institute of Economics of the Chinese Academy of Social Sciences (CASS).

Research in the Base's first year of operation has already yielded two publications (both in Japanese): Miyajima Yoshiaki and Oizumi Keiichiro (2008) *The Rise of China and Intra-Regional Trade in East Asia: Analysis of the World Trade Atlas, 1996-2006*, ISS Contemporary Chinese Studies No. 1; and Tajima Toshio and Furuya Shinsuke, eds. (2008) *Offshore Development, Staffing Service, and Vocational Education in China's Software Industry*, ISS Contemporary Chinese Studies No. 2.



The Base has also launched projects in the educational sphere. In the winter term of the 2007 academic year, a course on 'Multiple Dimensions of Japan-China Relations' was offered across all graduate schools under the Japan-Asian Studies Program of the Asian Studies Network at the University of Tokyo (ASNET). This course is being taught once again in the summer of 2008. In a similar vein, a half-year seminar on 'Revised Chinese Modern History' is set to be taught on the Komaba Campus (Graduate School of Arts and Sciences) in the 2008 winter term.

# The Lewis Turning Point and China's Aim for a Harmonious Society

Tajima Toshio



**Tajima Toshio is a Professor of Chinese Economy and the Director of the Contemporary China Research Base at the Institute of Social Science at the University of Tokyo**

Institute of Social Science

University of Tokyo

Hongo 7-3-1

Bunkyo-ku, Tokyo 113-0033

tajima@iss.u-tokyo.ac.jp

In 2007 discussions were held on China's 'unlimited' supply of labor and its advance toward the 'Lewis turning point', and the Contemporary China Research Base was established to conduct research on 'Economic Growth and Stability in China'. In recent years, shortages of young laborers and wage increases in urban and coastal China have been remarkable. Our research activities have focused primarily on understanding the extent of the economic implications of China's contemporary policy issues, and determining how to frame them in terms of long-term economic development.

However, there is actually a surplus of middle-aged labor in China's rural regions. Looking at the demographic features, China's labor force will enter a phase of definite growth over the next several years, and the dominant debate is that this is the medium-term process leading up to the surpassing of the Lewis turning point. It is commonly accepted that Japan surpassed its Lewis turning point around 1960, but the post-war Baby Boom Generation (1947

– 49) did not reach working age until 1963 and later, so the nation continued to enjoy demographic dividends even after the turning point. Real development of the regional labor market probably began in the early 1970s in Japan. However, in light of the sea change in the Japanese society and economy from the mid-1950s to the early 1970s, it is reasonable to say that China, since entering the 21st century, is in the midst of unprecedented social change.

As a member of the same generation that experienced Japan during this era, I shall briefly recount the situation.

Around the time of the Lewis turning point, the relation of supply and demand for labor grew tight. It was a seller's market. The ratio of labor distribution rose, and industrial development and export-oriented industrialization that relied on an abundant supply of low-cost labor faced revision. Short-term employment relations receded as laborers and unions continued to gain clout, and the spotlight fell on skills development via internal labor markets. Worker protection advanced, universal healthcare was implemented and a public pension system was launched. With the expansion of the labor market, farmers began taking on second jobs as the agricultural structure adjusted and agricultural protection was brought in line with these new policies. Higher education became common as labor force participation and birthrates fell. A middle class was created, and consumer durables like appliances and automobiles came into widespread use. Social interest in public and environmental issues rose, and social restrictions on industrial activity grew tight. After weathering the Nixon Shocks in 1971 (i.e. the transition from managed to floating currency and the thaw in relations with China) and the first Oil Shock in 1973, Japan's rapid economic growth came to an end.

The 5-year project of the ISS Contemporary China Research Base is an attempt to comparatively observe the social and economic changes in China as it approaches the Lewis turning point in light of

Japan's experiences.

In this article, I will discuss the research conducted in the 2007 academic year by the Economy Subgroup and the Rural Issues Subgroup.

The Hu Jintao-Wen Jiabao regime came into being at the 16th National Congress of the Chinese Communist Party in the Fall of 2002. It championed a 'Care-for-the-People Policy' and 'Building a Harmonious Society', and offered solutions to the 'three rural issues concerning agriculture, countryside and farmers'. This approach differs from the previous neoliberal trend toward deregulation, market economization and ownership reform, and it appears that China is aiming for social democratic or Keynesian policy management. But the predominant discipline in China today is imported Neoclassical economics, with a trace of left-wing Marxist economics remaining.

In light of this situation, we invited Prof. Sun Ge of the Institute of Literature, Chinese Academy of Social Sciences (CASS) to serve as an ISS Visiting Professor, and held a workshop on recent changes in Chinese economic and social thought. Discussions covered the affinity between neoclassical trends and nationalism as observed in both Japan and China. The voice of caution is strong regarding the resurgence of Big Government in the wake of China's traumatic planned economy, and the existence of any theoretical or ideological underpinnings in this policy transition appears to be rather flimsy.

Given the shift to closer, mutually complementary economic ties between Japan and China, we conducted field surveys of cases in the software industry. Giving consideration to offshore software development due to the shortage of talent in Japan and the inevitability of staffing from overseas, we conducted interviews at over 100 software companies, human resources companies, and vocational education institutions in Dalian, Beijing, Xi'an, Chengdu, Wuhan, Shanghai, Shenyang and Suzhou regarding the development of the software industry in China's coastal regions and the potential for industrial development inland. In the case of the software industry, direct communication in Japanese with customers and clients, among systems engineers and programmers, is necessary for creating a borderless division of labor. The issues faced are slight-

ly different in nature than those in manufacturing.

So-called Bridge Systems Engineers (Bridge SEs) serve as liaisons to overcome these problems and encourage effective offshore software development. Fluent in both Japanese and Chinese, Bridge SEs comprise a class of experienced leaders and managers. Dalian, Beijing and Shanghai are rich in human resources and, for the time being, they will maintain their competitive advantage, but skyrocketing wages and office building rents in these cities means there are also opportunities in the inland regions. This means that since there is already an oversupply of ordinary programmers throughout the country, regions will fight for veteran project managers, especially Bridge SEs fluent in foreign languages. The outcomes of this research were published in March 2008 in Tajima Toshio and Furuya Shinsuke, eds. (2008), *Offshore Development, Staffing Service, and Vocational Education in China's Software Industry*, ISS Contemporary Chinese Studies No.2.

In the Rural Issues Subgroup, the core mission is to observe social and economic changes in China as it approaches the Lewis turning point from the perspective of agricultural development and labor supply in light of the rural economy over the past few years. Speaking of agriculture, the shortage of labor and rising wage standards in non-agricultural sectors over the past several years has been caused by an increase in agricultural productivity and higher prices, both at home and abroad. This is also thought to be the result of agricultural protection policies put into effect since the Hu Jintao-Wen Jiabao administration came to power. The Rural Issues Subgroup held a joint research seminar with the Trade Subgroup on the impact of the China-ASEAN FTA on farm product trade, and invited a Chinese agricultural policy official to give a report. In March 2008, the Rural Issues Subgroup began fixed-point surveys in suburban and rural regions on the topic of employment composition of the rural workforce and the structural adjustment of land use. However, since this coincided with anti-government demonstrations by minority ethnic groups in Lhasa in the Tibet Autonomous Region, research initially scheduled for the mountain villages of Gansu Province had to be suspended. This was an unexpected incident, but it was yet another opportunity to experience China's serious ethnic and social issues—and the risks that come with them.



# Law Subgroup Report: The Property Law of the People's Republic of China

**Tanaka Nobuyuki**



**Tanaka Nobuyuki is a Professor of Contemporary Chinese Law at the Institute of Social Science at the University of Tokyo**

Institute of Social Science  
University of Tokyo  
Hongo 7-3-1  
Bunkyo-ku, Tokyo 113-0033  
tanaka@iss.u-tokyo.ac.jp

## Activities in the first year of operation

New enactments and amendments to laws in the civil and commercial fields in China are apt to generate intense controversy – a tendency which has become even more marked in recent years. It goes without saying that such controversy stems from the acute tension between new legal policies aimed at developing a market economy and the socialist legal tenets which China has maintained up until now, and from the fact that compromise between these two conflicting positions is becoming increasingly difficult to maintain. A leading example is provided by the fiery debate which arose in the summer of 2005 over the enactment of the new Property Law of the People's Republic of China.

