

RESTRICTED

GENERAL AGREEMENT ON TARIFFS AND TRADE

W.S/19
14 October 1953

Special Distribution

Working Party 3 on the Japanese Proposal

REPORT BY DRAFTING GROUP

1. The Drafting Group has examined the draft decision for the provisional participation of Japan in the General Agreement (L/107/Rev.1) in the light of the discussion at the meeting of the Working Party on 12 October. A revised text has been prepared and is attached to this report. The decision is now presented in a form which calls for a vote by two-thirds of the contracting parties before the close of the Eighth Session and also provides for signatures of contracting parties then or subsequently. This form of decision appears to have two advantages: it would be known before the close of the Session whether the specified majority of the contracting parties intend to make the provisional arrangement effective between themselves and the Government of Japan, and by requiring the signatures of governments it would constitute a formal contract. The word "accept" has been introduced to permit a contracting party to accept the decision by favourable vote or by signature or by an appropriate notification to the Executive Secretary. The Drafting Group believes that in this form the decision will be acceptable to the contracting parties which expressed a preference for the alternative formula - the draft arrangement - proposed in L/107; which consequently has now been discarded.

2. In the preamble the reference to the Peace Treaty and Japan's commitment to the Allied Powers has been omitted in view of the fact that the commercial relations of some of the contracting parties with Japan are not governed by that Treaty.

3. The Drafting Group proposes that the following notes on the text of the draft decision be incorporated in the Working Party's report.

Re paragraph (a)

4. By analogy with paragraph 6 (b) of the arrangement for the application of the General Agreement to acceding governments, it would be understood that the Japanese Government by signing the decision would accept the proposed declaration on the prolongation of the assured life of the schedules annexed to the Agreement until 30 June 1955.

5. It was agreed that the Government of Japan when entering into tariff negotiations would be 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 in the schedule annexed to the decision would cease to be valid upon the accession of Japan following tariff negotiations, and thereafter the only tariff obligations of Japan would be those which result from the negotiations. On the other hand, if accession should not take place before 1 July 1955, or by such extended date as may be agreed upon, all obligations under the decision, including those of Japan, would cease in accordance with paragraph (d).

Re paragraph (b)

6. This paragraph has been introduced to cover the special situation of such islands as the Ryukyu, where at the present time the United States has the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants.

Re paragraph (c)

7. Under this arrangement, Japan would not be a contracting party under the provisions of Article XXXII and, therefore, it is 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.

8. It is the intention of this provision to give the Government of Japan the possibility of full participation in the activities of the CONTRACTING PARTIES. However, in view of the wording of the provisions of Articles XXV and XXXII, it would not be possible from a strict legal point of view to grant full voting rights to Japan. In the normal course of business this would not be very important, since the CONTRACTING PARTIES do not usually proceed to a formal vote in reaching decisions; generally, the Chairman takes the sense of the meeting, and in these circumstances Japan would have the same opportunity as contracting parties to express its opinion. Moreover, when the CONTRACTING PARTIES do proceed to take a formal vote, the contracting parties which have accepted the application of the Agreement to their trade with Japan would, so far as they are concerned regard the opinions expressed by Japan as having the same validity as a vote on questions affecting the application or operation of the Agreement.

9. The Drafting Group suggests that Japan should participate in the expenses of the CONTRACTING PARTIES on the same basis as the contracting parties; Japan's contribution would be \$ 12,000 in 1954.

Re paragraph (e)

10. The decision would have the following legal effects: (i) when it had received the favourable vote of two-thirds of the contracting parties, Japan would have the right to participate in sessions of the CONTRACTING PARTIES and of subsidiary bodies, and (ii) after the decision had been signed by Japan and "accepted" by the contracting party concerned, in the sense indicated in paragraph 1 above, the obligations of an individual contracting party towards Japan and of Japan towards that contracting party would become effective.

Re the Annex

11. It would be necessary for the CONTRACTING PARTIES to ascertain before the vote on the decision is taken which contracting parties intend to cast favourable votes so that the list of items to be included in the schedule can be determined.

REVISED

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 XXXIII,
- (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 the application of the Government of Japan 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 Government of Japan has been granting most-favoured-nation treatment to all contracting parties whether or not they accord most-favoured-nation treatment to the trade of Japan,

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, and without prejudice to the freedom of individual contracting parties on the question of such later accession, the commercial relations between contracting parties and Japan shall be based upon the General Agreement as if the provisions of the arrangement for the application of the General Agreement to acceding governments, approved by the CONTRACTING PARTIES on 23 October 1951 (Basic Documents, Vol. 1, pp. 111 to 115), were embodied in this Decision and as if the Schedule annexed to this Decision were the schedule of an acceding government within the terms of the said arrangement;
- (b): in view of the provisional nature of the status of the islands referred to in Article 3 of the Treaty of Peace with Japan, this Decision shall not require any modification in the present arrangements for trade between Japan and such islands;

- (c) the Government of Japan shall have the right to participate in sessions of the CONTRACTING PARTIES and of subsidiary bodies established by the CONTRACTING PARTIES;
- (d) the arrangements embodied in this Decision shall not be applied after the accession of Japan to the General Agreement following tariff negotiations with contracting parties, or after 30 June 1955 unless it has been agreed to extend the validity of this Decision to a later date;
- (e) (i) subject to the provisions of sub-paragraph (ii) below, this Decision shall enter into force upon the favourable vote of two-thirds of the contracting parties;
(ii) the provisions of paragraphs (a) and (b) shall become effective between Japan and any contracting party on the thirtieth day following the day upon which it will have been signed by Japan and accepted by that contracting party;
- (f) this Decision shall remain open for signature until 31 December 1953 by contracting parties and by Japan at the Headquarters of the CONTRACTING PARTIES.

A N N E X

Schedule of Concessions by Japan