

---

## Committee on Safeguards

### MINUTES OF THE REGULAR MEETING HELD ON 9 NOVEMBER 2000

Chairman: Mr. J. Phoho Setipa (Lesotho)

1. The Committee on Safeguards (the "Committee") held a regular meeting on 9 November 2000.

2. The following agenda was adopted:

	<u>Page</u>
A. ELECTION OF OFFICERS .....	3
B. NATIONAL LEGISLATION.....	3
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
(i) Ecuador (G/SG/N/1/ECU/3)	
(ii) Latvia (G/SG/N/1/LVA/1/Suppl.2 + Corr.1)	
(iii) Chad (G/SG/N/1/TCD/1)	
2. Continuing review of previously reviewed notifications .....	3
C. NOTIFICATIONS OF ACTIONS RELATED TO SAFEGUARD MEASURES .....	3
1. Notifications of initiations of investigations .....	4
(i) Argentina - Motorcycles (G/SG/N/6/ARG/3 + Suppl.1)	
(ii) Chile - Liquid/powdered milk (G/SG/N/6/CHL/4)	
(iii) Egypt - Powdered milk (G/SG/N/6/EGY/3)	
(iv) India - Gamma ferric oxide/magnetic iron oxide (G/SG/N/6/IND/10)	
(v) India - Methylene chloride (G/SG/N/6/IND/11 + Corr.1)	
(vi) Morocco - Bananas (G/SG/N/6/MAR/1)	
(vii) El Salvador - Rice (G/SG/N/6/SLV/2)	
(viii) United States - Extruded rubber thread (G/SG/N/6/USA/9)	
2. Notifications of application of provisional safeguard measures .....	8
(i) Chile - Liquid/powdered milk (G/SG/N/7/CHL/3 + Suppl.1)	
(ii) Chile - Socks (G/SG/N/7/CHL/4)	

(iii)	Egypt - Powdered milk (G/SG/N/7/EGY/2)	
3.	Notifications of findings of serious injury or threat thereof caused by increased imports.....	9
(i)	Argentina - Footwear (G/SG/N/8/ARG/1/Suppl.1 + Suppl.2)	
(ii)	Latvia - Swine meat (G/SG/N/8/LVA/1/Corr.1)	
4.	Notifications of termination of an investigation with no safeguard measure imposed.....	9
(i)	Chile - Socks (G/SG/N/9/CHL/2)	
(ii)	United States - Crabmeat (G/SG/N/9/USA/2)	
(iii)	Venezuela - Cold-rolled steel (G/SG/N/9/VEN/1)	
(iv)	Venezuela - Hot-rolled steel (G/SG/N/9/VEN/2)	
5.	Notifications of a decision to apply a safeguard measure.....	10
(i)	Argentina - Footwear (G/SG/N/10/ARG/1/Suppl.4 + Suppl.5)	
(ii)	India - phenol (G/SG/N/10/IND/5)	
(iii)	Korea - Garlic (G/SG/N/10/KOR/2 + Suppl.1)	
(iv)	Latvia - Swine meat (G/SG/N/10/LVA/1/Corr.1) & (G/SG/N/10/LVA/2)	
(v)	United States - Wheat gluten (G/SG/N/10/USA/2/Suppl.2)	
6.	Notifications regarding the non-application of a safeguard measure to developing countries.....	12
(i)	Argentina - Footwear (G/SG/N/11/ARG/1/Suppl.4 + Suppl.5)	
(ii)	Korea - Garlic (G/SG/N/11/KOR/2 + Suppl.1)	
(iii)	United States - Wheat gluten (G/SG/N/11/USA/2/Suppl.2)	
7.	Notifications regarding proposed suspension of concessions and other obligations.....	12
(i)	Argentina/Indonesia - Footwear (G/SG/N/12/ARG/2 & G/SG/N/12/IDN/1)	
(ii)	Brazil/European Communities - Toys (G/SG/N/12/BRA/1/Add.1 + Corr.1 & G/SG/N/12/EEC/2/Add.1 + Corr.1)	
(iii)	United States/European Communities - Steel wire rod (G/SG/N/12/USA/2 & G/SG/N/12/EEC/4)	
(iv)	United States/European Communities - Line pipe (G/SG/N/12/USA/3 & G/SG/N/12/EEC/5)	
(v)	United States/Japan - Steel wire rod (G/SG/N/12/USA/4 & G/SG/N/12/JPN/1)	
(vi)	United States/Japan - Line pipe (G/SG/N/12/USA/5 & G/SG/N/12/JPN/2)	
D.	OTHER BUSINESS.....	14

Page

E.	PROGRESS IN PHASING OUT MEASURES COVERED BY ARTICLES 10 AND 11 OF THE AGREEMENT.....	15
F.	ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS .....	16
G.	DATE OF NEXT REGULAR MEETING.....	16

A. ELECTION OF OFFICERS

3. The Committee elected Mr. István Pokorádi of Hungary as Vice-Chairperson of the Committee.

B. NATIONAL LEGISLATION

1. Review of notifications of new or amended legislation or regulations not previously reviewed

4. There were no comments regarding any of the legislative notifications on the agenda.

5. The Chairman recalled that the deadline for any written questions concerning the legislative notifications reviewed by the Committee was 30 November 2000. The deadline for providing written answers to written questions submitted by that date was 21 December 2000.