The Law Subgroup was established with the aim of using an analysis of these and other problems surrounding civil and commercial law in China to develop a clearer understanding of the actual nature of the socialist market economy advocated by China's leaders. The Institute of Social Science (ISS)

had pursued exchange and joint research activities with the Institute of Law of the Chinese Academy of Social Sciences (CASS) for many years ahead of this Subgroup's establishment. In order to contribute to advancements in civil and commercial law research in China, the ISS also played a part in the formation of the Sino-Japan Civil and Commercial Law Society and cooperates with the Society's activities on an ongoing basis. It was thus highly significant, albeit somewhat fortuitous, that an international symposium to mark the enactment of the new Property Law was held jointly by the ISS and the Sino-Japan Civil and Commercial Law Society in 2007, the same year in which the Contemporary China Research Base was launched.

## International Symposium – 'Contemplating China's Property Law'

Celebrating the 130<sup>th</sup> anniversary of the founding of the University of Tokyo

Hosts: University of Tokyo Institute of Social Science (ISS), University of Tokyo Graduate Schools for Law and Politics, Sino-Japan Civil and Commercial Law Society

Planning: University of Tokyo ISS Contemporary China Research Base

Date/Time: Friday August 31, 2007 1:00 to 6:00 p.m.

Venue: Main Conference Room, Sanjo Conference Hall, University of Tokyo Hongo Campus



### **Statement of Purpose:**

The adoption of the Property Law of the People's Republic of China in March 2007 attracted a great deal of attention, both from within China and internationally, for its provision of legal foundations for the country's socialist market economy system. The law was initially drafted by a group of scholars from the Research Department of Civil Law at the Institute of Law of the Chinese Academy of Social Sciences (CASS), commissioned by the Standing Committee of the National People's Congress and headed by Professor Liang Huixing. The draft they produced was seen as lending impetus to China's shift towards a market economy model, and generated a great deal of controversy.

The Symposium on China's new Property Law was organized as part of the Contemporary China Research Base at the ISS, in collaboration with the Sino-Japan Civil and Commercial Law Society convened by the Research Department of Civil Law at the CASS Institute of Law, and the University of Tokyo Graduate Schools for Law and Political Science. Featuring presentations from the actual scholars responsible for producing the Law's initial draft, the Symposium aimed to review the issues raised in the processes leading to the adoption of the Law and thereby shed light on its significance and the challenges it presents.

The Symposium featured presentations by seven scholars from the CASS Institute of Law who had participated in the drafting of the Property Law, part of a contingent of 25 attendees from universities and institutes all over China. They were joined in pas-

sionate discussion by seven presenters from Japan and numerous other scholars, making total attendance at the Symposium exceed one hundred people. A volume containing the Symposium proceedings is scheduled to be published shortly.

### **Plans for the future**

With the enactment of the Property Law in 2007, compilers of China's civil code have shifted their attention to the drafting of a Law of Obligations. However, because no significant activity on this front is expected for the next two to three years, the Law Subgroup will devote itself to research in fields such as intellectual property rights and finance/securities. These are the most advanced fields of law in terms of application of global standards; examining how China addresses them and what kind of laws it formulates is likely to yield important insights relevant to research in other areas.

In terms of methodology, we plan not only to explore the theoretical dimensions of these issues, but to address the interface between law and society, extending our scope of analysis to practical considerations of how transformation of the legal system is affecting Chinese society, what processes are involved and what kind of problems are being engendered thereby.

We will continue to enjoy the cooperation of CASS, but we also plan to adopt a diversified, multi-pronged approach to our survey and research activities, involving not only scholars but lawyers and other practitioners as well.



# The Rise of China and Development of Intra-Regional Trade: Findings from the World Trade Atlas (1996-2006)

**Suehiro Akira, Miyajima Yoshiaki and Oizumi Keiichiro**



(From left: Oizumi Keiichiro, Suehiro Akira, and Miyajima Yoshiaki at the Golden Triangle, the border among Laos, Myanmar and Thailand, on August 19 2008)

**Suehiro Akira is a Professor of Asian Economy at the Institute of Social Science at the University of Tokyo**

**Miyajima Yoshiaki is a Research Associate at the Institute of Social Science at the University of Tokyo**

**Oizumi Keiichiro is a Senior Economist at the Japan Research Institute, Limited**

Institute of Social Science  
University of Tokyo  
Hongo 7-3-1

Bunkyo-ku, Tokyo 113-0033  
asuehiro@iss.u-tokyo.ac.jp  
miyajima@iss.u-tokyo.ac.jp

The Japan Research Institute, Limited  
16 Ichiban-cho  
Chiyoda-ku, Tokyo 102-0082  
oizumi.keiichiro@jri.co.jp

## Observations and Issues

The growth of the Asian economy since 1990 has been remarkable. Although the Asian currency crisis of 1997 created serious financial and currency crises for the countries of the region, the Asian economy recovered rapidly and by the early part of the 2000s was once again showing signs of strong growth fueled by domestic consumption and manufactured exports. The regional driving force behind this growth has been China.

If we examine trends in trade for East Asia (Japan, Northeast Asia, Southeast Asia) since the 1980s, we

observe the following four characteristics:

First, while global trade (exports) between 1980 and 2005 grew from US\$1,932 billion to \$10,241 billion (530%), it was outdone by the speed of expansion in East Asian trade during the same period, which grew from \$272 billion to \$2,696 billion (990%). As a result, East Asia's share of global exports grew from 14% to almost 26%. In contrast, the North American share dropped from 15% to 12%, and the European share dropped from 42% to 37%.

Second, the expansion in East Asian trade up to 1985 was buoyed by a growth in exports to the United States. However, the Plaza Accord in 1985 signaled a turning point after which trade with neighbors in the region began to rise (from 34% in 1985 to 49% in 2005). In other words, East Asia was no longer simply a base for production and export but also a destination for goods manufactured in the region, creating an 'Asian economy' by shifting its major markets from the U.S. to Asian countries themselves.

Third, the driving force behind East Asian trade expansion has been the remarkable growth of Chinese exports. If we compare the years 1998 and 2006, we see that China's position as an import trading partner increased for each of the major nations/regions, going from #4 to #2 for the United States, from #4 to #1 for the 15 nations of the EU, and from #2 to #1 for Japan.

Fourth, the most significant increase in trade with China over the past 10 years has come from the members of ASEAN. While the value of this trade is less than that of trade between China and the United States or China and the EU, the percentage increase in imports from China for each ASEAN member has been 700 to 800%, compared with 200 to 300% for overall imports. This is one of the factors responsible for the increase in the proportion of East Asian intra-regional trade.

With these four characteristics in mind, our Trade Subgroup set out to examine the following two

major research issues;

What factors are responsible for the increase in trade between China and ASEAN members?

What is happening to the competitive relationship between China and the other countries of East Asia within the three major markets of Japan, the United States and the EU? In other words, is China's rise driving the other countries of East Asia out of the global market?

#### Data Source: World Trade Atlas

The trade statistics which each country announces for itself are not sufficient to address these two issues because different countries use different commodity categories, creating significant discrepancies in the statistical figures given by exporting and importing countries. Thus, we instead used the electronic version of the World Trade Atlas (WTA) put out by Global Trade Information Services, Inc. By using the WTA, we were able to obtain more detailed and relevant trade relations information based on a Harmonized Commodity Description and Coding System (HS Code).

We used the latest version of the WTA to produce detailed trade statistics for 1,270 commodities (rep-

resented by four-digit HS Codes) for 12 countries and regions: Japan, China, Hong Kong, Taiwan, Korea, Singapore, Thailand, Malaysia, Indonesia, the Philippines, the United States, and the EU (15 countries). The resulting database contains 335,280 items created from 1,270 commodities  $\times$  12 countries and regions  $\times$  2 groupings (exports and imports)  $\times$  11 years (1996 – 2006). Furthermore, for each major commodity, the intensity of trade, trade specialization index and market share shift within the three major markets was calculated for China and the other countries of East Asia. This data is arranged and organized in 'The Rise of China and Intra-Regional Trade in East Asia: Analysis of the World Trade Atlas, 1996-2006' (Miyajima & Oizumi [2008]).

