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Committee on Safeguards

DRAFT MINUTES OF THE REGULAR MEETING HELD ON 29 OCTOBER 2001

Chairman Mr. Martin Pospíšil (Czech Republic)

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A.	NATIONAL LEGISLATION	
1.	Review of notifications of new or amended legislation or regulations not previously reviewed by the Committee (including supplemental notifications of existing provisions not previously reviewed)	
3.	The <u>Chairman</u> recalled that questions regarding legislative notifications were to have been submitted to the Member concerned and to the Secretariat no later than 8 October 2001. The Chairman noted that written questions had been submitted by the European Communities regarding the legislative notification made by the Philippines on 11 October 2001.	
4.	The Chairman recalled that follow-up questions could be asked at this meeting, and that other delegations also had an opportunity to present questions orally at this meeting. If Members wished to have written answers to questions, they should ensure that all questions were presented in writing to the Member whose legislation was concerned, and to the Secretariat, no later than 19 November 2001. Written answers to all questions submitted in writing by that deadline should be submitted to the Secretariat no later than 10 December 2001.	
(a)	Burundi	
5.	There were no comments or questions regarding the "nil" notification submitted by Burundi in document G/SG/N/1/BUR/1.	
(b)	Croatia	
6.	The delegate of <u>Croatia</u> made a number of opening remarks regarding the legislative notification contained in document G/SG/N/1/HRV/1. He stated that the notified legislation contained general provisions that could not be applied in the absence of implementing regulations. He further noted that Croatia had committed, during accession negotiations, not to apply its safeguards legislation until the requisite implementing regulations had been adopted. He stated that such regulations were currently being prepared by the Ministry of Economy.	
(c)	Japan	
7.	There were no comments or questions regarding Japan's legislative notification contained in document G/SG/N/1/JPN/3.	

(d) Jordan

8. There were no questions or comments regarding the legislative notification submitted by Jordan in document G/SG/N/1/JOR/1/Corr.1.

(e) Korea

9. The representative of Korea informed the Committee that the legislative notification contained in document G/SG/N/1/KOR/4 concerned a simple renumbering of certain provisions of the Customs Act. There were no comments or questions regarding this notification.

(f) Madagascar

10. There were no comments or questions regarding the "nil" notification submitted by Madagascar in document G/SG/N/1/MDG/1.

(g) Namibia

11. There were no comments or questions regarding the "nil" notification submitted by Namibia in document G/SG/N/1/NAM/1.

(h) Oman

12. There were no questions regarding Oman's "nil" notification contained in document G/SG/N/1/OMN/1. The representative of Oman stated that draft safeguards legislation was currently under review by the Ministry of Legal Affairs. The law would be issued by a royal decree once the process was finalized and the approval was given.

(i) Philippines

13. The Chairman noted that the European Communities had submitted written questions regarding the legislative notification submitted by the Philippines in document G/SG/N/1/PHL/2. The questions are contained in document G/SG/Q1/PHL/1.

14. The representative of the Philippines stated that, in view of the forthcoming Ministerial Conference at Doha, his delegation had not yet had an opportunity to reply to the EC questions.

15. The delegate of the European Communities regretted that the Philippines had not yet responded to the questions submitted by the EC, especially as safeguard investigations were currently underway in the Philippines. Indeed, these investigations had been initiated well before the Philippines made its legislative notification to the Committee.

16. The Chairman reminded the Committee of the importance of providing written answers to written questions posed. As Members were aware, the exchange of written questions and answers constituted the Committee's only record of the review of legislations. Thus, the Committee's records were left incomplete when written questions were not answered, or only answered long after the meeting where the review took place. In this context, the Chairman urged all Members to abide by the deadlines set by the Committee for the provision of written replies to written questions.

17. The Chairman informed the Committee that there were still 35 Members that had not yet made any legislative notification:

Albania, Angola, Antigua & Barbuda, Bangladesh, Barbados, Belize, Burkina Faso, Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Djibouti, Gabon, the Gambia, Georgia, Grenada, Guinea Bissau, Guyana, Kuwait, Lithuania, Malawi, Mali, Mauritania, Moldova, Mozambique, Niger, Papua New Guinea, Rwanda, Saint Kitts & Nevis, Saint Vincent & Grenadines, Sierra Leone, Solomon Islands, Swaziland, Tanzania and Togo.