6. The Chairman also reported on the status of legislative notifications received from Members, noting that the following 37 Members had still not made the required legislative notification:

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

7. The Chairman urged these Members to make the required notification. The Chairman noted that, in cases where no legislation exists, only a very simple "nil" notification is required.

8. The Committee took note of all statements made concerning the legislative notifications on the agenda.

2. Continuing review of previously reviewed notifications

9. There were no comments under this agenda item.

C. NOTIFICATIONS OF ACTIONS RELATED TO SAFEGUARD MEASURES

10. The Chairman encouraged Members intending to make remarks concerning different notifications in respect of the same product/investigation to do so in one intervention.

1. Notifications of initiation of an investigation and the reasons for it

11. The Chairman noted that, since the Committee's last meeting, notifications of initiation of investigations have been received from Argentina on motorcycles (G/SG/N/6/ARG/3 and Suppl.1), from Chile on liquid and powdered milk (G/SG/N/6/CHL/4), from Egypt on powdered milk (G/SG/N/6/EGY/3), from India on gamma ferric oxide and magnetic iron oxide (G/SG/N/6/IND/10), from India on methylene chloride (G/SG/N/6/IND/11 and Corr.1), from Morocco on bananas (G/SG/N/6/MAR/1), from El Salvador on rice (G/SG/N/6/SLV/2), and from the United States on extruded rubber thread (G/SG/N/6/USA/9).

(i) **Argentina - motorcycles**

12. Japan expressed concern regarding Argentina's investigation on motorcycles. Japan asserted that it has a significant trade interest in motorcycles. Japan expressed doubts regarding the consistency of Argentina's action with the Safeguards Agreement. In this regard, Japan referred to the Appellate Body report on *Argentina - Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R), noting in particular that it addressed the application of safeguard measures within Mercosur.

13. The United States noted that the Resolution attached to Argentina's notifications refer to a causal link between increased imports and the serious injury or threat of serious injury. According to the United States, however, none of the import data submitted by Argentina supports this conclusion. The United States asked Argentina to provide the import statistics used in its analysis. In addition, the United States asked Argentina to clarify the current applied rate and bound rate of duty for motorcycles covered by Argentina's investigation.

14. India expressed concern regarding the absence of any import data in Argentina's notifications, since Article 2 of the Safeguards Agreement requires imports "in such increased quantities". Noting that the relevant domestic industry's performance apparently deteriorated in 1999, India presumed that the requisite causal link between increased imports and serious injury must have been based on increased imports during 1999. India asked Argentina to confirm whether or not imports had increased during 1999. Furthermore, India suggested that the current applied rate of duty (23 per cent) is already extremely high, and provides sufficient protection to Argentina's domestic motorcycle producers.

15. Indonesia asserted that it has a substantial trade interest as an exporter of motorcycles. Indonesia stated that the applicant domestic producer only manufactures 50cc motorcycles, and not 51-100cc motorcycles. However, the investigation covers all motorcycles up to 100cc. Indonesia stated that a significant volume of imported motorcycles are 51-100cc, which - because of their different cylinder capacities - are not like or directly competitive with the applicant's 50cc product. Indonesia therefore urged Argentina not to take safeguard action against imported motorcycles.

16. Korea also registered concern regarding Argentina's investigation on motorcycles. Korea noted that the volume of imports rose from 1996 - 1998, consistent with an increase in domestic consumption, and then fell slightly in 1999. Korea asserted that it would study carefully any finding by Argentina regarding the existence of a causal link between actual or threatened serious injury and increased imports.

17. Argentina recalled that, for the time being, Argentina has simply initiated a safeguard investigation on mopeds and motorcycles up to 100cc. Argentina has not imposed any safeguard measures, not even provisional, on imports of such mopeds and motorcycles. Argentina has respected the requirements of domestic law and of the Safeguards Agreement. Argentina informed the Committee that a public hearing took place in September 2000, and that the investigating authority is

currently assessing the existence of serious injury or threat thereof. In this regard, hard facts will become available in February or March 2001. In response to some of the issues raised by Members before the Committee, Argentina confirmed that the current applied rate for products covered by the investigation is 23 per cent. Argentina suggested that this should not be viewed as a high rate, when compared to the rate applied by other WTO Members. Although import statistics will be forthcoming in due course, Argentina asserted that there was a significant increase in imports over 1998/1999. Imports in 1997 amounted to less than US\$20 million, whereas imports in 1998 amounted to US\$54 million. There was an increase in imports of almost 300 per cent over the period of investigation.