While the WTA is useful in that it includes Hong Kong and Taiwan in its statistics, there is a problem in that it does not include such countries as Vietnam, Laos, or Cambodia due to their failure to maintain trade statistics corresponding to the HS Codes. Thus, the ASEAN members are limited to the four countries of Thailand, Malaysia, Indonesia and the Philippines (Singapore is included in the NIES4).

#### Trade Expansion for China and ASEAN Members: Intra-firm Trade and Traditional Vertical Trade

**Table 1 Increase of IT Goods Trade Between China and Major Countries, 1998-2006**

(Units: Million US dollars, times)

Country	to/from China	1998	2002	2006	*2006/1998
Japan	Export	4,212	10,157	23,069	5.48
	Import	4,993	13,523	30,522	6.11
NIES4	Export	15,980	45,190	120,418	7.54
	Import	16,929	33,187	92,541	5.47
ASEAN4	Export	1,100	4,309	12,966	11.79
	Import	1,457	5,943	16,218	11.13
USA	Export	2,683	5,296	12,857	4.79
	Import	13,747	31,794	97,189	7.07
EU15	Export	4,275	4,914	9,965	2.33
	Import	8,568	20,344	78,171	9.12

Note: NIES4 includes Hong Kong, Republic of Korea, Taiwan and Singapore; ASEAN4 includes Thailand, Malaysia, Indonesia and the Philippines.

Source: Miyajima and Oizumi [2008], pp.110-130.

The primary commodities supporting the expansion of trade for China and the ASEAN4 are IT goods such as computer-related products (HS Code 8471, 8473), semiconductor devices (8541), and integrated circuits (8542). Table 1 gives statistics for IT goods according to major country or region.

As Table 1 shows, the United States is the largest

importer of IT goods from China (\$97 billion) followed by the NIES4 (\$93 billion). Hong Kong, Taiwan, Korea, and Singapore have become major markets for Chinese IT goods. At the same time, the NIES4 are the largest exporters of IT goods to China (\$120 billion). On the other hand, although inferior in terms of dollar value, the ASEAN4 have shown an astounding growth rate of more than 1,100%

between 1998 and 2006. But what does all this movement mean?

Put simply, the growth in bilateral trade of IT goods for China and the other nations of East Asia is a reflection of the regional expansion and development of intra-firm trading for Japanese, Korean and Taiwanese companies. For example, if we look at laptop computers, we see American companies contracting Taiwanese companies to design the computers which are then assembled in China, with semi-conductors coming from Japan and peripheral devices coming from ASEAN members. As a result, the increase in personal computer exports from China to United States means an accompanying increase in IT goods-related trade within East Asia. Furthermore, the final destination of these personal computers is not just the United States or the EU; East Asia, including China, is itself a huge market.

However, trade within and between companies from Japan, etc., cannot fully account for the sudden

increase in trade experienced by China and ASEAN members. Based on WTA data, Table 2 shows the top ten commodities (four-digit HS Code) exported to China from the ASEAN4 in 2006. It shows that the #1, #3, #4, and #5 commodities are all IT goods. However, with the exception of polycarboxlic acid at #9, the remaining commodities are all primary commodities. In other words, China's industrialization has meant increased exports of natural rubber (for making tires) and crude oil, while higher incomes in China have meant increased exports of palm oil (cooking oil), rice and other agricultural products to China. Meanwhile, though not shown here, the top ten commodities imported by the ASEAN4 from China, excluding IT goods, include mobile phones and digital cameras (#4), steel products (#5), and audio-visual equipment (#6). In other words, the ASEAN4 export primary commodities to China and, in turn, import industrial products, confirming that a traditional, vertically specialized trade relationship exists between the two.

**Table 2 Top Ten Commodities in ASEAN Four's Exports to China, 2006**

(Units: Million US dollars, %)

Ranking	HS Code	Commodity	Value	Share
1	8542	Integrated circuits	3,477	9.6
2	4001	Natural rubber	2,828	7.8
3	8471	Computer products	2,774	7.6
4	8541	Semiconductor, device	2,418	6.6
5	8473	Computer parts	2,285	6.3
6	1511	Palm oil	1,993	5.5
7	2711	Natural gas	1,909	5.2
8	2709	Crude oil	1,457	4.0
9	2917	Polycarboxlic acid	1,224	3.4
10	2710	Petroleum products	832	2.3
		Others	15,176	41.7
		Total	36,373	100.0

Source: Computed from the World Trade Atlas 2006 edition.

From the perspective of catch-up industrialization, the above facts do not make sense (Suehiro [2008]). The common assumption would be that China would export primary commodities and food while the ASEAN members export industrial products. What needs to be noted, however, is that while China may be a latecomer to the global marketplace compared to the NIES4 and ASEAN4 countries, China has a longer history of industrialization, just behind Japan. At the same time, China's rapid economic growth provides an immense market for

ASEAN members' raw materials and food. Thus, China and Southeast Asia's trade has grown as a result of the mutually reciprocal nature of horizontally specialized trade based on intra-firm trade, and vertically specialized trade based on factor endorsement. Therefore, the expansion in intra-regional trade is operating according to more autonomous and sustainable mechanisms than when the United States contributes simply as a consumer of East Asian manufactured exports.

## Competitive Relationship between China and East Asia in Major Markets

An overlap in products such as electronics and textiles is apparent amongst exports from China and those East Asian countries which have been late to industrialize, and a frequent point of contention has been the so-called 'Chinese menace' thesis which asserts that China's economic rise has been driving the industrial products of NIES and ASEAN member countries out of world markets. Is this assertion true?

In order to examine this issue, we undertook the following analysis: First, for each four-digit HS Code grouping, we computed the change in market share within the three major markets of Japan, the United States and the EU for ten countries/regions in East Asia (including China). If, for example, Export

Country A increased its market share by 3% or more within the Japanese market for product X1 between 2000 and 2006, we counted this as a 'Win'. If it declined 3% or more during that time, we counted this as a 'Lose'. A variation within the range of 3% to -3% was treated as a gray area because of its difficulty in assessing. In the same way, product X1 was also evaluated as 'Win' or 'Lose' for China. If both Export Country A and China increased their market share 3% or more within the Japanese market, this was treated as a 'Win-Win' relationship for Country A; if it decreased its market share by more than 3% (but China increased by more than 3%) this was treated as a 'Lose-Win' relationship. Finally, the export value of Country A's 'Win-Win' products X1, X2, X3... (or 'Lose-Win' products Y1, Y2, Y3...) targeting Japan was calculated as a ratio of the total value of country A's exports to Japan. The results are shown in Table 3.

**Table 3 China and Other East Asian Countries/Regions in Three Major Markets, 2000-2006**

(Unit: %)

Market Exporter	Japanese Market		United States Market		EU Market	
	Win-Win	Lose-Win	Win-Win	Lose-Win	Win-Win	Lose-Win
Japan	-	-	1.6	36.0	1.7	37.5
Korea	<i>24.2</i>	16.4	9.7	13.3	<i>27.6</i>	8.8
Taiwan	<i>44.2</i>	20.1	<i>25.6</i>	28.4	11.9	43.2
Singapore	<i>16.6</i>	16.0	5.0	21.0	<i>21.9</i>	14.7
Thailand	<i>17.3</i>	8.8	12.4	6.6	3.1	6.1
Malaysia	<i>18.0</i>	19.3	<i>48.3</i>	3.2	<i>21.6</i>	5.7
Indonesia	3.7	5.6	11.8	4.9	1.7	14.2
Philippines	7.3	15.8	0.9	2.9	<i>25.8</i>	2.5
U.S.A.	1.9	41.9	-	-	2.1	33.8

Note: 'Win-win' figures exceeding 15% are in italics.

Source: Miyajima and Oizumi [2008], p.13.