18. The Chairman urged those Members to make the required notification. The Chairman reminded Members that, in cases where no legislation existed, only a very simple "nil" notification was required.

19. The Committee took note of the statements made.

B. NOTIFICATIONS OF ACTIONS RELATED TO SAFEGUARD MEASURES

20. The Chairman noted that a large number of notifications of actions related to safeguard measures had been received since the previous meeting. In order to ensure that all of those notifications could be reviewed in the limited time available, the Chairman suggested that the Committee address each investigation separately, and review all notifications pertaining to each investigation at the same time. The Chairman informed Members that any questions concerning the notifications under review for which written responses were requested should be submitted to the Member concerned and to the Secretariat no later than 19 November 2001. Written answers should be submitted to the Secretariat no later than 10 December 2001.

(a) Argentina - Motorcycles

21. The Chairman noted that notifications made by Argentina regarding its investigation on motorcycles were contained in documents G/SG/N/8/ARG/3 + Add. 1 + Corr. 1 & 2, G/SG/N/10/ARG/2 + Add.1 + Corr.1 & 2, G/SG/N/11/ARG/2 + Add. 1 + Corr. 1 & 2, G/SG/N/10/ARG/4, and G/SG/N/11/ARG/4.

22. There were no comments or questions regarding these notifications.

(b) Argentina - Peaches

23. The Chairman noted that notifications made by Argentina regarding its investigation on peaches were contained in documents G/SG/N/6/ARG/4/Suppl.3, G/SG/N/7/ARG/2/Suppl.3, G/SG/N/8/ARG/4, G/SG/N/10/ARG/3, and G/SG/N/11/ARG/3.

24. The representative of the European Communities regretted that Argentina had still not replied to the questions put by the EC at the last meeting, as set forth in document G/SG/Q2/ARG/9, since in the meantime Argentina had imposed definitive measures on imports of peaches. In the view of the EC, these measures were inconsistent with a number of provisions of the Safeguards Agreement. Without wishing to revisit all of the issues raised by the EC at the Committee's last regular meeting in respect of the provisional duty imposed by Argentina, the representative of the EC noted that Argentina had imposed a definitive duty of 88 per cent ad valorem. According to the EC, such an exceptionally high duty was in breach of Article 5 of the Safeguards Agreement, because no justification had been provided of why that extremely high level was necessary. The EC delegate also raised concerns regarding Argentina's injury determination in this investigation, and the fact that Argentina had already increased the applicable tariff to the bound rate, and imposed countervailing duties on imports of peaches from the EC.

25. The representative of Argentina stated that his delegation would be circulating written replies to the EC's questions in the coming days. He stated that any WTO Member had the right to raise its tariffs to bound rates. He also expressed the view that the simultaneous application of countervailing duties and safeguard measures on the same product was not inconsistent with the Safeguards Agreement, since they were two separate instruments addressing two separate factual situations.

26. The delegate of Chile informed the Committee that his delegation had requested consultations with Argentina under Article 23.1 of the Dispute Settlement Understanding ("DSU") and Article 14 of Safeguards Agreement, and that such consultations had taken place on 2 October 2001 in Geneva.

27. The representative of the United States expressed concern at Argentina's failure to provide written replies to the EC's written questions, and looked forward to the prompt submission of such replies.

(c) Brazil - Coconuts

28. The Chairman noted that Brazil had notified the initiation of an investigation on coconuts, as set forth in document G/SG/N/6/BRA/2.

29. There were no comments or questions regarding this notification.

(d) Chile - Lighters

30. The Chairman noted that Chile had notified the initiation of an investigation on lighters, as set forth in document G/SG/N/6/CHL/6.

31. The representative of Chile stated that Chile had decided not to impose any provisional safeguard measure pending completion of the investigation.

32. The representative of the European Communities expressed concern regarding the standards of initiation applied by the Chilean authorities. Although the Safeguards Agreement did not contain any provisions regarding the standards for initiation, the applicable jurisprudence had confirmed that safeguard actions were only warranted in emergency situations. According to the EC, this condition should be taken into account when investigating authorities consider whether or not to initiate an investigation. The EC delegate also stated that, according to the information available, imports had been declining from 1998 to 2000. While there had been some increase in the first months of 2001, there had been an important increase only in April 2001. This one month increase had apparently been sufficient basis for Chile to initiate an investigation. The EC delegate also expressed concern regarding the like product definition for the investigation, since it included two different products that were very different as to technical characteristics: imported lighters and domestic matches. Although Chile had sought to ensure a fair comparison of the two products by determining "lights" as a unit of measurement (650 lights for lighters, and one light for a match), this approach had not been fully explained in Chile's notification.

