

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/SG/M/7**

19 March 1997

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## Committee on Safeguards

### MINUTES OF THE REGULAR MEETING HELD ON 25 OCTOBER 1996

Chairman: Mr. A. Buencamino (Philippines)

1. The Committee on Safeguards held a regular meeting on 25 October 1996.
2. The following agenda was adopted:

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A. <u>National legislation</u>	

3. The Chairman recalled the procedures adopted by the Committee at its May 1996 special meeting for the continuing review of legislations, both newly submitted and those that have been previously reviewed (G/SG/W/116). With respect to the legislative notifications to be reviewed at the meeting, most written questions had been received after the 4 October deadline. While the Members whose legislation was to be reviewed would be asked to respond to all questions put to them at the meeting, the Chairman noted that late receipt of questions made it difficult for Members to respond, and reduced the effectiveness of the review process.

4. The Chairman reminded Members that follow-up questions could be asked orally at the meeting, and that if written answers to such questions were desired, the questions should be submitted in writing to the Member whose notification was being reviewed, and to the Secretariat, no later than 25 November 1996. Written answers to all questions submitted in writing should be submitted to the Secretariat no later than 23 December 1996.

5. The Chairman reminded the Committee of the procedures that had been agreed at the May 1996 special meeting for the revisitation of previously-reviewed legislations (G/SG/W/116). In particular, any given such legislation would be placed on the agenda of a meeting only if written questions concerning it were received no less than six weeks before the meeting. Under the agreed procedures, any such questions would be answered in writing no less than two weeks before the meeting, and the review at the meeting would consist of follow-up to the written questions and answers that had been exchanged. No such questions had been received before this meeting and therefore this item was not included on the agenda.

(i) Examination of new or amended legislations not previously reviewed by the Committee (Art. 12.6)

6. The Committee proceeded to the substantive review of the legislation on the agenda.

7. The questions concerning the legislation of Argentina can be found in the following documents:

G/SG/Q1/ARG/1	(Submitted by Canada)
G/SG/Q1/ARG/2	(Submitted by Korea)

Answers to these questions can be found in the following documents:

G/SG/Q1/ARG/3	(To Korea)
G/SG/Q1/ARG/4	(To Canada)

8. The questions concerning the legislation of Brazil can be found in the following documents:

G/SG/Q1/BRA/1	(Submitted by Korea)
G/SG/Q1/BRA/2 + Corr.1	(Submitted by the EC)

Answers to these questions can be found in the following documents:

**[NO REPLIES HAVE BEEN RECEIVED TO DATE]**

9. The questions concerning the legislation of El Salvador can be found in the following documents:

G/SG/Q1/SLV/1	(Submitted by Korea)
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Answers to these questions can be found in the following documents:

G/SG/Q1/SLV/2	(To Korea)
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10. No questions were posed at the meeting regarding Hungary's legislation.

11. No questions were posed at the meeting regarding Israel's legislation.

12. No questions were posed at the meeting regarding Japan's legislation.

13. No questions were posed at the meeting regarding Norway's legislation.
14. No questions were posed at the meeting regarding St. Lucia's legislation.

(ii) Examination of notifications without legislative text

15. The questions concerning the notification of Côte d'Ivoire can be found in the following documents:

G/SG/Q1/CIV/1

(Submitted by the US)

Answers to these questions can be found in the following documents:

**[NO REPLIES HAVE BEEN RECEIVED TO DATE]**

16. The questions concerning the notification of Kenya can be found in the following documents:

G/SG/Q1/KEN/1

(Submitted by the US)

Answers to these questions can be found in the following documents:

**[NO REPLIES HAVE BEEN RECEIVED TO DATE]**

17. The questions concerning the notification of Nigeria can be found in the following documents:

G/SG/Q1/NGA/1

(Submitted by the US)

Answers to these questions can be found in the following documents:

**[NO REPLIES HAVE BEEN RECEIVED TO DATE]**

(iii) Status of legislative notifications

18. The Chairman reported on the status of legislative notifications received from Members, noting that compliance with this obligation was less than complete. As of 24 October 1996, no legislative notification had been received from the following 45 Members: Antigua & Barbuda, Bahrain, Bangladesh, Barbados, Belize, Benin, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Cyprus, Djibouti, Dominica, Fiji, Gabon, the Gambia, Grenada, Guinea Bissau, Guyana, Haiti, Jamaica, Kuwait, Lesotho, Liechtenstein, Madagascar, Malawi, Mali, Mauritania, Mozambique, Namibia, Papua New Guinea, Qatar, Rwanda, Saint Kitts & Nevis, Saint Vincent & Grenadines, Sierra Leone, Solomon Islands, Suriname, Swaziland, Tanzania, Togo, and United Arab Emirates. The Chairman recalled that the WTO was nearing its second anniversary, and that the list of Members not having made the required legislative notification had remained virtually unchanged since one year earlier. The Chairman noted that the requirement for legislative notification, including for a very simple "nil" notification from Members with no safeguards legislation, is essential for ensuring full transparency among all WTO Members, and that the lack of compliance by more than one-third of all WTO Members with this requirement created a very unfortunate gap in transparency in this area.

