ACCESSION OF JAPAN

Note by the Executive Secretary on the Communication from the Japanese Government of 4 August 1953

In paragraph 5 of the communication from the Japanese Government it is suggested that "the CONTRACTING PARTIES might agree to an arrangement or formula whereby during the period before tariff negotiations can be arranged, Japan's commercial relations with contracting parties would be regulated by the General Agreement." If such a proposal should commend itself to the CONTRACTING PARTIES, various methods could be used to achieve that result. It appears from the statement made to the Intersessional Committee by the representative of Japan, in explaining the memorandum submitted by his Government, that the Japanese Government has in mind that Japan could provisionally accede to the Agreement through an arrangement analogous to that followed in the past for accession under Article XXIII. This method would involve a decision to be adopted by two-thirds of the contracting parties, agreeing to such provisional accession on the terms embodied in a formal protocol. The decision and protocol would contain provisions similar to those of the instruments drawn up at Annecy and Torquay.

The Japanese memorandum, however, does not specify any particular formula and it would appear that the same practical result could be achieved by a collateral arrangement between the CONTRACTING PARTIES and the Government of Japan, which would be less elaborate. The following draft of such an arrangement has been prepared in the form of a decision by the CONTRACTING PARTIES, and this is followed by an alternative arrangement which would require the signatures of contracting parties as well as of Japan.

DRAFT DECISION FOR THE PROVISIONAL PARTICIPATION OF JAPAN IN THE GENERAL AGREEMENT

CONSIDERING that

(1) the Government of Japan on 18 July 1952 made a formal request to accede to the General Agreement in accordance with the provisions of Article XXIII,
(2) a condition precedent to proceeding with this application would be the holding of satisfactory tariff negotiations between the contracting parties and Japan,

(3) it is not at present possible for arrangements to be made for such negotiations in the near future,

(4) accordingly it is not possible for the CONTRACTING PARTIES to proceed at this time with Japan's application to accede,

(5) at the Seventh Session it had been recognized that Japan should take her rightful place in the community of trading nations,

(6) the Japanese Government being committed by the Peace Treaty of September 1951 to accord to each of the Allied Powers most-favoured-nation treatment on the basis of reciprocity and has in fact been voluntarily complying with the principles of the General Agreement in its relations with contracting parties whether or not such treatment was reciprocal,

THE CONTRACTING PARTIES DECIDE that

(a) pending the conclusion of tariff negotiations with Japan with a view to the accession of that country under the provisions of Article XXXIII, the commercial relations between contracting parties and Japan shall be based upon the provisions of the General Agreement, in the sense that during such period Japan shall be subject to all the obligations and shall receive all the benefits of the General Agreement as applied pursuant to the Protocol of Provisional Application;

Note: Paragraph (a) should be read in the light of paragraph (g) regarding the period of application of this Decision.

(b) Japan shall have the right to participate in sessions of the CONTRACTING PARTIES and of subsidiary bodies established by the CONTRACTING PARTIES;

Note: Under this arrangement Japan would not be a contracting party under the provisions of Article XXXII and therefore it would be necessary to make it clear that Japan would have the right to participate in meetings of the CONTRACTING PARTIES for joint action under Article XXV. It might also be necessary to specify the effect of a vote by Japan in cases where there are special majority requirements in the Agreement.

Japan would presumably contribute to the budget of the CONTRACTING PARTIES on the same basis as the contracting parties; it would not appear necessary to provide for this in the decision, but it should be dealt with as was done in the case of acceding governments.
(c) pending the conclusion of tariff negotiations with Japan with a view to the accession of that country under the provisions of Article XXXIII, the Japanese Government shall accord to the commerce of each contracting party treatment no less favourable than that provided for in the Schedule annexed to this Decision and subject to all relevant provisions of Article II;

Note: The Japanese Government has promised to submit a draft of its schedule not later than the opening of the Eighth Session. This is intended to place the Government of Japan, when entering into tariff negotiations, in the same position as an acceding government. Whereas the obligations of the CONTRACTING PARTIES provided for in their schedules to the Agreement would remain valid, subject to action under Article XXVIII, the bindings granted by Japan under paragraph (c) would cease to have validity at the conclusion of the negotiations and thereafter the only tariff obligations of Japan would be those which result from the negotiations.

(d) the obligations assumed by the Japanese Government pursuant to paragraph (c) shall be identical with and subject to the same conditions as those accepted by the contracting parties with respect to the concessions embodied in their respective schedules to the General Agreement;

Note: This paragraph is intended to make it clear that the Government of Japan would be subject to any self-denying ordinance which the contracting parties may accept concerning their right of recourse to the provisions and procedures of Article XXVIII. If no action is taken by the CONTRACTING PARTIES with respect to Article XXVIII, the Japanese Government would have the same right of recourse to that Article as a contracting party.

(e) the acceptance of this Decision shall not prejudice in any way the judgment of any contracting party on the decision, whether or not, following appropriate tariff negotiations, to agree to the accession of Japan under the provisions of Article XXXIII; in particular, concurrence in this Decision shall not prejudice the right of any contracting party upon the accession of Japan under the provisions of Article XXXIII to invoke the provisions of Article XXXV in accordance with its terms;

(f) this Decision shall enter into force upon the favourable vote of two-thirds of the contracting parties and signature by the Japanese Government; it shall be effective between Japan and any contracting party, which has recorded a favourable vote at the time of its adoption or thereafter, on the date of signature by Japan or the date on which the favourable vote of that contracting party is recorded, whichever is the later;

Note: The phraseology of this paragraph is complicated. In the first place, it has been thought desirable to enable a contracting party,
which has not recorded a favourable vote at the time of the collective vote of two-thirds of the contracting parties, to record a favourable vote subsequently. Secondly, just as a contracting party not recording a favourable vote would not assume any obligations towards Japan, so Japan would not assume any obligations towards that contracting party.

(g) the arrangement embodied in this Decision shall cease to be applied as from 30 June 1955 unless prior to that date tariff negotiations with Japan with a view to the accession of that country under the provisions of Article XXXIII have been completed or this Decision has been renewed.

General Note: It is contemplated that, if any contracting party which proposes to accept this Decision so desires, the CONTRACTING PARTIES before voting on the Decision should (provided the recommendation proposed by the Committee on this point commends itself to the CONTRACTING PARTIES) adopt the interpretation of Article XXXIII and the consequent procedures proposed in document L/76.

Alternative Formula

DRAFT ARRANGEMENT FOR THE PROVISIONAL PARTICIPATION OF JAPAN IN THE GENERAL AGREEMENT

The Governments which are contracting parties to the General Agreement on Tariffs and Trade on the date of this Arrangement and the Government of Japan CONSIDERING that

1. the Government of Japan,...
2. a condition precedent to...
3. it is not at present possible...
4. accordingly it is...
5. at the Seventh Session...
6. the Japanese Government...

As in the Draft Decision above with appropriate changes of form.
HAVE through their representatives agreed as follows:

1. Pending the conclusion ...;

2. Japan shall have the right ...;

3. Pending the conclusion ...;

4. The obligations assumed ...;

5. The acceptance of this ...;

6. This arrangement shall enter into force when it has been signed by two-thirds of the contracting parties and by Japan; it shall be effective between Japan and any contracting party, which has signed it at the time of its entry into force or thereafter, on the day of signing by Japan or of that contracting party, whichever is the later.

7. This arrangement shall ...;

As in paragraphs (a) to (e) in the Draft Decision above with appropriate changes of form.