(e) Chile – Mixed Oils

33. The Chairman noted Chile's notification regarding the termination of its investigation on mixed oils, as set forth in document G/SG/N/9/CHL/3. There were no comments or questions regarding this notification.

(f) Chile – Synthetic Socks

34. The Chairman noted that Chile had made a number of notifications regarding its investigation on socks of synthetic fibres, as set forth in documents G/SG/N/6/CHL/3/Suppl.1, G/SG/N/7/CHL/4/Suppl.1, G/SG/N/9/CHL/2/Suppl.1, G/SG/N/10/CHL/2/Suppl. 2 & 3, and G/SG/N/11/CHL/2/Suppl. 1.

35. The representative of Chile informed the Committee that these notifications concerned Chile's decision to extend the relevant safeguard measure by six months.

36. There were no other comments or questions regarding these notifications.

(g) Chile – Wheat, Wheat Flour, Sugar, and Edible Vegetable Oils

37. The Chairman noted that Chile had made a number of notifications regarding its investigation on wheat, wheat flour, sugar and edible vegetable oils as set forth in documents G/SG/N/6/CHL/2/Suppl.1, G/SG/N/7/CHL/2/Suppl.2, G/SG/N/8/CHL/1/Suppl.2, G/SG/N/10/CHL/1/Suppl.3, G/SG/N/11/CHL/2/Suppl.2 and G/SG/N/14/CHL/1/Suppl.1.

38. The delegate of Chile stated that the safeguard measures relating to wheat and wheat flour had been lifted as of 27 July 2001. The measure applicable to imports of sugar and oil would expire on 25 November 2001.

39. The representative of Colombia reiterated Colombia's concern that it had expressed at the previous regular meeting of the Committee in respect of Chile's safeguard measure because it did not meet the conditions provided for in the Safeguards Agreement, nor did it comply with Article XIX of the GATT. Also she reiterated the serious concern in the Colombian sugar industry regarding the measures that had been adopted by Chile.

(h) Czech Republic - Footwear

40. The Chairman noted that the Czech Republic had notified the termination of its investigation on footwear, as set forth in document G/SG/N/9/CZE/1.

41. There were no comments or questions regarding this notification.

(i) Czech Republic - Isoglucose

42. The Chairman noted that the Czech Republic had made a number of notifications regarding its investigation on isoglucose. These notifications were contained in documents G/SG/N/8/CZE/2, G/SG/N/10/CZE/2, and G/SG/N/11/CZE/2.

43. There were no comments or questions on these notifications.

(j) Egypt – Powdered Milk

44. The Chairman noted that Egypt had made two notifications regarding its investigation on powdered milk. The notifications were contained in documents G/SG/N/8/EGY/4 and G/SG/N/10/EGY/4. Egypt had also made a joint notification with the European Communities concerning this investigation, as set forth in document G/SG/N/12/EGY/1 & G/SG/N/12/EEC/6.

45. The delegate of the European Communities referred to the concerns raised by the EC at the Committee's last regular meeting. He reiterated the EC's opposition to the safeguard measure imposed by Egypt. He asked whether Egypt was going to carry out a mid-term review of that measure.

46. The representative of Egypt stated that he would forward the EC's question to his capital.

(k) India - Phenol

47. The Chairman noted that India had made a notification regarding its investigation on phenol, as set forth in document G/SG/N/8/IND/6/Suppl.1.

48. The representative of India stated that India proposed to extend its safeguard duty on imports of phenol, but stressed that the safeguard duty was less than the bound rate.

49. The delegate of Mexico noted that only an insignificant quantity of phenol was exported from Mexico to India from 1999 to 2000. The delegate of Mexico queried why the measure against imports from Mexico had not been lifted in accordance with Article 9.1 of the Safeguards Agreement, and asked India to specify how the Indian authorities had determined that imports from Mexico threatened to cause serious injury to the Indian domestic industry. In addition, Mexico asked why it had not been afforded an opportunity for consultations prior to application of the measure, consistent with Article 12.3 of the Safeguards Agreement.

