Mémorandum du conseiller juridique au Premier ministre

Memorandum from Legal Adviser to Prime Minister

[Ottawa,] July 26, 1941

TERMINATION OF JAPANESE TREATY

1. The Japanese Treaty is a treaty of commerce and navigation concluded between the King and the Emperor of Japan, signed in London April 3, 1911, ratifications exchanged at Tokyo May 5, 1911.

2. The Treaty does not extend directly to Canada. Article XXVI provides for notice of adhesion and that, in the absence of adhesion, the stipulations are not to be applicable to Dominions, colonies, etc. Adhesion is to take place within two years of ratification.

3. The Treaty was sanctioned by the Japanese Treaty Act 1913, and notice of adhesion in respect of Canada was given May 1, 1913.

4. Article XXVII provides that the Treaty is to remain in force until July 16, 1923, and thereafter, subject to termination on twelve months notice.

Provision is also made for termination as regards Dominions, etc., which have adhered to the Treaty, upon twelve months notice.

5. Dominions Office telegram No. 122, July 26, 1941, makes it clear that the United Kingdom Government, acting in a constitutional manner, is giving notice of termination in respect of the United Kingdom, India and Burma, extending both to the original treaty and to the conventions of 1934 and 1937 which apply to India and Burma. The notices of termination are in accordance with Article XXVII and they provide for termination upon the expiration of twelve months.

6. A question would arise as to whether termination of the Treaty by the United Kingdom Government would affect the Canadian position. In my opinion, the termination of the main treaty would bring to an end the Canadian arrangement resulting from adhesion.

7. It is submitted that the proper course would be for the Secretary of State for External Affairs to give formal notice of termination under Article XXVII to the Japanese Minister. Instructions could be given for Mr. McGreer to deliver a similar notice at Tokyo.