ALTERNATIVE PROTOCOLS FOR ACCESSION BY JAPAN
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Annex to this document is a draft protocol for the accession of Japan, for consideration by the Tariff Negotiations Committee. It will be seen that it differs in certain important respects from the model Protocol of Accession approved by the CONTRACTING PARTIES (Basic Instruments and Selected Documents, Volume I, pages 111 through 114). The model Protocol would not be open for signature until after a favourable decision on accession had been taken by the CONTRACTING PARTIES. In view of the important considerations in favour of opening the Protocol for signature at the earliest possible date and in any event before 12 June which have been explained to Heads of Delegations in a confidential communication from the Executive Secretary, the form suggested is based upon that used at the end of the Annecy negotiations. The most important respects in which this form differs from the model Protocol, are:

1. Signature of the Protocol would constitute a favourable vote on the accession of Japan, thus making unnecessary a separate decision by the CONTRACTING PARTIES;

2. Signature of the Protocol by the negotiating governments can take place promptly after the conclusion of negotiations, without waiting for the favourable vote on accession;

3. In order to make it possible for governments thus to record the results of the negotiations without waiting for legislative or other action that may be required in order to bring the tariff concessions into effect, the Protocol provides that the schedule of any negotiating contracting party would come into effect only after a specific notification of its intention to apply the concessions has been received by the Executive Secretary.

An Alternative Draft

In case the Tariff Negotiations Committee should consider it desirable to hold a separate vote on accession, an alternative to the draft Protocol in the Annex would be to preserve the features of the Annecy Protocol mentioned in 2 and 3 above, but, consistently with paragraph 6 of the Standard Procedures (Basic Instruments and Selected Documents, Volume I, page 111) circulate a decision on which contracting parties would be asked to cast their votes. This procedure
would differ from that foreseen for the model Protocol, however, in that the Protocol would be open for signature without waiting for the decision on accession and would come into effect thirty days after the decision.

If the Tariff Negotiations Committee should prefer this formulation, the following changes would be required in the draft Protocol given in the Annex:

Preamble: Delete beginning with the words "In accordance with .." and the two succeeding paragraphs, and substitute:

"HAVE through their representatives agreed as follows:"

Paragraphs 10 and 11: Delete both paragraphs and substitute the following:

"10. This Protocol shall enter into force thirty days after favourable votes have been received from two-thirds of the governments which are then contracting parties to a decision for the accession of Japan to the General Agreement under the terms of this Protocol; PROVIDED, that Japan shall first have signed this Protocol."

(As a consequence, the paragraph references in paragraphs 1(c) and 2 would be changed.)

Paragraph 12: The number of this paragraph would be changed to "11".

Recommendation

It is recommended that the Tariff Negotiations Committee approve one of these forms of protocol, with such changes as they may consider necessary, and recommend its use by the CONTRACTING PARTIES. The draft Protocol as approved would then be circulated to all contracting parties for their information and comments and, in the absence of objection, would be drawn up and opened for signature promptly upon the conclusion of the tariff negotiations.
ANNEX

DRAFT GENEVA PROTOCOL OF TERMS OF ACCESSION BY JAPAN
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter called "the present contracting parties" and the "General Agreement", respectively), and the Government of Japan,

HAVING REGARD to the results of the negotiations directed towards the accession of Japan to the General Agreement,

In accordance with the provisions of Article XXXIII of the General Agreement:

HEREBY AGREE upon the terms on which Japan may so accede, which terms are embodied in this Protocol,

AND the present contracting parties DECIDE by a two-thirds majority, taken in the manner provided in paragraph 10 of this Protocol, upon the accession to the General Agreement of Japan

1. (a) Upon the entry into force of this Protocol, Japan shall apply provisionally:

(i) Parts I and II of the General Agreement, and

(ii) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

(b) The obligations incorporated in paragraph 1 of Article I of the General Agreement by reference to Article III thereof and those incorporated in paragraph 2(b) of Article II by reference to Article VI shall be considered as falling within Part II of the General Agreement for the purpose of this paragraph.

(c) For the purposes of the General Agreement, the schedule contained in Annex B upon its entry into force pursuant to paragraph 11 shall be regarded as a schedule to the General Agreement relating to Japan.

2. Upon the entry into force of this Protocol pursuant to paragraph 11 hereof, Japan shall become a contracting party as defined in Article XXXII of the General Agreement.