50. The delegate of India asked Mexico to provide its questions in writing.

(l) Japan – Tatami-Omote, Welsh Onion and Shiitake Mushrooms

51. The Chairman noted that Japan had made two notifications regarding its investigation on tatami-omote, welsch onion and shiitake mushrooms. These notifications were contained in documents G/SG/N/7/JPN/1 and G/SG/N/11/JPN/1.

52. There were no comments or questions regarding these notifications.

(m) Jordan – Chocolates / Biscuits

53. The Chairman noted that Jordan had made a number of notifications regarding its investigation on chocolates and biscuits. These notifications were contained in documents G/SG/N/6/JOR/1/Suppl.1, G/SG/N/6/JOR/1/Suppl.2 & Corr.1, G/SG/N/8/JOR/1, G/SG/N/9/JOR/1, G/SG/N/9/JOR/1/Corr.1, G/SG/N/9/JOR/1/Rev.1, and G/SG/N/10/JOR/1.

54. The delegate of Jordan stated that his country had terminated its investigation on chocolate without imposing any measure. Jordan had, however, decided to impose a safeguard measure on imports of biscuits. Jordan was consulting bilaterally with exporting Members.

55. The representative of the European Communities criticised the lack of information contained in Jordan's notifications, and requested more details of Jordan's findings. The EC also asserted that Jordan had failed to provide for consultations before the measure took place, contrary to Article 12.3 of the Safeguards Agreement.

56. The delegate of Jordan stated that the notifications respected the format set by the WTO, and that all details of the investigation were in the final report.

57. The delegate of Turkey was pleased to note that Jordan had decided to terminate the safeguard investigation on chocolate without imposing a safeguard measure. However, Turkey still had concerns regarding the investigation on biscuits. Turkey was pursuing these concerns bilaterally with Jordan. Turkey would keep the Committee informed of any developments resulting from these bilateral consultations.

(n) Korea - Garlic

58. The Chairman noted that Korea had made a notification regarding the results of the mid-term review of its safeguard measure on garlic, contained in document G/SG/N/13/KOR/2.

59. There were no comments or questions regarding this notification.

(o) Morocco - Bananas

60. The Chairman noted that Morocco had made two notifications regarding its investigation on bananas. These notifications were contained in documents G/SG/N/8/MAR/1 and G/SG/N/10/MAR/1.

61. There were no comments or questions regarding these notifications.

(p) Philippines - Cement

62. The Chairman noted that the Philippines had notified the initiation of an investigation on cement. The notification was contained in document G/SG/N/6/PHL/1.

63. The delegate of Japan stated that cement exported from Japan should be excluded from the scope of the investigation, because it was not like or directly competitive with cement produced in the Philippines.

64. The representative of the European Communities asked for an update on the status of the two investigations, since a preliminary injunction had apparently been granted by a trial court which prevented the Philippines Government from implementing its domestic safeguards legislation.

65. The delegate of the Philippines expressed his understanding that a restraining order had been issued by the trial court in the province of Bulacan in the Philippines, and that such order was the subject of further proceedings in the Supreme Court of the Philippines. He further understood that the implementation of the Philippines safeguards law - including further proceedings under the investigations on cement and ceramic tiles - would be held in abeyance pending the resolution of those proceedings.

(q) Philippines – Ceramic Tiles

66. The Chairman noted that the Philippines had notified the initiation of an investigation on ceramic tiles. The notification was contained in document G/SG/N/6/PHL/2.

67. There were no comments or questions concerning this notification.

(r) El Salvador - Rice

68. The Chairman noted that El Salvador had made two notifications regarding its investigation on rice. The notifications were contained in documents G/SG/N/6/SLV/2/Suppl.2 and G/SG/N/9/SLV/2.

69. There were no comments or questions regarding these notifications.

(s) El Salvador - Fertilizer

70. The Chairman noted that El Salvador had made notifications regarding its investigation on fertilizer. The notifications were contained in documents G/SG/N/6/SLV/3/Suppl.1 and Suppl.2.