For example, if we look at Malaysia, we see that 18% of its exports to Japan are 'Win-Win' while 19% are 'Lose-Win'; 48% of exports to the United States are 'Win-Win' while 3% are 'Lose-Win'; and 22% of exports to the EU are 'Win-Win' while 6% are 'Lose-Win'. As Table 3 clearly shows, China does not have one-sided dominance over the other East Asian countries and regions in any of the three major markets. The export value of 'Win-Win' products is quite large, and there is great variation in 'Win-Win' and 'Lose-Win' ratios according to country / region and market. Thus, by needlessly insisting that a 'Chinese menace' exists, people only invite a misunderstanding of the actual competitive relationship that exists between China and other East Asian nations.

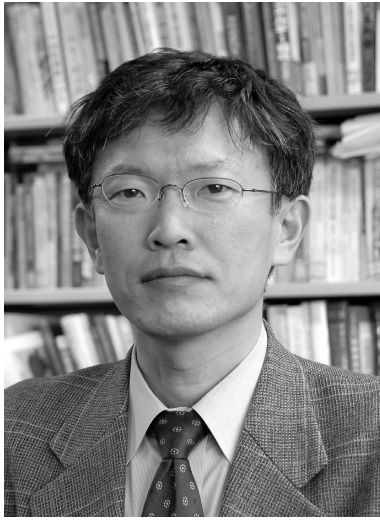
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# The Discovery of Industrial Agglomerations in China

**Marukawa Tomoo**



**Marukawa Tomoo is a Professor of Chinese Economy at the Institute of Social Science at the University of Tokyo**

Institute of Social Science  
University of Tokyo  
Hongo 7-3-1  
Bunkyo-ku, Tokyo 113-0033  
marukawa@iss.u-tokyo.ac.jp

Industrial agglomeration refers to the phenomenon in which small and medium-sized enterprises in the same or related industries concentrate in a specific region. In his *Principles of Economics* published at the end of the 19<sup>th</sup> century, the economist Alfred Marshall reported on industrial agglomeration in the United Kingdom. This was the first academic treatment of industrial agglomeration, after which the phenomenon was ‘discovered’ throughout Europe, Japan, Asia and Africa. Since the 1990s, industrial clusters, a type of industrial agglomeration formed from university and research institution spin-offs, have been gaining attention—e.g. the Silicon Valley in the United States—and countries are implementing policies to cultivate industrial clusters.

However, socialist planned economies that focus on planned industrial zoning and economies of scale are incompatible with industrial agglomeration. During China’s planned economy that started in the 1950s, industrial agglomerations that existed up to that point completely vanished;

however, they made a quiet comeback under the economic reforms of the 1980s. Until recently, industrial agglomeration was generally frowned upon as ‘disorganized, with low technical standards’. Not until the Eleventh Five-Year Plan (2006 – 2010) was the industrial cluster concept (*chanye jiqun* in Chinese) incorporated into Chinese economic policy, and the previously negative view of industrial agglomeration transformed into a positive one.

Given this, and the fact that research on Chinese industrial agglomeration has yet to advance significantly, instances of industrial agglomeration throughout China have been ‘discovered’ in rapid succession over the past few years. The aim of our research is to discover Chinese industrial agglomeration that has not been given sufficient focus until now and unlock the mechanisms behind its origins, development and decline. The first step in this process was to spend 4 months (November 2007 to March 2008) conducting field surveys of industrial agglomerations in Wenzhou city in Zhejiang Province, and Wuxi and Tianjin cities in Jiangsu Province.

Wenzhou city was the first region where industrial agglomeration was noticed after China’s economic reforms. Wenzhou is home to a collection of somewhat unrelated industries such as leather shoes, rubber and plastic shoes, synthetic leather, electric parts, lighters, valves and pumps, but each individual case of industrial agglomeration has a history.

The leather and leather shoe industrial agglomeration is one of the small-scale agglomerations that existed before the establishment of the People’s Republic which made a comeback after economic reforms. During the planned economy, this industrial agglomeration vanished, and tradesmen became laborers in state-owned companies. Under the new open-door policy, individuals were allowed to start household enterprises, so the former tradesmen turned laborers set up their

own businesses and, in turn, rejuvenated the industrial agglomeration. The plastic shoe industrial agglomeration began when the tradesmen that left the leather shoe factories started making shoes by melting scrap plastic with soldering irons. Their neighbors began imitating this practice, and over the course of several years, thousands of small plastic shoemaking operations sprang up, creating the industrial agglomeration. The industrial agglomeration for valve-making was born around 1970, right in the middle of the planned economy era. During this time, even the slightest hint of private enterprise, including farmers raising chickens in their yards, was subject to crackdown in an effort to keep capitalism at bay. Some farmers in Wenzhou started their own business under the guise of 'People's Commune-Operated Enterprise', and began manufacturing valves—which were in high demand at the time—for petrochemical factories. By the end of the Cultural Revolution, the number of valve-makers in Wenzhou skyrocketed to over 1,000 companies. Every time the government would clamp down, the valve-makers would spring back to life, and now Wenzhou has grown into the largest valve manufacturing region in China. In the 1980s, some of these companies saw the increasing demand for water pumps in high-rise apartment buildings and switched industries. Many enterprises followed suit, giving rise to an industrial agglomeration in pumps.

Several industrial agglomerations have sprung up in southern Jiangsu Province. In the 1980s, factories operated by village government agencies flourished, and this region was often contrasted to the agglomeration of small business owners in Wenzhou. Some of these village-run enterprises have since grown into massive corporations with thousands of employees. As opposed to Wenzhou, where only a handful of companies have more than 1,000 employees, the existence of industrial policies in the village government agencies is part of the reason why there are so many large companies in southern Jiangsu Province. On the other hand, southern Jiangsu Province and Wenzhou are becoming similar in nature. This is due to the increasingly large number of employees that are leaving the village-run companies to set up their own businesses nearby in the same or similar industries. For example,

400 small and medium-sized apparel manufacturing factories started by former employees of a large knitwear company nearby form an industrial agglomeration in the Zhutang district of Wuxi city. Likewise, a large apparel factory in the Changan district of Wuxi is surrounded by an agglomeration of 300 small and medium-sized apparel manufacturing factories started by former employees. This region of industrial agglomerations now includes factories in the related industries of dyeing and clothing accessories.

While industrial agglomerations in China are distributed largely along the southeastern coast in the provinces of Jiangsu, Zhejiang and Guangdong, they also exist in the north. Tianjin city is home to a bicycle manufacturing agglomeration that produces approximately 40% of the world's bicycles. Tianjin was originally the home of one of the most powerful state-owned bicycle manufacturers in China, and this industrial agglomeration was born out of a slump in state-owned manufacturing. Unable to respond to rising production costs and changing needs in the early 1990s, the state-owned enterprise went into a slump. Many workers left the enterprise to start their own businesses or to take jobs with private companies in rural areas, taking the state-run bicycle factory technical know-how with them. With the decline of the vertically integrated state-run factory that manufactured everything from parts to finished bicycles, private companies created an industrial agglomeration, with each company specializing in certain parts or finished bicycle assembly. The road to agglomeration, however, has not been easy. Since 2003, cost competition among Tianjin's bicycle manufacturers has grown fierce, as the industry is wracked by skyrocketing raw materials and personnel costs. However, in the face of trouble, Tianjin's privately-owned bicycle makers are switching over to electric bicycle production in addition to making use of new materials in an effort to ride out the storm.

In this article I described the industrial agglomerations in the 3 cities of Wenzhou, Wuxi, and Tianjin. It used to be thought that industrial agglomeration of numerous private companies was a phenomenon only limited to certain regions such as Wenzhou city; however, with private enterprises replacing state-run companies as the major play-

ers in the economy, cities such as Wuxi and Tianjin, with historically dominant industrial organizations much different than Wenzhou, are growing more and more similar to Wenzhou. The vertically integrated large bicycle company of Tianjin has since been replaced by an industrial agglomeration of specialized small and medium-sized enterprises, and the region's growth into both a domestic and an international manufacturing stronghold has been impressive. The fact that industrial agglomerations of small and medium-sized enterprises in specialized industries have more of a competitive advantage in the market over China's large vertically-integrated compa-

nies can, for the most part, be taken for granted.