19. The Chairman reminded the Committee of the horizontal efforts being made throughout the WTO to improve compliance with all notification obligations, including through the development of a handbook for preparing the various notifications. He urged all Members to complement these efforts

by encouraging the Members that had not yet done so to submit notifications concerning the status of their legislation, or the lack of any legislation, as soon as possible.

B. Notifications of actions related to safeguard measures

(i) Notifications of initiation of investigations (Art. 12.1(a))

20. The Committee reviewed the three notifications of initiation of investigation that had been circulated since the previous meeting: Brazil's investigation on toys; Korea's investigation on dairy products; and Korea's investigation on bicycles.

21. No questions were raised with respect to Brazil's notification.

22. With respect to Korea's investigation of dairy products, the representatives of the United States, New Zealand, the EC, and Canada asked the representative of Korea to report on the status of the investigation. The representatives of New Zealand and Canada stated that they had information that a finding of serious injury had been made, and sought confirmation of this from the representative of Korea. The representative of Canada indicated concern over the initiation, and asked for an identification of the Members affected by the investigation.

23. The representative of New Zealand asked Korea to make known the grounds for any such determination, indicated that his delegation did not believe that such a finding was warranted, and stated that the use of safeguard action with respect to products that had been liberalized under the Balance of Payments provisions and in the context of the Uruguay Round was regrettable. In addition, the representative of New Zealand recalled the Agreement's requirement for bilateral consultations in the event that application of a measure was proposed.

24. The representative of the EC expressed concern over the initiation, indicating that the EC had a trade interest in the matter. The EC had sent a letter to the Korean Trade Commission, seeking information beyond that in the notification, and had just received a response, which was being studied. The representative of the EC indicated that the notification of initiation contained insufficient information, particularly as to the reasons or rationale for the initiation, and mentioned, by comparison, the Korean notification of initiation in the investigation of bicycles. The representative of the EC suggested that the information contained in the letter it had received from the Korean Trade Commission should be included in the original notification. This representative also noted that although the original notification was dated 11 June 1996, it was circulated 1 July 1996, and he voiced concern over the delay, which could cause problems for Members who might need to adopt legal defense promptly upon initiation of an investigation by another Member.

25. The representative of Korea regretted having inconvenienced Members by any lack of information in the notification, and indicated that his delegation was not in a position to furnish additional information at the meeting. He asked any interested Members to address their questions to the Korean delegation in writing, and indicated that his delegation would do its best to provide the additional information requested, so long as such information was not confidential.

26. The Chairman reminded the delegation of Korea of the obligation to notify any affirmative finding of serious injury due to increased imports, if such a finding had been made.

27. Regarding Korea's initiation of an investigation on bicycles, the representatives of Japan, Canada and the United States expressed their interest. The representatives of Japan and Canada indicated that they would submit written questions to Korea about the investigation.

28. The representative of Korea stated that his delegation would respond to all such questions immediately.

29. The Committee took note of the statements made.

(ii) Notifications of findings of serious injury or threat caused by increased imports (Art. 12.1(b))

30. The Committee reviewed the one notification of a finding of serious injury due to increased imports that had been circulated since the previous meeting, that from the United States with respect to broom corn brooms.

31. The representative of Mexico asked for a written clarification on whether a measure had been implemented. The representative of the United States indicated that on 1 August 1996, the US International Trade Commission had made an affirmative determination of serious injury due to increased imports, and that on 30 August 1996, the President of the United States had deferred for 90 days any decision with respect to applying a measure, to allow time for a negotiated solution to address the serious injury, to facilitate industry adjustment and to balance the competing interests involved. He further stated that as the 90-day period was still underway, no decision had been taken, but that any actions taken or agreements reached in the matter would be fully consistent with the United States' obligations under the Agreement on Safeguards.