71. There were no comments or questions regarding these notifications.

(t) Slovak Republic - Sugar

72. The Chairman noted that Slovak Republic had made a number of notifications regarding its investigation on sugar. Those notifications were contained in documents G/SG/N/8/SVK/1, G/SG/N/10/SVK/1, G/SG/N/11/SVK/1 and G/SG/35/Suppl.2. The Chairman further noted Poland had also made notifications concerning that investigation. Poland's notifications, which concerned the suspension of substantially equivalent concessions under Article 8.2 of the Safeguards Agreement, were contained in documents G/L/453, G/SG/35, and G/SG/35/Suppl. 1.

73. The delegate of Poland explained that his country was justified in taking unilateral, retaliatory action under Article 8 of the Safeguards Agreement because Poland had concluded that the safeguard measure imposed by the Slovak Republic was inconsistent with various provisions of the Safeguards Agreement.

74. The representative of the Slovak Republic expressed his country's strong disagreement with Poland's suspension of concessions. He rejected the suggestion that the Slovak measure was inconsistent with the Safeguards Agreement, and stated that in any event it was not for Poland to make a unilateral determination as to the conformity of that safeguard measure with the Agreement.

75. The representative of the United States recalled that the Council for Trade in Goods was currently reviewing the Article 8 measures taken by Poland, and that the United States would therefore refrain from commenting on that matter in the Safeguards Committee. However, the United States expressed the view that this matter should have been reviewed as a technical matter by the Safeguards Committee before it was referred to the Council for Trade in Goods.

76. The delegate of the Czech Republic expressed the view that only the Dispute Settlement Body ("DSB") was entitled to determine whether or not a measure taken by a WTO Member was consistent with its WTO obligations.

77. The representative of Poland stated that, in principle, he shared the prevailing view that a Member should not make any one-sided or unilateral determinations of other Members' violations of the Agreement. But, given the logical structure of Article 8, it was impossible to find a solution which would please everybody in the house. That is why Poland considered that there was a very difficult choice to be made between two conflicting assumptions. First, the assumption that Members should not make unilateral determinations as to the conformity with the WTO Agreement of another Member's measures. Second, the assumption that law-makers, *i.e.*, the Contracting Parties, always acted in a rational way. In this case, Poland decided to respect the rationality assumption, that is that the Contracting Parties had decided to regulate the situation they were dealing with in that very specific manner. That is, under Article 8, once a Member had determined that there was a *prima facie* of violation of some procedural rules under the Agreement, that Member should be allowed to suspend their concessions and other obligations. Otherwise, there was no way to do so because the time for suspension would expire after a year or so. That is exactly the time-period required, or which could be expected to be taken, by a panel to resolve a dispute. If, instead, one respected the assumption that Members should not make unilateral determinations as to the conformity of other Member's measures, Members would not be in a position to take advantage of or use their rights under Article 8.2.

78. The representative of Chile expressed systemic concern with the proposition that one Member could unilaterally determine that another Member's safeguard measure was not consistent with the Safeguards Agreement. He queried whether there was really conflict between the two assumptions identified by Poland.

