

# Japanese Perspectives on Long Term Contracts

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## Key points

1. The influence of Confucian thinking on Japan's legal system is said to have created a general preference for vaguely defined contractual terms coupled with flexibility to accommodate change in circumstances over the course of a contract's duration.
2. After World War II, the concepts of good faith, impossibility of performance and changed circumstances became increasingly important doctrines of Japanese law concerning long term contracts.
3. Contracts for the supply of iron ore, coal and LNG from Australia to Japan successfully combined a need for long term supply commitments with good faith negotiation of prices and flexibility to deal with change in circumstances.
4. Coinciding with the loss of dominance of the Japanese as the most important buyers of raw materials from Australia, there has been an increasing use of shorter term contracts and shorter term indexed based pricing in place of good faith price renegotiation clauses and a reduced reliance on clauses to address change in circumstances.

During the 1970s and 1980s, when it seemed that Japan was poised to challenge the dominance of the Western economies, it became very popular to highlight the differences between Japanese and Western (especially American) approaches to the law and to explain them by reference to the differences in cultural heritage. It was said that, on account of the continuing influence of Confucianism, the Japanese preferred a non-confrontational approach and placed emphasis on maintaining social harmony rather than the assertion of the individual's rights and benefits.

It was further asserted that the Japanese would resist lengthy and detailed contracts, as this implied suspicion or lack of trust. Instead, it was said that the Japanese had a preference for vaguely defined terms and indeterminate commitments, so as to allow for future flexibility and adjustment to accommodate any unforeseen circumstance.

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