**(ii) Chile - liquid & powdered milk**

18. The Chairman noted that Chile's notification of initiation concerning liquid and powdered milk was followed by notifications concerning a provisional safeguard measure (G/SG/N/7/CHL/3 and Suppl.1).

19. Argentina expressed concern regarding both the initiation of the investigation, and the imposition of a provisional safeguard measure. According to Argentina, Chile has failed to respect various provisions of Article XIX of the GATT 1994 and the Safeguards Agreement, and also of Chile's domestic legislation. First, it is unclear whether the alleged increase in imports is absolute or relative to domestic production (Article 2 of the Safeguards Agreement). Second, there is no demonstration that the alleged increase in imports resulted from unforeseen developments (Article XIX of the GATT 1994). Third, there is no clear proof of causality between the alleged increase in imports and the alleged serious injury (Article 4). Fourth, there is no correct definition of like or directly competitive product, and therefore no correct definition of the relevant domestic industry (Article 4). Fifth, there is no explanation of the critical circumstances justifying the imposition of a provisional safeguard measure (Article 6). Finally, there is no assessment of all relevant factors of serious injury, contrary to Article 4.2(a) of the Safeguards Agreement. For these reasons, Argentina has requested consultations with Chile pursuant to Article 12.4 of the Safeguards Agreement.

20. Uruguay expressed concern regarding the consistency of the initiation of the investigation, and of the provisional measure, with Article XIX of the GATT 1994 and the Safeguards Agreement. In this regard, Uruguay referred to an absence of proof regarding the existence of unforeseen developments, and shortcomings regarding Chile's preliminary determination that increased imports had caused serious injury. Uruguay also referred to an absence of proof regarding critical circumstances justifying the imposition of a provisional safeguard measure, and to Chile's failure to examine other potential causes of injury to the domestic industry. Uruguay also asserted that Chile had failed to comply with the applicable provisions regarding notification, publication and consultation. Finally, Uruguay also failed to understand why the Chilean authorities had initiated the investigation *ex officio*, without any application or re-adjustment plan from the relevant domestic industry. For these reasons, Uruguay has requested consultations with Chile pursuant to Article 12.4 of the Safeguards Agreement.

21. The European Communities shared many of the concerns already expressed by Argentina and Uruguay. The European Communities raised additional points of procedure and substance. The European Communities asserted that the procedure followed by the Chilean authorities was highly questionable, since the investigation was initiated *ex officio*, and the provisional measure was applied just one day after a countervailing duty on the same product had been annulled. The European Communities asserted that safeguard measures should not be used as a convenient instrument to replace other types of trade defence measures that cannot be maintained. On substance, the European Communities stated that Chile has failed to provide sufficient evidence justifying the need for emergency action. On the contrary, Chile's findings in the countervailing duty investigation

completed just before initiation of the safeguard investigation would seem to indicate that the conditions for applying safeguard measures are not fulfilled. In particular, imports declined in 1999, both in absolute terms and relative to domestic production. Furthermore, the market share held by imports has always been moderate, even decreasing from 10 per cent in 1996 to 6 per cent in 1999. In addition, there were no critical circumstances justifying the imposition of a provisional safeguard measure, contrary to Article 6 of the Safeguards Agreement. For these reasons, the European Communities has requested Article 12.4 consultations with Chile. The European Communities asked Chile to disclose all the information regarding this investigation as soon as possible, and in any event before imposing any definitive safeguard measure. The European Communities urged Chile to promptly remove the provisional measure.

22. The United States asked Chile to update the Committee on the current status of its safeguard investigation. The United States also raised a number of questions regarding Chile's notifications. These questions can be found in document G/SG/Q2/CHL/7.

23. New Zealand shared the concerns expressed by other delegations.

24. Australia shared the concerns expressed by other delegations, adding that there were both legal and economic questions concerning Chile's action. In particular, Australia referred to Chile's definition of the relevant domestic industry, to its preliminary determination of serious injury, and to its preliminary determination of increased imports. In this regard, Australia noted that 1999 imports were less than 1998 imports, and that domestic milk powder producers have been recording strong economic performance. Australia also asserted that there were no unforeseen developments justifying Chile's safeguard action. Chile's concern in applying a provisional safeguard measure seems primarily to be lower international prices. Australia questioned the use of safeguard measures as a response to downward movement in world prices. In any event, Australia noted that international prices of milk powder have increased substantially since the middle of 1999, and are currently well above levels in 1998, when Chilean production of milk powder was at a record level. Given increased international prices and continued high levels of domestic production, Australia questions the justification provided by Chile for imposing a provisional safeguard measure. In Australia's view, there is similarly no justification for imposing a definitive safeguard measure. Australia urged the Chilean Government not to impose a definitive safeguard measure, and to revoke the provisional measure without delay.