79. The delegate of Poland expressed the view that, while interpreting the provisions of Article 8, account must be taken of the structure of this Article, that is of the links between paragraphs 1, 2 and 3. It was beyond any doubt that paragraph 1 laid down a basic general rule obliging a Member proposing to apply a safeguard measure to endeavour to maintain a substantially equivalent level of concessions and other obligations at a predetermined level, the rationale for this being to keep these concessions and other obligations in balance. In order to accomplish this objective, paragraph 1, through the reference to Article 12, provided for the consultations between the interested parties whereby some trade compensation measures granted by the importing Member were expected to restore the aforementioned balance. However, in the case of failure of such consultations to reach the stipulated objective, and under precisely specified conditions in paragraph 2, the affected Members were free to suspend the application of substantially equivalent concessions and other obligations and thus to restore unilaterally the equilibrium of trade rights and duties of the Members concerned. The aforementioned remarks pertained to paragraphs 1 and 2 treated as *leges generalae* but as had been indicated earlier account must be taken of paragraph 3 of Article 8 laying down an exemption to the general rules which meant that it was of a *lex specialis* character. That character of the provision should be kept in mind when construing its meaning. One of the conditions for the application of that provision referred to the notion of "conformity with the Agreement". In that context, an issue had arisen as to who was entitled, and under what procedure, to determine this conformity, or the lack thereof. Here there appeared to have been two different positions presented at the last CTG meetings. According to one of them, strongly voiced by Slovakia and supported by some other delegations, the conformity determination in the context of para. 3 Art. 8 should rest exclusively with the DSB or else Article 23 of the DSU would be violated. It seemed that it was in order not to give a blessing to any unilateral determination of conformity and to evaluate any risk involved that some delegations flatly rejected the interpretation of paragraph 3 proposed by Poland. Under that interpretation of the exemption question, two things deserved to be stressed: first, Poland shared the view that a Member should not make a unilateral determination on another Member's violation of an Agreement and that the said determination should be made through the DSU system. But, on the other hand, Poland did have serious doubts as to whether the DSU mechanism should be invoked in the context of paragraph 3 since the objective to be sought by the Member concerned under this provision differed from the one referred to in Article 23 of the DSU. Once more, if a Member considering the application of suspension followed the procedure proposed by Slovakia and waited for the DSB ruling on the conformity of this safeguard measure with the Agreement, that would eventually result in granting the importing Member a bonus in case of the DSB's declaration of non-conformity of the measure. So, even though that approach would be in full accord with the DSB, it would, nevertheless, effectively deprive the affected Member, in the light of paragraph 2 - imposed time limit, of its right to suspend concessions even in the situation where the safeguard measure was finally declared by the DSB as non-conforming to the provisions of the Agreement. The delegate of Poland noted, in that context, that in order to avoid that unintended legal consequence some Members had decided to get around a 90-day deadline by means of a bilateral agreement between them. Following this example, Poland could have tried to reach an agreement with Slovakia to the effect that the 90-day period would expire within the time-frame needed for getting a panel's report on the matter. However, in Poland's view, one could have some doubts as to the legal validity of such an agreement as it would have been based on a quite objectionable assumption that some provisions of the type of *jus cogens* ("not later than") included in a multilateral agreement, i.e. in that case in the Safeguard Agreement, might lose their binding force under the bilateral agreement concluded by the Members to the former Agreement. If one would not be inclined to take such a position, a way out of this interpretative trap could be to claim that a 90-day period was of an indicative character, in spite of the obvious result of the textual interpretation of the phrase "not later than". The issue whether it was the case could not unfortunately be resolved in this forum. So, the choice really was between two questionable proposals. Secondly, it seemed to be quite natural to assume that any interpretation of the agreement in question should rest on two basic assumptions: i.e. on the rationality of the Contracting Parties and on the exclusivity of the conformity determination by the DSU. However, in order to make such interpretation possible,

the texts of the Agreement should respect certain logical requirements. In that case, for example, the relevant requirement could be as follows: “If, as one of the conditions for its application by a Member, the provision in an Agreement provides for the assessment of conformity of other Member’s action with this Agreement, other provisions of this Agreement must *not*, without making the former provision inoperative, lay down a deadline for its application which, out of necessity, can not be met given the timeframe for the determination of conformity under the DSU”. Abiding by such simple logic made it possible to keep both abovementioned assumptions intact. Had Article 8 followed the requirement in question, one would not be confronted with the problem that had now arisen. But, unfortunately, that article regulated mutual rights and obligations of the Members concerned in the way, which made it impossible for an interpreter to reconcile the result of simultaneous applications of those two assumptions. As it was almost imperative for interpreters of legal texts never to reject the rationality assumption, sometimes contrary to the facts of the case, hence, the only option left seemed to be that of rejecting the applicability of the exclusivity rule in this case. Such rejection could easily be reinforced by a legal reasoning *a contrario* which could go as follows: where a provision laying down the basic rule, to which an exemption based on conformity determination was provided for in another provision, set a deadline for its application (including the situations covered by the exemption), which clearly could not be met if the Member concerned was to wait for the DSB to make the conformity-determination, then one could safely assume that in the situations covered by the exemption the legal power of conformity-determination was not vested on the DSB. The delegate of Poland stressed that since they could not reject the rationality assumption all they could do was to reject the exclusivity assumption for such cases.