32. The representative of Colombia asked when the substantive information on increased imports required in item 2 of the relevant notification format would be provided to the Committee, given that Colombia understood that such information had been reported to the US President in August 1996. The representative of the United States indicated that, in accordance with the United States' usual practice, and due to the length of the report, the full report of the US International Trade Commission on the investigation had been placed on file with the Secretariat rather than being circulated to all Members. The representative of Colombia stated that from a systemic point of view, the information referred to in the notification formats should be provided therein, as it was difficult for small delegations, and for capital-based officials, otherwise to follow developments in a particular situation. She noted that the initial US notification indicated that the relevant information would be provided at a later date, and stated that such information should be provided or otherwise updated.

33. The Committee took note of the statements made.

(iii) Notifications regarding application of provisional safeguard measures (Art. 12.4)

34. The Committee reviewed the one notification regarding application of a provisional safeguard measure that had been circulated since the previous meeting, that from Brazil with respect to imports of toys.

35. The representative of Japan noted his delegation's serious concern over the measure, and stated that his delegation shared in particular the concerns raised by the EC in its letter to Brazil (G/SG/3) as to the meaning of "directly competitive products" and as to the causal link between increased imports and serious injury. He noted that the provisional measure raised the tariffs on two Harmonized System categories -- wheeled toys and video games -- above bound rates. He stated that it was clear that wheeled toys and video games were different, due to the manner and occasions of their use, and other characteristics, which raised serious doubts as to the consistency of the measure with the Agreement. He stated that video games were not produced by the Brazilian domestic producers, and that most were produced by licensees of foreign makers. For this reason, it was difficult to agree that toys by Brazilian

makers were directly competitive with video games. He indicated that Japan reserved its rights under the WTO with respect to the measure.

36. The representative of Japan then posed three questions (which already had been submitted in writing to the delegation of Brazil). First was whether the provisional measure applied to products from Mercosur member countries, and if not, what the legal basis was for excluding them, in light of the GATT's and Safeguards Agreement's MFN requirements, and in light of Article 5 of the Brazilian decree on safeguards (Decree 1488/95, 11 May 1995). The representative of Brazil stated that the measure applied to all countries, but that due to the Mercosur treaty which provides a tariff preference of 100% for imports from Mercosur countries, the effect of the measure on these countries was nil. The representative of Japan indicated that his government was not convinced by this explanation. The representative of the United States queried, in light of the earlier discussion of the Brazilian safeguard legislation and Brazil's legal system, whether the measure's lack of effect on imports from Mercosur countries was because the Mercosur treaty takes precedence over Brazil's safeguards decree, and that thus, regardless of that decree's MFN provision, this would prevent application of a measure to Mercosur countries. The representative of Brazil indicated that there would be no legal basis for excluding any country from application of a safeguard measure, given the MFN obligations of the Safeguards Agreement and the Brazilian decree. The Asuncion Treaty which created the Mercosur customs union and free trade zone provided that each Mercosur member accord to all the others a 100% tariff preference (i.e., a zero tariff), on all but a few products listed as exceptions. Therefore, the issue was not which obligation applied with respect to Mercosur members, but rather, that two obligations applied. He further indicated that negotiations were being held within Mercosur to draft a common regulation for the application of safeguard, anti-dumping and countervailing measures. This regulation would make clear that the adoption of trade remedies within the customs union would follow the rules specified therein.

37. The second question posed by the representative of Japan was regarding the volume and value, during the past three years, of domestic production of each product covered by the measure. The representative of Brazil indicated that this question, which had been received in writing, would be answered in writing.

38. The representative of Japan then asked what the concrete criteria were for distinguishing "directly" from "indirectly" competitive products, and when asked to clarify this question, restated it in terms of the distinction between "directly competitive" and "non-directly competitive" products. The representative of Brazil stated that the Brazilian safeguards decree does not contain such concrete criteria, nor does the Agreement require the creation of such criteria. He questioned whether it was possible to establish such criteria, reminded the Committee of the long discussion that had taken place on the concept of "directly competitive", and referred to the report of the Appellate Body on the Japanese liquor case, which treated this subject, *inter alia*. The representative of the EC noted his disagreement with part of Brazil's response. Although the Agreement contains no requirement to define the criteria for a determination of whether a product is directly competitive, it does require that such a determination be made. From this perspective, it might be a matter of semantics whether the criteria are listed or described. This representative indicated his belief that the Brazilian authority was tackling the issue, and noted that whether it was doing so satisfactorily was another matter.

