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10 February 1953AD HOC COMMITTEE ON AGENDA AND INTERSESSIONAL BUSINESSFIRST REPORT OF THE DRAFTING GROUP
TO
THE WORKING PARTY ON JAPANESE ACCESSION

The Drafting Group has prepared the following draft report for consideration by the Working Party:

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The Working Party has examined the provisions of the General Agreement which provide safeguards for contracting parties in the event of injury to their commercial interests and has considered whether these would provide adequate safeguards in a situation in which goods are exported by a contracting party in such circumstances as to produce violent disruption of trading conditions which causes or threatens to cause serious injury to a significant sector or sectors of production of one or more other contracting parties and where no preventive measures consistent with the General Agreement and its objectives can be found which seem likely to be effective. As a result of this examination, in the course of which attention was devoted particularly to Articles VI, XIX and XXIII, the Working Party has formulated recommendations which it believes will assist the Intersessional Committee in dealing with the problem before it.

For the sake of convenience and in order to avoid delay, the Working Party has drafted the following paragraphs for inclusion, if approved, in the Committee's report to the CONTRACTING PARTIES:

"1. The Committee noted that the CONTRACTING PARTIES have recognized that Japan should take her rightful place in the community of trading nations and, to that end, should be admitted to appropriate international arrangements. As regards the accession of Japan to the General Agreement, the Committee recognized the need of Japan for an increased participation in world trade. However, certain members of the Committee, while indicating that they did not seek special safeguards against competition arising from a genuine advance in the long-run efficiency of Japanese production, recalled the sudden flooding of certain markets with Japanese manufactures in prewar years in conditions which produced violent disruption of trading conditions and serious injury to large sectors of production in many countries. They recognized that the circumstances of production and export in Japan had changed and, particularly, that the Government of Japan had taken measures designed to prevent the recurrence of the conditions which had given rise to these difficulties. These members pointed out, however, that fears still existed in many quarters that these conditions might recur and, accordingly, that it was desirable to ensure that the Agreement provided safeguards to deal with such a situation.

"2. The Committee examined the provisions of the Agreement which contain safeguards against injury and considered, in particular, whether these safeguards would afford protection to the commercial interests of contracting parties in the event of violent disruption of international trading conditions.

"3. First, the Committee examined the provisions of Article VI. It was found, however, that while these might cover part of the problem presented to the Committee, they would not be adequate to deal with all the difficulties which might arise.

"4. The Committee then examined the provisions of Article XIX which allow a contracting party, in certain circumstances, to take emergency action against increased importation of particular products which causes, or threatens, serious injury to domestic producers. It was found that Article XIX is not altogether satisfactory as a means of obtaining relief in the type of situation described. Action pursuant to paragraph 1 of Article XIX is non-discriminatory and would thus have to be applied to the trade of all contracting parties, including those which were in no way responsible for the circumstances requiring redress. It was considered, therefore, that extensive resort to Article XIX for dealing with problems resulting from violent disruption of trading conditions arising from exports from a particular contracting party would not be consistent with the attainment of the objectives of the Agreement and that such action if taken would be harmful to world trade generally. Moreover, Article XIX provides primarily for action by a contracting party whose domestic producers suffer injury and only in very limited circumstances for action by a contracting party which is not itself a producer of the goods in question.

"5. The Committee then turned to Article XXIII which provides for consultations and the suspension of obligations or concessions when benefits accruing under the Agreement are being nullified or impaired, or when the attainment of objectives of the Agreement is being impeded. It appeared to the Committee that violent disruption of trading conditions of the type described, if remedial action consistent with the Agreement would lead to a general raising of tariff levels and other barriers to world trade, would create a situation impeding the attainment of objectives of the Agreement. This would therefore be a situation falling under part (c), of paragraph 1 of Article XXIII. It was considered that, in the event of such a situation arising, contracting parties whose interests were seriously affected would avail themselves of the facilities of Article XXII, but that if consultations under that Article should prove unsuccessful they could thereafter refer the matter to the CONTRACTING PARTIES under paragraph 2 of Article XXIII.

"6. It was recognized, however, that there might be circumstances in which the procedures of Article XXIII would be too slow in operation to provide an adequate safeguard. The Committee considered that provision should be made for emergency action in critical circumstances where delay would cause damage difficult to repair. The question whether critical circumstances existed and whether emergency measures should, therefore, be taken would require a ruling upon by the CONTRACTING PARTIES. If, however, the CONTRACTING PARTIES did not act promptly in such circumstances the delay thus caused would clearly defeat the purposes of any emergency action. If therefore the CONTRACTING PARTIES failed to reach decisions within 30 days, at least on the interim measures designed to prevent damage, it should be possible for the contracting party concerned to take provisional defensive measures pending a decision by the CONTRACTING PARTIES.

"7. The question then arose whether the emergency procedure should be provided for by amendment of the Agreement or by a declaration of the CONTRACTING PARTIES asserting that in certain defined circumstances they would adopt a specified procedure for dealing with cases of the type described in this Report which may be referred to them under Article XXIII. The Committee concluded that no amendment of the Agreement would be necessary since what was contemplated was that the CONTRACTING PARTIES would authorize the taking of certain measures in an emergency which they would have authority to authorize in any particular case under paragraph 2 of Article XXIII. The Committee considered that the procedural arrangements required could be introduced by a declaration on the following lines:

'THE CONTRACTING PARTIES DECLARE

- '(a) that according to their interpretation of paragraph 1 of Article XXIII, a situation in which goods are exported by a contracting party in such circumstances as to produce violent disruption of trading conditions which causes or threatens to cause serious injury to a significant sector or sectors of production of one or more other contracting parties and where no preventive measures consistent with the General Agreement and its objectives can be found which seem likely to be effective, would be deemed to impede the attainment of objectives of the General Agreement;
- '(b) that, accordingly, in such a situation a contracting party, into a territory of which the goods are being imported, could have recourse to Article XXIII within the terms of paragraph 1(c) of that Article for the purpose of arriving at a satisfactory adjustment or, alternatively, appropriate relief in accordance with paragraph 2 of that Article; and

'(c) that, if such a situation is so referred to the CONTRACTING PARTIES and if the CONTRACTING PARTIES, in critical circumstances where delay would cause damage which it would be difficult to repair, fail within 30 days of such reference to reach a final decision on or adjustment of the matter or to authorize appropriate provisional measures to prevent such damage, a contracting party, into a territory of which the goods are being imported, may thereafter apply such provisional measures not otherwise permitted under the Agreement as the situation may require pending a final decision or adjustment by the CONTRACTING PARTIES in accordance with Article XXIII.'"

1 The question was raised in the Working Party whether this recourse should be open to any contracting party or only to contracting parties directly affected or associated with the contracting party directly affected in a preferential arrangement. As this point was not resolved the following alternatives have been drafted for consideration by the Working Party:

- (i) a contracting party into a territory of which the goods are being imported, which is directly affected or is associated with a contracting party directly affected in one of the preferential areas defined in Annexes A to E.
- (ii) a contracting party into a territory of which the goods are being imported and which is directly affected.