80. Finally, the delegate of Poland emphasized once again that Poland was of the view that it was the DSB which had the exclusive power of conformity-determination under the DSU. At the same time, it had been their intention to draw attention of the Members to certain discrepancies within the Safeguards Agreement. Poland understood, of course, that its approach to the problem might cause some concerns of the Members of the Committee as their interpretation of the Article 8 might make it easier for a Member to apply suspensions. But, on the other hand, they thought that it would rather result in more careful application of the safeguard measures, especially as far as the procedural rules were concerned, and in wider use of trade compensation provided for in the Article 8.1 of the SG Agreement.

81. The Chairman noted that Members had shown considerable interest in Poland's recourse to Article 8.2 of the Safeguards Agreement. In doing so, Members had identified a number of systemic issues regarding the operation of this provision. The Chairman noted that similar issues had been raised by Members at the 17 October 2001 meeting of the Council for Trade in Goods. As a result, the Chairman of the Council for Trade in Goods had undertaken to hold informal consultations on those issues. To that end, the Chairman of the Council for Trade in Goods had invited Members to submit written questions and comments to the parties concerned by 31 October 2001, and for the parties to supply written answers by 20 November 2001. Those written questions and answers were to be circulated as formal documents. The Committee agreed to revert to this issue at a later date, following further by the Council for Trade in Goods.

(u) United States – Wire Rod

82. The Chairman noted that the United States had made a notification regarding its investigation on wire rod. This notification was contained in document G/SG/N/6/USA/6/Suppl.1.

83. There were no comments or questions regarding this notification.

(v) United States – Steel

84. The Chairman noted that the United States had notified the initiation of an investigation on steel. The notification was contained in document G/SG/N/6/USA/10.

85. The representative of the United States informed the Committee that the US had recently made a notification under Article 12.1 (b) (on 26 October 2001) regarding a finding of serious injury caused by increased imports with respect to certain products. A notification of termination of the investigation without a measure for certain other steel products had been filed at the same time.

86. The delegate of Japan stated that they understood that the US International Trade Commission ("USITC") had made an affirmative serious injury determination with respect to 16 types of steel like products out of 33, and that the US was considering trade remedies for those 16 like products. Japan asserted that the development of international trade would be adversely affected if US trade law was used in a protectionist manner to offset the need for structural reform of its domestic steel industry.

87. The representative of the European Communities noted that the US had launched the investigation covering a very broad range of steel products, classified in four macro-categories and in 33 subcategories or individual products. He expressed concern that the USITC had not given any indication of what kind of like product could be involved, nor how the relevant domestic industry would be defined. This lack of clarity had impaired the US injury investigation. The EC expressed concern at this approach, and asserted that it was difficult for third parties to defend their rights appropriately without having a clear idea of the exact product being investigated. The categorization of different types of like products made it impossible to assess import levels, injury indicators, or other factors. It also made it impossible for interested parties to comment at the remedy phase, since they would not know in what direction the US was going when it came to the defining the products groups, the product categories, the domestic industry and the measures that should be imposed. The EC considered that in the beginning of the safeguards investigation it must be necessary, even if it was not stated in the Safeguard Agreement, to give some preliminary idea of what is the like product, what is the domestic industry investigated so as to allow all interested parties to focus their attention and to build up their defence precisely on those products and those categories that were investigated. That had not been possible in the present case, and therefore the EC were concerned that their essential rights in that proceeding had not been respected so far. The EC also asserted that for many products the evidence provided by the US did not support the USITC determination of serious injury. The EC also raised a concern of multiple protection, since many of the products that were covered by the US investigation were already subject to countervailing and anti-dumping measures. The EC asked the US to explain how it would ensure that injury already remedied by anti-dumping and countervail measures would not be attributed to increased imports and further remedied by any safeguard measures imposed by the US. The EC also asked the US to reassure the Committee that the issue of unforeseen developments would be addressed, consistent with applicable WTO jurisprudence, since the EC was of the opinion that there were no such unforeseen developments in the present case.

88. The delegate of Korea endorsed the points raised by the representatives of Japan and the EC.

89. The delegate of Argentina expressed concern at the initiation of the US investigation, and at the USITC determination of serious injury. He noted that safeguard measures were exceptional measures for use in emergencies, and found it difficult to understand how any emergency situation could cover so many products. Argentina also raised doubts regarding the existence of unforeseen developments, and the existence of any causal link between increased imports and the serious injury identified by the USITC.