Of course, small and medium-sized enterprises do not have a strong competitive advantage across all industries. In some cases vertically-integrated companies in the same industry may have the upper hand due to changes in technology. Under what conditions can industrial agglomerations demonstrate their strengths? To what extent can industrial agglomerations adjust to changes in technology and outside forces? These are the kinds of questions that we intend to consider as we continue to investigate more cases in our research.

# Chinese Foreign Aid ODA Subgroup Report

**Kawashima Shin**



**Kawashima Shin is an Associate Professor of History of Politics and Diplomacy in Asia at the Graduate School of Arts and Sciences at the University of Tokyo**

Graduate School of Arts and Sciences  
University of Tokyo  
Komaba 3-8-1  
Meguro-ku, Tokyo 153-8902  
kawashima@waka.c.u-tokyo.ac.jp

Our Subgroup consists of Takahara Akio, Professor of Chinese politics in the Graduate Schools for Law and Politics, Endo Mitsugi, Professor of international relations in Africa in the Graduate School of Arts and Sciences, myself, and Matsuda Yasuhiro, Associate Professor of Asian political history in the Institute of Oriental Culture, who joined the Subgroup in 2008.

China's astounding economic growth, rooted in foreign investment, continues in the midst of globalization. While it provides the world with cheap products, it is also expected to grow as a market itself. Now, China is turning the tables and using its financial muscle to provide aid to foreign countries as an actor in the global economy. Amidst this backdrop, even the local Japanese media now covers China's activities across the globe as it seeks to secure resources and food in a public-private joint effort. The fact that China, which is still an aid recipient with a per-capita GDP of approximately U.S. \$2,000, now actively engages in foreign aid with a focus on its national interests has shocked the world's donor nations. Most donor nations adhere to OECD-

DAC rules for development assistance, but since China is not a member, its non-compliance with these rules is considered a new problem. China does not require freedom, human rights or democracy for its ODA, and its procedures are simple, so in some respects, aid from China has been embraced more than aid from advanced nations. In addition, anti-American sentiment driven by the Iraq War helped draw some recipient nations closer to China. From China's standpoint, ODA was crucial for securing resources to maintain growth and for keeping inflation in check. Investment was not led by the private sector, but rather the government provided aid, or in some cases, the government involved the private sector in its initiatives. In other words, the delineation between aid and investment and between public and private is unclear. ODA as a government vehicle remains unregulated, and aside from what is released by the Ministry of Commerce's Department of Foreign Aid, even information on government aid is not sufficiently disclosed.

In light of this, the ODA Subgroup must delve into a very gray area. Our research covers China as well rival Taiwan, and has taken to recipient nations, including those in Africa. Our aim is to create a precedent by clearly determining how China is actually implementing aid and investment. The outcomes of this research will provide an important key for understanding the global expansion of China's economy and shall contribute to the overall Research Base. We also expect to develop synergies with research on Africa, the cross-strait relationship, Chinese diplomacy and global governance to create an interdisciplinary field. For this reason, we planned collaborations with domestic and international Africa researchers and have already begun implementing some of these projects.

Activities are divided into research seminars and research. In the 2007 academic year, we held the following research seminars at the Komaba Campus. All sessions were open to the public. The first seminar (2007.12.05) featured a report by Wu Jinan of the Shanghai Institute for International Studies on the topic of 'China's Diplomatic Relations with Africa'. The second seminar (2008.01.23) featured a report by Hirano



Katsumi of the Institute of Developing Economies on the same topic, 'China's Diplomatic Relations with Africa'. In the third seminar (2008.02.28) Dr. Christopher Alden, a Senior Lecturer in the Department of International Relations, London School of Economics, introduced and led discussions on his book—*China in Africa (African Arguments)*, Zed Books, 2007. These presentations provided us with insight on China's presence in Africa, perspectives on both sides of China-Africa relations, and information on trends in research on these topics. These sessions all served as briefings for the field research we conducted in February and March.

Field research was conducted in Ethiopia and Tanzania by Professor Takahara and in South Africa and Malawi by Professor Endo and myself. Reports on this research were presented at the 4<sup>th</sup> research seminar, the China in Africa Mini-Workshop, held on June 6th. Professor Takahara's 'China's Advancement into Tanzania and Ethiopia', my 'Malawi's Anti-Taiwan Pro-China Diplomacy and Chinese Aid', and Professor Endo's 'The African Standpoint on Chinese Aid' all noted the features of Chinese foreign aid and the wide-ranging involvement of China in Africa. Professor Takahara's report pointed out that 'assistance' is not clearly defined and the concept of 'ODA' has not yet been established in China. Official aid to Africa falls under U.S. \$1 billion according to the supervising Ministry of Commerce's Department of Foreign Aid (operated in-country by the embassy commerce sections). Chinese banks handle aid loans and charge a high 2% interest rate across the board. Professor Takahara also profiled the diverse types of Chinese citizens in Tanzania and Ethiopia. He especially noted the large number of Chinese nationals in these countries, both laborers and engineers alike. He divided actual assistance projects into 2 types: projects for the establishment (i.e. parliament building construction) and projects for the people (i.e. soccer stadium construction). Looking at the overall picture, China is entering a transition period as an aid donor, and at this time they are trying to learn the rules for development assistance.

Reports by Professor Endo and myself examined the course of events leading up to Malawi's cessation of diplomatic relations with Taiwan at the end of 2007 in favor of ties with China. We attempted to illustrate the machinations of Chinese foreign aid from the 3-way relationship between China, Taiwan and Malawi. The issue of government approval is a key factor in Chinese

diplomacy in Africa. Landlocked Malawi was alarmed by the surrounding countries of Mozambique, Tanzania and Zambia that were progressing with nation-building due to their friendly ties with China. It thought it would be isolated in the region. China then offered to establish diplomatic ties with Malawi and proffered a generous aid and investment package. With an eye on the upcoming elections, the President seized the initiative and sealed an agreement in a short time-frame. Taiwan and its low-key economic cooperation to date were no match for China's financial might. Malawi explains its relationship with China in terms of national interest in a domestic context, not in terms of threat. As was the case with Zambia, relations with China are sometimes merely an election issue. However, developed nations' ambassadors stationed in Malawi are trying to involve China in the group of donor nations, and China is showing signs that it will agree to certain conditions.

In this article I have reported our research outcomes to date. Commentator Hirano Katsumi and many others have given us several issues to ponder. In the 2008 academic year, we shall build on these achievements, and with our new member Matsuda Yasuhiro, we aim to select regions for field research, including regions outside of Africa. We are also planning to hold research seminars every other month.



Taipei Park in Malawi



The Rand Confucius Institute in South Africa

# The Beijing Research Base

## Kajima Jun



**Kajima Jun is a Project Research Associate of the Contemporary China Research Base at the Institute of Social Science at the University of Tokyo**

Institute of Social Science  
University of Tokyo  
Hongo 7-3-1  
Bunkyo-ku, Tokyo 113-0033  
kajima@iss.u-tokyo.ac.jp

The University of Tokyo Institute of Social Science's (ISS) Beijing Research Base was established in the Institute of Economics of the Chinese Academy of Social Sciences (CASS) to encourage effective in-country research and research exchange for the ISS Contemporary China Research Base. This Base was established in April 2007, and the Research Base is the fruit of a memorandum on academic exchange concluded by ISS and the CASS Institute of Economics on October 28th of the same year.



The Beijing Research Base host institution, the CASS Institute of Economics, is located southwest of the Fucheng Gate, one of the old Beijing city gates. It is one of China's premier economic research institutes. Its history dates back to 1929, when its preceding organization—the Institute of Social Survey of the Chinese Education and Culture Foundation—was founded. It later merged with the Institute of Social Sciences of the Academia Sinica. The Institute as it is organized today was formed after the establishment of the People's Republic of China in 1949 (it changed its name to CASS in 1977—see <http://ie.cass.cn/index.asp>). The Institute has grown to house 8 research departments with 145 researchers. In addition to its active research, the Institute's library, renowned as a treasure trove of materials on Chinese society and economy since the days of the R.O.C., attracts many scholars of Chinese economics.