39. The representative of Japan sought confirmation that Brazil would provide written answers to the written questions. The Chairman requested that the delegation of Japan submit its written questions to the Secretariat for circulation to the Committee. These questions were subsequently circulated in document G/SG/Q2/BRA/1. **TO DATE, NO REPLIES HAVE BEEN RECEIVED.**

40. The Committee took note of the statements made.

(iv) Notifications regarding consultations (Arts. 12.4 and 12.5)

41. The Committee reviewed the notifications that it had received concerning consultations between the EC and Brazil regarding the provisional measure on toys (G/SG/3 and G/SG/5-G/L/110). The representative of the EC indicated that his delegation concurred with the notification by Brazil as to the outcome and present state of the consultations. He added that although the consultations had been helpful in clarifying factual and methodological issues, the EC nevertheless remained concerned over the measure, and had followed up the consultations with written questions regarding some of the matters discussed and certain factual clarifications, the answers to which the EC trusted would be provided in time for the EC to make further input into the investigation. He then asked the Brazilian delegation about the expected timing for the remainder of the investigation. The representative of the United States indicated that his delegation also was interested in answers to the question raised by the EC. The representative of Brazil, with regard to the question from the United States, recalled the information provided in the notification of the results of the consultations, and stated that the investigating authority had taken due note of all points discussed in the consultations, that the new written questions were in the process of being answered by the authority, and that the answers would be provided in the near future. As to the timing of the investigation, the representative of Brazil recalled that, as had been notified, the provisional measure would expire on 31 December 1996, and that therefore, any decision as to application of a definitive measure would be taken before that date.

42. The Committee took note of the statements made.

C. Examination and monitoring of measures covered by Article 11.1

43. The Committee reviewed the two new notifications pertaining to timetables for the phase-out of measures covered by Article 11.1 that had been received and circulated since the previous meeting, one from South Africa and the other, a supplement, from the European Communities.

44. The representative of the EC stated that since South Africa's notification had circulated, the EC had had bilateral contacts with South Africa concerning the tariff items for new tyres that were not included in South Africa's notification on timetables for liberalization of import controls on tyres. The South African authorities had informed the EC that removal of import controls on these remaining items was under consideration, and might be implemented before January 1997. The representative of the EC requested clarification by the South African delegation regarding the elimination of the import controls, and regarding the timing of an official communication to that effect. The representative of South Africa confirmed that the target date of 31 July 1996 for the elimination of import controls on those items that had been listed in South Africa's notification had been met, that those items would remain under surveillance, and that import licenses would be issued freely. As for the other items, for which no date had been notified, import controls would be lifted in January 1997, and a notice to that effect would be published in the South African Government Gazette. The Chairman requested that South Africa make a notification to this effect.

45. The Committee took note of the statements made.

D. Progress in phasing out measures covered by Articles 10 and 11.1

46. The Chairman recalled that Article 13.1(d) of the Agreement required the Committee to monitor the phase-out of measures covered by Articles 10 and 11.1, and that the Committee had decided, at its meeting of 24 February 1995, that such monitoring should be conducted on an annual basis. Two Members, the EC and Korea, had notified pre-existing Article XIX measures covered by Article 10. In addition, five Members, Cyprus, the EC, Korea, Slovenia and South Africa, had notified pre-existing grey area measures, along with timetables for the phase-out of such measures. Each Member having



so notified was asked to make a brief statement regarding its progress in phasing out its notified measures.

47. The representative of Cyprus reported that Cyprus continued to abide by its previously notified timetable, under which its notified measures would be eliminated by 31 December 1998, and continued to be subject to this obligation.

48. The representative of the EC indicated that the progressive elimination of the measures covered by Article 11.1 was proceeding as notified (G/SG/N/5/EEC). Some measures had terminated on 1 June 1995, three would terminate at the end of 1996, and one at the end of 1997. Measures covered by Article 10 would, in keeping with the requirements of the Agreement, be eliminated by 31 December 1999.

49. The representative of Korea indicated that the phase-out of voluntary export restraints was proceeding as notified. He indicated that these were measures agreed by the private sector interests in Korea and the affected countries, and that it was not appropriate to make any changes to the termination dates that had been decided by these private sectors. He recalled the termination dates for each measure: microwave ovens (EC and Korea) - 31 December 1998; colour picture tubes (EC and Korea) - 31 December 1997; stainless steel flatware (UK, Germany and Korea) - 31 December 1998; oysters in airtight containers (all Members and Korea) - 31 December 1998; and chestnuts in shells (Japan and Korea) - 31 December 1998.