90. The delegate of India stated that they were very much concerned by the broad coverage of the products and the investigation. They shared the concerns expressed by Argentina, the EC, Korea, and Japan.

91. The delegate of Brazil endorsed the comments made by Argentina, the EC, India, Japan and Korea.

92. The delegate of Australia stated that Australia was also involved in that investigation and joined other delegations in expressing concerns with the number of issues raised by the investigation.

93. The delegate of the United States stated that he had noted the concerns of Argentina, Australia, Brazil, the EC, India, Japan, and Korea regarding the USITC's determination of serious injury, but since the US Article 12.2 (b) notification was not on the agenda of this meeting it was not appropriate to provide substantive responses at this time.

(w) United States – Wheat Gluten

94. The Chairman noted that the United States had made a number of notifications regarding its investigation on wheat gluten. These notifications were contained in documents G/SG/N/10/USA/2/Suppl.3 & Suppl.4, and G/SG/N/11/USA/2/Suppl.3 & Suppl.4.

95. There were no comments or questions regarding these notifications.

(x) United States – Line Pipe

96. The Chairman noted that the United States had notified the results of a mid-term review of its safeguard measure on line pipe. This notification was contained in document G/SG/N/13/USA/2.

97. The delegate of the European Communities stated that the US notification did not contain any information regarding decisions taken as a result of the mid-term review, but simply referred to findings made by the USITC. He asked the US to provide information on the state of play on that issue, noting that according to Article 7.4 of the Safeguards Agreement the mid-term review should be completed before the mid-term of the measure, and that this deadline had already expired.

98. The delegate of the United States asserted that he would follow-up on the EC question.

(y) Venezuela - Tyres

99. The Chairman stated that Venezuela had made two notifications regarding its investigation on tyres. These notifications were contained in documents G/SG/N/8/VEN/1 and G/SG/N/8/VEN/2.

100. Since Venezuela was not represented at the meeting, the delegate of the European Communities stated that he would present its questions to Venezuela in writing.

101. The Committee took note of the statements made.

C. OTHER BUSINESS

1. Nigeria – pre-existing measures

102. The Chairman drew Members' attention to document G/SG/N/2/NGA, dated 16 March 1998, in which Nigeria notified certain measures as pre-existing within the meaning of 11.1(b) of the Safeguards Agreement. The Chairman recalled that Article 11.1(b) provided for such measures to be "brought into conformity with" the Safeguards Agreement, or "phased out" in accordance with timetables to be notified to the Committee. In the absence of any notification from Nigeria regarding its plans for bringing those measures into conformity, or phasing them out, the Secretariat, on behalf of the Committee, had sought on numerous occasions to obtain information from Nigeria regarding

the status of those measures. Nigeria had not responded to the Secretariat's requests. Therefore, the Chairman proposed to place that issue on the agenda of the next regular Committee meeting, for consideration by Members, unless the requisite information was provided by the delegation of Nigeria in the meantime.

103. The delegate of Nigeria stated that he had not yet received any clarification from capital on the status of the pre-existing measures notified to the Committee in 1998, but that he would notify the Committee of the status of the measures as soon as possible.

2. Article 12.5 notifications

104. The Chairman stated that Members would be aware that, in accordance with Article 12.5 of the Safeguards Agreement, the results of any consultations held under Article 12 of the Agreement "shall be notified immediately to the Council for Trade in Goods by the Members concerned". Members would also be aware that, by virtue of Article 12.10 of the Agreement, "[a]ll notifications to the Council for Trade in Goods ... shall normally be made through the Committee on Safeguards". The Chairman impressed upon all Members the importance of complying with these provisions, with a view to maximizing transparency in the safeguards area.

D. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS

105. The Committee adopted its annual report to the Council for trade in Goods for 2001 (see document G/L/494).

E. DATE OF NEXT REGULAR MEETING

106. The Chairman recalled that regular meetings normally would be held in the last week of April and the last week of October, in conjunction with the regular meetings of the Committees on Anti-Dumping Practices and Subsidies and Countervailing Measures. The Committee on Anti-Dumping Practices and subsidiary bodies would meet for the whole week commencing 22 April 2002, and the Committee on Subsidies and Countervailing Measures would meet from 30 April to 3 May 2002. Accordingly, he suggested that the Safeguards Committee meet on Monday, 29 April 2002.

107. The Committee so agreed.