The Beijing Research Base was launched sharing space and staff with the Underdeveloped Economic Center of CASS. Center Director Yuan Gangming is one of the overseas joint researchers with the ISS Contemporary China Research Base, and he has been cooperating closely with the Base on joint research. With the support of this Research Center, the Beijing Research Base serves to assist ISS Contemporary China Research Base researchers with their in-country research, library materials collection and research exchange. With this we expect to further develop the research activities of the Contemporary China Research Base.





## The Contemporary China Research Base Photo Gallery (Photos by Tajima Toshio)



The face of the “new socialist countryside”  
(Donghan village, Hu county, Shaanxi province)



A row of plastic greenhouses, used for growing watermelons (Tongxing village, Hu county, Shaanxi province)



A starch factory (Hu county, Shaanxi province)



A milking plant at a ranch (Wangfang village, Hu county, Shaanxi province)



A bazaar in a rural village (Hu county, Shaanxi province)

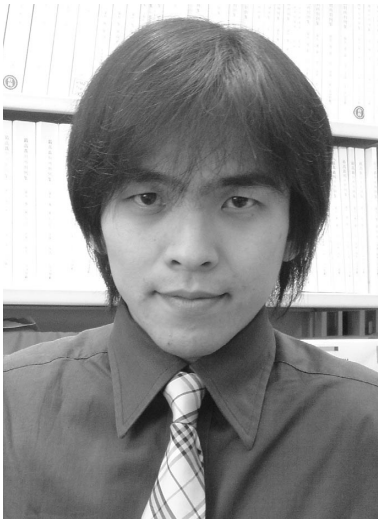


A herd of cows at a ranch (Wangfang village, Hu county, Shaanxi province)

# History, Institutions, and Jurisprudence

*A comparative contextual approach to the analysis of contract law*

## Ishikawa Hiroyasu



**Ishikawa Hiroyasu is an Associate Professor of Civil Law at the Institute of Social Science at the University of Tokyo**

Institute of Social Science  
University of Tokyo  
Hongo 7-3-1  
Bunkyo-ku, Tokyo 113-0033  
hiroyasu@iss.u-tokyo.ac.jp

### Comparative Contextual Approach to Contract Law

My field is civil law and my research is particularly focused on problems related to contracts. Contracts are one of the most important instruments individuals have when forming their self-autonomous realms. At the same time, contracts function only when legal and social systems support them. In thinking about the role of law in the relationship between individuals and society, the issues within contract law provide very interesting material. On the other hand, as is obvious from the rules in the present Japanese civil code, the origins of many of these varied rules in the Japanese civil code can already be found present in Roman law more than 2,000 years ago. Of course, this is not the result of serendipity. It is not that the present Japanese legal rules just happen to be the same as those in Roman law. It is nothing more than the result of long years of academic work by legal scholars consciously using and continuing to develop those various Roman

legal rules and principles. One of the reasons I focus my research on contract law is that I think it is possible, through investigations related to contract law, to get down to more fundamental insights concerning the society and history that formed the context of contract law. I think that only by this kind of contextual analysis of society, institutions, and history can an analysis of contract law be more precise and articulated.

### The Modern Restoration of *numerus clausus* and *natura contractus* in Contract Theory

With this contextual-based approach to the study of contract law, I have until now written a number of publications that I would like to discuss here, starting with a series of essays concerning the doctrine of good faith and contract categories. Among these publications, my primary work is a series of articles entitled the 'Theory of *natura contractus*' (*Keiyaku no honsei no hōiron*), which I first discussed at the 2005 meeting of the Japan Association of Private Law, and later published in the *Journal of the Jurisprudence Association* (*Hōgaku kyōkai zasshi*) between 2005 and 2007. The central issue considered in these articles is the trichotomy of contractual obligations, which classifies the content of contracts into the three elements of *substantialia*, *naturalia*, and *accidentalialia*. Today, this trichotomy has been widely adopted through the contract law of various countries belonging to the civil law system that includes Japan.

In the trichotomy, the general understanding of each of the three elements is that, first, *substantialia* are the elements which, without an arrangement on, a contract cannot come into being (e.g., the price and the object in a contract of sale, etc.). Next, *naturalia* are those elements that should flow from the category of the contract and, even without the agreement of all parties pertaining to those matters, become terms of a contract and may be excluded by the agreement of the parties (e.g., a seller's liability for eviction, etc.). Finally, *accidentalialia* are those elements that are unessential



parts of the category of the contract, and therefore first come into being due to the special arrangements of the parties pertaining to those matters and, even in the absence of such arrangements, do not hinder the contract from existing. To date, the common understanding on the origins of the trichotomy of contractual obligations is that it was developed in the Middle Ages under the influence of Scholastic philosophy, with Baldus de Ubaldis in particular making the greatest contribution to formulating and crystallizing the logic of the trichotomy. However, this understanding is decidedly superficial because it only focuses on a resemblance between the elements of the trichotomy and the Scholastic concepts. To revise our understanding of the trichotomy, it is necessary to make a historical and contextual investigation into some problems regarding what legal issues the trichotomy was related to during its generative process and what relation the trichotomy had to the Roman legal concept of *natura contractus*, which is a prototype version of the trichotomy.

In pursuing historical investigations into these problems, my articles make the following arguments. Namely, while the theory of *natura contractus* (nature of contract) was concerned with an extension of *actio* (the right of action) within the Roman law of contracts, when looking at Roman legal texts related to this theory, the usage of the word of *natura* found therein is divided into instances which use either the meaning of *substantialia*, or the meaning of *naturalia* in the trichotomy. Of these two, the cases about *natura* using the meaning of *substantialia* present an extremely broad range of legal issues that do not necessarily allow for the detection of a unified context for the issues. In contrast, most of the cases about *natura* using the meaning of *naturalia* are related to the protection of *pacta adiecta* (informal ancillary agreements) that were appended to *bonae fidei contractus* (contracts of good faith) and the extension of *actio* in *bonae fidei iudicia* (actions of good faith). The following are specific examples in the texts of *Corpus Iuris Civilis*:

- D.2.14.7.5 prescribes that *pacta ex intervallo*, which are *pacta adiecta* appended with the interval from the conclusion of a contract, don't produce a right of action but a right of defense when it is appended *extra naturam contractus*

(away from the nature of contract).

- D.19.1.11.1 prescribes that the terms naturally included within the scope of the buyer's right of action, even if there are no arrangements of the parties for them, become the contents of the buyer's right of action.
- D.19.5.5.4 prescribes that *pacta adiecta* in a contract of mandate can override the *natura* of the contract of mandate.
- D.16.3.24 prescribes that *pacta adiecta* that causes the charging of interest before falling into arrears with respect to *depositum irregulare* (deposit for consumption) infringe on the *natura* of *depositum* and *bona fides*.
- D.2.14.27.2 prescribes *pacta ex intervallo* as *actus contrarius* (contrary act) that subsequently dissolve *pacta in continenti*, which are *pacta adiecta* appended at the same time of the conclusion of a contract, cause the return to the legal position which the law has assigned to *natura*.

In this way, the theory of *natura contractus* which works within the meaning of *naturalia* in the trichotomy serves to provide a theoretical framework to extend the right of action in *bonae fidei iudicia*, simultaneously enclosing this extended protection within a scope that can maintain the unity of the original terms of the contract. By beginning with this limited kind of problem, the inherent significance of the theory of *natura contractus* can be found in the context of legal rules of Roman law. Namely, in the contract system of Roman law where contracts with protection through action were restricted to *numerus clausus* (closed number), the theory of *natura contractus* relieves the constraints of *numerus clausus* to some extent by allowing a more flexible structure of contract type and serves to substantially maintain *numerus clausus*.