3. Notwithstanding the provisions of paragraph 11, the concessions provided for in the schedule relating to any present contracting party and contained in Annex A to this Protocol shall not enter into force for that contracting party unless notification of the intention to apply these concessions has first been received by the Executive Secretary to the CONTRACTING PARTIES to the General Agreement (hereinafter called "the Executive Secretary") from that
contracting party. Such concessions shall thereafter enter into force for that contracting party either on the date on which this Protocol first enters into force pursuant to paragraph 11 or on the thirtieth day following the day upon which such notification is received by the Executive Secretary, whichever is the later. Upon the entry into force of such concessions the appropriate schedule shall be regarded as a schedule to the General Agreement relating to that contracting party.

4. After the entry into force of this Protocol, Japan, or any present contracting party which has given the notification referred to in paragraph 3, shall be free at any time to withhold or to withdraw in whole or in part any concessions provided for in the appropriate schedule contained in Annex A or B to this Protocol, in respect of which Japan or such contracting party determines that it was initially negotiated with a present contracting party which has not given such notification;

Provided that

(i) the government withholding or withdrawing in whole or in part any such concessions shall give notice to all contracting parties within thirty days after the date of such withholding or withdrawal and, upon request, shall consult with any contracting party having a substantial interest in the product involved; and

(ii) any concession so withheld or withdrawn shall be applied on and after the thirtieth day following the day upon which the government with which it was initially negotiated signs this Protocol.

5. (a) In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of the schedules annexed to this Protocol shall be the date of this Protocol.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement, refer to the date of that Agreement, the applicable date in respect of Japan shall be 24 March 1948.

(c) In the case of references in paragraph 11 of Article XVIII of the General Agreement to 1 September 1947 and 10 October 1947, the applicable dates in respect of Japan shall be 1 March 1955 and 1 May 1955, respectively.

(d) In the case of the date in paragraph 1 of Article XXVIII of the General Agreement, the applicable date in respect of the schedules annexed to this Protocol shall be 1 January 1958.

6. (a) The provisions of the General Agreement to be applied by Japan shall be those contained in the text annexed to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment as rectified, amended, supplemented, or otherwise modified by such instruments as may have become effective by the day on which this Protocol is signed by Japan.
(b) The signature of this Protocol by Japan shall constitute an acceptance of the rectifications, amendments, supplementations, or other modifications of the General Agreement provided for in any instruments which have been drawn up by the CONTRACTING PARTIES and opened for acceptance, but which have not become effective at the time this Protocol is signed by Japan, such acceptance to take effect when Japan becomes a contracting party; 

Provided that such signature shall not, unless so stated by Japan in connection with such signature, constitute acceptance of the Protocols of Amendment to the General Agreement which were drawn up by the CONTRACTING PARTIES at their Ninth Session.

7. Japan, following signature of this Protocol, shall be free to withdraw its provisional application of the General Agreement and such withdrawal shall take effect on the sixtieth day following the day on which written notice of such withdrawal is received by the Executive Secretary.

8. (a) Japan, after having signed this Protocol and not having given notice of withdrawal under paragraph 7, may, on or after the day on which the General Agreement enters into force pursuant to Article XXVI thereof, accede thereto upon the applicable terms of this Protocol by deposit of an instrument of accession with the Executive Secretary. Such accession shall take effect on the thirtieth day following the day of the deposit of the instrument of accession.

(b) Accession to the General Agreement pursuant to sub-paragraph (a) shall, for the purpose of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 3 of Article XXVI thereof.

9. (a) The original text of this Protocol shall be deposited with the Executive Secretary and shall be open for signature at the Headquarters of the CONTRACTING PARTIES in Geneva from [a date before 12 June 1955] until 15 September 1955.

(b) The Executive Secretary shall promptly furnish a certified copy of this Protocol and a notification of each signature thereto, of each deposit of an instrument of accession under paragraph 8(a) and of each notification or notice under paragraph 3 or 7, to each contracting party and to Japan.

(c) The Secretary General of the United Nations is authorized to register this Protocol in accordance with Article 102 of the Charter of the United Nations.

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1 This paragraph is taken from the model Protocol. In the unlikely event that the General Agreement should come definitively into force under Article XXVI before the amendments to Article XXVI drawn up at the Ninth Session have come into force, the paragraph would be necessary in order to make it possible for Japan to accede definitively. The Committee may consider that it is unnecessary to provide in the Protocol for this remote eventuality, and therefore may wish to delete this paragraph.
10. Upon signature of this Protocol by two-thirds of the present contracting parties it shall constitute a decision taken under Article XXXIII of the General Agreement agreeing to the accession of Japan.

11. This Protocol shall enter into force thirty days after the day upon which it shall have been signed by Japan or thirty days after a decision under paragraph 10 above, whichever is the later.

12. The date of this Protocol shall be after the conclusion of the negotiations and before 12 June 1955.

DONE at Geneva, in a single copy in the English and French languages, both texts authentic, except as otherwise specified in schedules annexed hereto.