50. The representatives of Brazil, the United States, Japan, and Canada asked for clarification of the nature of the measures notified by Korea. In particular, given Korea's statement that these were measures agreed between private sector interests in Korea and other Member countries, the question was raised whether Korea considered that these were or were not safeguard measures covered by the Agreement. Also raised was the extent to which the government of Korea took any action to support such agreements between private interests.

51. The representative of Korea stated that these were voluntary export restraints that were fully private sector measures, that is, that they were agreed between the private sectors (importers and exporters). The Korean government's role with respect to these measures was to ensure that the terms of the agreements were respected. Thus, the government controlled Korean exports of the products to ensure that the quota levels that had been agreed by the private parties were not exceeded. The representative of Canada responded that this statement indicated that the Korean government did play a role in enforcing the measures, so that Canada saw the measures as going beyond purely private sector measures. The government of Canada would follow up with written questions.

52. The Chairman requested that interested Members submit written questions to Korea, so that Korea could provide answers in writing.

53. The representative of Slovenia recalled that in January 1996, Slovenia had notified final dates for elimination of the measures that had been notified in March 1995. Since then, there had been some changes, and some measures had already been eliminated. Slovenia would provide a notification indicating all of the changes.

54. The representative of South Africa indicated that his government did not intend to deviate from the dates previously notified for the elimination of measures. That is, discretionary import licensing on oil and petrochemical products would terminate at the end of 1998, and on polymer and polypropylene film by the end of 1996. Moreover, as had been noted under the previous agenda item, measures on some new pneumatic tyres had been eliminated as of 31 July 1996, and on the remaining tyres would be eliminated in January 1997.

55. The Committee took note of the statements made.

E. Examination of notification of termination of a safeguard investigation with no safeguard measure imposed

56. The Chairman recalled the Committee's decision at its special meeting of May 1996 to adopt a format for the notification of certain information upon termination of a safeguard investigation with no safeguard measure imposed. The Committee reviewed the one notification of this type that had been received and circulated since the previous meeting, that from the United States concerning its investigation of tomatoes and bell peppers. No comments were made or questions raised with respect to this notification.

F. Observers: international organizations

57. The Chairman recalled the General Council's "Guidelines on Observer Status for International Intergovernmental Organizations" (WT/L/161, Annex 3), in particular the provision that requests for observer status be considered on a case-by-case basis by each WTO body to which such a request is addressed, taking into account such factors as the nature of work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization had been associated in the past with the work of the CONTRACTING PARTIES to GATT 1947. The Chairman further recalled that up to that time, the Committee had, pursuant to a decision taken at its meeting of 13-14 July 1995, invited the IMF, OECD and World Bank to attend its meetings on an ad hoc basis, pending the establishment of necessary criteria for observer status of international and intergovernmental organizations. Given that the General Council had established the relevant criteria the Chairman proposed to consult informally on which international intergovernmental organizations would be granted observer status in the Committee, and pending the outcome of such consultations, he proposed that the Committee continue to invite on an ad hoc basis those organizations which had been following the Committee's meetings up to that time.

58. The Committee so decided.

G. Other business

59. The Chairman informed the Committee that on 2 May 1996 he had received a letter from the Chairman of the Committee on Trade and Development requesting information on the implementation of development-related provisions in the Safeguards Agreement, in connection with that Committee's periodic review and reporting to the General Council regarding the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members. Because the Committee on Safeguards would not have met again in time to formulate a response to the request, the Chairman had submitted a response under his own responsibility, which had been compiled by the Secretariat, along with the responses of other Committees, in document WT/COMTD/W/16 dated 27 August 1996 and an Addendum that would be issued shortly. Based on this document, the matter was under consideration in the Committee on Trade and Development.

60. The Committee took note of the statement made.

H. Annual report to the Council for Trade in Goods

61. The Committee adopted its annual report to the Council for Trade in Goods (subsequently circulated as G/L/129).

I. Date of next regular meeting

62. The Committee decided that its regular Spring meeting for 1997 would be held during the week of 28 April 1997, that is, in conjunction with the regular meetings of the Committees on Anti-dumping Practices and on Subsidies and Countervailing Measures.

63. The Chairman reminded the Committee that previously-reviewed legislative notifications would be placed on the agenda of the Spring meeting only if questions concerning such notifications were received from Members no later than six weeks before the meeting, and that such questions should be submitted directly to the Member concerned and to the Secretariat. Members receiving such questions were reminded to submit their written answers no later than two weeks before the meeting so that the discussion at the meeting could proceed on the basis of the written questions and answers.

64. The meeting was adjourned.