In the medieval period when the trichotomy (namely the theory of *substantialia*, *naturalia*, and *accidentalialia*) emerged as a derivative version of the theory of *natura contractus*, the problem originally concerning this theory overlapped with the context of the problems in the theory of *natura contractus* known as the legal rules for *pacta adiecta*. In this way, through the relation to the theory of *natura contractus*, the trichotomy deeply connected to the juridical structure of a discretionary judgment by *arbiter* in *bonae fidei iudicia*

and the doctrine of *bona fides* which lies at the foundation of *bonae fidei iudicia*. The trichotomy also implied that it required a specific type of social foundation as functional and environmental conditions, such as the structure of Roman society during the Late Republic, which made transaction norms derived from *fides* (faith) between *boni viri* (men of virtue) customary in commercial relationships among the cities around the Mediterranean and constituted the background for the wide prevalence of the relation of *bona fides*. Even in modern contract law, the trichotomy of contractual obligations is used in relation to various kinds of issues and, on those occasions, one must bear in mind the structuring based on the social context and the presuppositions as above.

In the contract law of the civil law system of modern France, Germany, Japan, and elsewhere, the trichotomy of contractual obligations serves to confirm the scope of an agreement required for the conclusion of a contract, to supplement contractual obligations beyond the arrangements of the parties, and to regulate the clauses which are in conflict with the essence of the contract which can't be excluded from the contract type (e.g., the theory of *obligation essentielle*, that is the French juridical precedent pertaining to the regulations for exemption clauses, as well as Art.307, par.2, subpar.2 of the German Civil Code, concerning the regulation for a clause in a standard contract form which restricts cardinal rights and obligations arising from the nature of the contract). Accordingly, the trichotomy, on the basis of a qualification as a contract type, supplements the terms of a contract that should have naturally been provided for in the contract type and denies the validity of clauses which conflict with the essence of the contract type. In this way, the trichotomy makes the contractual obligations more typical and standardized. This kind of modern functioning of the trichotomy is delineated that it is realized by the trichotomy to revive the system of *numerus clausus* of contract types in a compatible form with consensualism (*pacta sunt servanda*), which substantively guarantee the effectiveness of consensualism.

#### **A Sociological Contextual Approach regarding Trust and the Doctrine of Good Faith**

My research relating to the theory of *natura contractus* and the trichotomy of contractual obligations is part of a project concerning the doctrine of good faith. While based on the historical context pertaining to the doctrine of good faith that is in the doctrine of *bona fides* and the legal regulations in *bonae fidei iudicia*, this research aims to clarify the functions of the doctrine of good faith in modern contract law and its functional conditions. Because one of the most important functions of the doctrine of good faith is characterized by the incorporation of conventions and social norms, it requires a more multi-layered contextual approach through a sociological analysis concerning the structure of social norms and their function.

Concerning these issues, I have published several articles on trust and social institutions with reference to interdisciplinary studies on trust that have ranged broadly across sociology, psychology, economics, and biology over the last decade. While seeking to understand trust as cooperative behavior resulting from rational calculation based on given incentive structures, I emphasize that trust and law indirectly facilitate the formation of trust relations and the rationalization of the content of trust through offering sources of motivation for trustworthiness. Based on this thinking, conventions and social norms serve an important function as sources of trust and trustworthiness along with law. Through the doctrine of good faith, trust and trustworthiness are raised to the level of law while being provided structure as contractual obligations.

Of course, regarding the incorporation of social norms, social norms must include content that can be reasonably expected by the concerned parties. For that reason, it is necessary to grasp contract as a categorical existence appearing in the actual practice of transactions and confirm the content of social norms that are categorized for each type of contract. From this perspective, if there is a need for the restoration of the system of *numerus clausus* of contract types in modern contract law, the contract types that should be presupposed when social norms are incorporated through the doctrine of good faith must be the more specific and practical types of contracts (e.g., selling of real estate, installment sales, etc.),

which are subordinated to the contract types in the civil code (e.g. sale, lease, etc.). Accordingly, it is necessary that social norms which are to be incorporated be socially connected with the category of contract, but it is unnecessary that the social normative order be intersubjective. A social normative order must be viewed self-evidently in the subjective semantic relation of each individual for it to be sufficient for the order to function institutionally. This perspective of the structure of social norms is based on the phenomenological sociological view of institutions about what is necessary for norms to function as an informal institution. This is one more conclusion that can be stated as a result of an analysis of the doctrine of good faith using a sociological contextual approach.

### **Toward a Multi-layering of Context of Law through Pluralistic Interdisciplinary Studies**

Besides the articles I introduced above, I have also published some articles regarding hardship in contracts. With regard to hardship in the legal systems of various countries, the frequent result of hardship is to adapt or terminate a contract, but as a preliminary step, it must be emphasized that it is important for parties to first be encouraged to an autonomous renegotiation to revise a contract. From this point of view, the obligation to renegotiate, instituted as a legal obligation in cases of hardship, should be theoretically designed for supporting a value-creating process through autonomous renegotiation. Consequently, the obligation to renegotiate should be separate from the effects, as the adaptation and termination of a contract aim for some fixed result, and inherent conditions and sanctions should be given to it. This perspective is based on some insights from negotiation theory that have been

advancing with research centered on the Harvard Negotiation Project, etc. In this area, I also perform analyses from a comparative contextual approach that relies on insights from interdisciplinary research.

Since the late nineteenth-century, Japanese codes for civil and commercial law have been modeled on Western law, and legal studies in Japan has developed with a focus on comparative legal research examining the legal institutions of Japan and various Western countries. The adoption in Japan of Western legal institutions also means that Japanese law stands in direct relationship with the history of law and jurisprudence in Western law and that research from a historical approach based on this view holds even more significant meaning. Of course, it is necessary to approach the structure of legal systems multilaterally, not only from a historical perspective, but also from various contextual approaches regarding institutions, society, etc. In my research, I believe it is important analytically to get down to the various contexts based on the law. Fortunately, at the Institute of Social Science, it is possible to have many opportunities to debate and carry out collaborative research with my economist and sociologist colleagues. While making maximal use of this environmental advantage, I endeavor to bring the precision and diversity of comparative contextual approaches to an even higher level.

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# Questions and Answers with Visiting Professor

## Dimitri Vanoverbeke



Professor  
Faculty of Arts  
Japanese Studies  
Catholic University of Leuven  
(Visiting *Shaken* from July 1 to September 29, 2008)

### Q. How did you first come to know about *Shaken*?

I have known of *Shaken* since I spent a year and a half in 1992-1993 in the law faculty here at the University of Tokyo. At that time I attended a seminar on the sociology of law taught by Professor Toshitani Nobuyoshi. That seminar undeniably stimulated my academic interest, and I still have very positive memories of Professor Toshitani. Later, I met with Professor Sato Iwao when he was in Belgium briefly for research on legal statistics in various European countries. Professor Sato explained about the possibility of applying to stay at *Shaken* to conduct research, and knowing the high standard of research conducted at *Shaken*, I did not hesitate to take advantage of the opportunity, with the positive result of being granted a three month stay.

### Q. What is the main purpose of this visit?

The main purpose of my visit is to study judicial reform in Japan. I am not only interested in the judicial reforms which are currently changing the judiciary in Japan, but I am also interested in the judicial reforms in modern Japanese history. I am now mainly studying the establishment and changes in the judicial institutions in Meiji and Taishō Japan. Aside from the characteristics and functions of the

judicial institutions in Meiji and Taishō Japan, I am looking at the policy-making process in the field of justice in that period. This permits to see a broader, dynamic picture of the development of law, politics and society. I am convinced that the historical process of reform is very relevant for the current judicial reforms when we consider this as the result of a political process. More specifically, my research at *Shaken* first focuses on the experience of Japan with the popular jury system in the late 1920s and the 1930s. Of course this topic is related to the current measures to establish the mixed-court system with lay assessors in the judicial process from May 2009. It is very interesting to study why and how Japan established a jury system in 1923 as it ran counter to the general idea of law in the period, that the court was a scary place which had to remain far from the people's regular lives.

The second specific focus of my research at *Shaken* is a very interesting and polyvalent savant: Osatake Takeki. He liked to call himself the “useless savant” (*muyō hakase*) but Osatake was everything but useless as he still influences leading scholars in various disciplines today. Osatake was a Supreme Court judge from 1924 till 1942. He received a doctoral degree from the law faculty of the University of Tokyo, created the Meiji Culture Research Association (*Meiji bunka kenkyukai*) with Yoshino Sakuzo and others, and was a professor of law at Meiji University. Osatake became a judge at age 19 and in his early career he was confronted with the lack of knowledge of the law by regular people, and of the lack of understanding of the lives of regular people by lawyers. This was the starting point of his scientific interest. The first books he wrote were on the customs and punishments on the islands of Niijima, where he was assigned as a judge in 1908. Later, he also became a judge in courts in Fukui, Nagoya and Tokyo, mainly specializing in criminal cases. Osatake, as a judge, apparently regularly met petty criminals such as gamblers and pickpockets and became interested in the techniques they used. It is reported that he did not hesitate to ask pickpockets to explain and demonstrate their skills so that he could understand this (he called it an “art”) better. This judge of the Supreme Court of Japan became a



specialist on the issue and wrote a reference work on gambling and pickpockets in 1920. Another focus of Osatake is the modernization of justice in Japan. First, he studied the path to establishing the Meiji constitution in detail, and was awarded a doctoral degree at the law faculty of the University of Tokyo for this research. Second, he studied the historical process towards the establishment of the jury system in Taishō Japan.

Osatake's books actually were among the first studies on law in Japan from a historical and socio-legal perspective. Osatake's numerous studies are sometimes quoted in major studies on Japanese history, but his work and ideas have never thoroughly been studied. He focused on the legal customs or the so-called "living law" which was new in a period when most legal scholars studied law as it was in Europe or in the United States. Osatake demonstrated that the newly imported foreign legal codes actually had a very fruitful ground of Japanese customs and institutions which were not so different, but rather similar to the "new" legal institutions and legal thinking. Indeed it is surprising that an approach such as Osatake's existed as early as the 1920s in Japan.

Here at *Shaken*, I have the opportunity to talk with specialists in various fields, such as historians, sociologists, sociologists of law and many more on the above-mentioned points of interest. I am also very fortunate to find many written sources such as diaries by policy entrepreneurs (Sasaki Takayuki, Hara Takashi, etc.) who were involved with the reform of justice in prewar Japan, and to find many documents on and by Osatake Takeki.

**Q.** What are your current research interests?

My current research is on policy-making in the field of the judiciary, focusing on Japan. There are very challenging theoretical developments in the field of public policy-making and in research on the history of institutions. I am particularly interested in the dynamics of policy-making over an extended period of several decades, and I try to include several factors to explain changes and stability. Those factors include the public discourse on a certain subject, economic developments and the power balance between political parties as well as the efforts of particular actors in a certain period, or incidents

such as scandals which can have an important effect on the development of institutions and their functions.

Societies are dynamic but dynamism in certain fields, such as judicial institutions, is not always as strong at some times compared to other times. I want to try to explain factors behind periods of relative stability and periods of rapid change. This is the current focus of my research.

**Q.** What do you like about *Shaken*?

I like very much the interdisciplinary nature of *Shaken*. I had the opportunity to present my research at the *Shaken* Staff Seminar and was surprised that scholars from a wide range of disciplines attended. I talked about the modernization of judicial institutions in Meiji and Taishō Japan and Osatake Takeki. After the presentation, the *Shaken* staff-members sliced my presentation into many parts: history, law, sociology, economics and more. I am grateful for the valuable feedback I received then. This certainly is the first aspect I like very much at *Shaken*, because the interdisciplinary character of these institutions makes you think about issues which you do not consider when staying in your own field or approach. The presence of faculty members at *Shaken* from various disciplines is indeed valuable for me because the topics I tackle transgress the discipline of legal studies. I also want to stress that the collection of sources here at *Shaken* is impressive, although I only had a limited time to use the library this time due to construction going on around the *Shaken* building. Still, I can find much interesting data and documents useful for my research at the other libraries in the Hongō campus of the University of Tokyo. The location of *Shaken* is an additional merit, allowing me to further my research. Finally, to be freed from teaching obligations is very advantageous for my research. I think that this research institute inside the University of Tokyo is unique, and is a perfect environment to conduct high level research. I would like to take this opportunity to express my sincere gratitude to Professor Sato Iwao and to Professor Komorida Akio as well as to the administrative staff of *Shaken* who were instrumental in arranging this stay.

## ISS Contemporary Japan Group at the Institute of Social Science, University of Tokyo

*The ISS Contemporary Japan Group serves as a forum for researchers on Japan to receive critical feedback on their work. Researchers visiting Tokyo are invited to contact Professor Ishida Hiroshi (ishida@iss.u-tokyo.ac.jp) for more information if they would like to make a presentation. Meetings are open to everyone.*

*Photo by Morita Hidetsugu (ISS).*



**Assistant Professor of Sociology, Bryn Mawr College**

**Takenaka Ayumi**

*Re-Migration of Immigrants and Its Consequences for Japan  
July 7, 2008*

**Abstract:**

With growing human mobility and ageing populations, many rich countries are competing to attract “desirable” immigrants with high levels of human capital. Within this context, there is concern in Japan that it is losing to other countries, such as the US, in attracting such immigrants. Although the number of foreign migrants in Japan has steadily increased in recent years, a significant

number of them, particularly skilled migrants, have re-migrated from Japan. While studies on international migration have primarily focused on migratory flows from poorer countries to richer ones, more and more immigrants today re-migrate to North America via Western Europe and Japan, using one rich country as a stepping-stone to reach their final destinations.

Why do immigrants re-migrate from one rich country to another, despite the countries’ comparable economic status? How do migrants choose destinations, or how do rich countries succeed or fail in attracting the kinds of immigrants they desire? This presentation examines the causes of re-migration, focusing on South and East Asian and Latin American re-migratory flows from Japan to the US, and the possible consequences for Japanese society.

Based on interviews and quantitative analysis I have conducted so far, I find that an important cause of re-migration lies in the patterns of immigrants’ racial/ethnic integration and social mobility. Chances of immigrants’ upward social mobility are relatively limited in Japan, compared to the US, and this often has to do with the way they are treated and perceived as racial and ethnic minorities.

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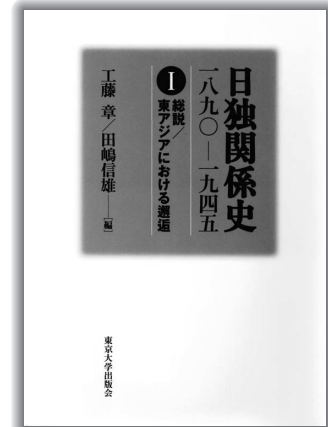


工藤章・田嶋信雄（編）

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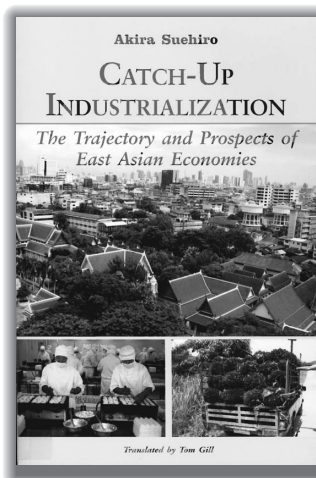
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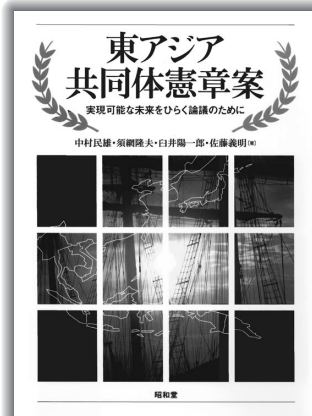
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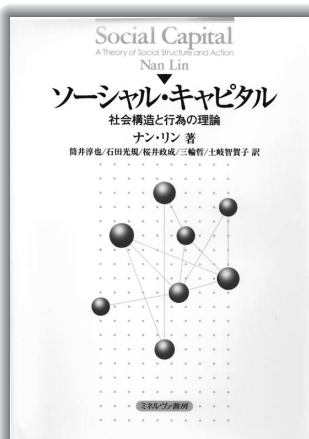


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