25. Canada shared the concerns expressed by other delegations, and noted that it has requested Article 12.4 consultations with Chile on this matter.

26. Chile informed Members that Article 12.4 consultations will take place on 21 and 22 November 2000. The results of these consultations will be communicated to all Members, in accordance with Article 12.5.

**(iii) Egypt - powdered milk**

27. The Chairman noted that Egypt's notification concerning the initiation of an investigation on powdered milk (G/SG/N/6/EGY/3) was followed by notifications regarding a provisional safeguard measure (G/SG/N/7/EGY/2 and Corr.1).

28. The European Communities expressed its concern regarding the safeguard action taken by Egypt. According to the European Communities, there is no evidence that increased imports cause, or threaten to cause, serious injury to the domestic industry. First, it is questionable whether imported milk powder competes directly with domestic fresh / liquid milk. Second, imports of powdered milk have decreased substantially. Third, international milk powder prices have increased sharply in 2000, thereby eliminating the alleged import pressure on domestic prices. As a result, there was no basis for

the imposition of provisional measures, since there were no "critical circumstances" as required by Article 6. The European Communities therefore asked Egypt to remove promptly its provisional safeguard measure on powdered milk. More generally, the European Communities also expressed concern regarding the proliferation of provisional safeguard measures imposed without proper justification but solely in response to movements in international prices.

29. The United States registered its interest in this case as a principal supplier of powdered milk, and noted that it had concerns regarding the conduct of Egypt's investigation. The United States noted that Article 6 permits the imposition of a provisional safeguard measure "pursuant to a preliminary determination". The Egyptian investigation was initiated on 25 September 2000, and the provisional measure was imposed the next day. According to the United States, this implies at best that only some nominal form of investigation was carried out before the provisional measure was imposed. The United States presented a number of questions to Egypt (see document G/SG/Q2/EGY/12).

30. Australia associated itself with the comments made by the European Communities and the United States, and regretted the tendency for certain Members to consider the imposition of a provisional measure as part and parcel of the initiation of an investigation. Given the significant trade impact resulting from the imposition of a provisional measure, such provisional measure may only be imposed following a clear determination of Article 6 "critical circumstances". Australia asked Egypt to explain what "critical circumstances" justified the imposition of a provisional measure in the present case. Furthermore, Australia queried why Egypt included liquid milk producers (including buffalo milk producers) in its definition of the relevant domestic industry. Even if liquid milk producers are included, there is scant evidence to suggest that they have suffered serious injury as a result of imports of powdered milk, since world prices have been increasing for some time. Australia expressed its understanding that Egyptian farmers' problems are due largely to internal factors, such as increased competition, increased production, and the role of the major processors purchasing liquid milk.

31. New Zealand shared the concerns expressed by other delegations.

**(iv) India - gamma ferric oxide / magnetic iron oxide**

32. There were no comments on this notification.

**(v) India - methylene chloride**

33. The European Communities expressed concern regarding India's investigation, noting that it is based solely on threat of serious injury. The European Communities asserted that, on the basis of the scant information in India's notification, no investigation should have been initiated. In particular, there has been no recent or sharp increase in imports, and there are no clear indications that the domestic industry is threatened with serious injury. On the contrary, domestic producers are operating at full capacity. In addition, other factors such as an increase in the world price for raw materials, and the overall evolution of the world market for this product, seem to be responsible for any adverse effects on the performance of domestic producers. The European Communities recalled that, according to Article 4.1(b), determinations of threat of serious injury "shall be based on facts and not merely on allegation, conjecture or remote possibility". The European Communities invited India to exercise all the appropriate caution called for in a threat of injury case, and noted the absence of any "critical circumstances" that might justify the imposition of provisional measures requested by the applicants.

34. The United States noted that domestic producers have requested the immediate application of provisional safeguard measures in both cases notified by India. The United States asked India to confirm whether it has implemented a provisional safeguard in these cases.

35. India confirmed that no provisional safeguard measures have been imposed in either case. In respect of comments by the European Communities, India denied that its notifications contain only "scant" information. India noted that the amount of information it generally includes in its notifications far exceeds that contained in other Members' notifications. On substance, India asserted that imports increased by approximately 40 per cent during the period 1998-2000. During the same period, world prices have fallen by approximately 40-46 per cent. While domestic producers are running at full capacity, that is only to keep up with the substantial fall in world prices. With regard to Article 4.1(b), India noted that it has only just initiated the investigation. While Article 4.1(b) will apply during the course of the investigation, it does not necessarily apply at the initiation stage.

**(vi) Morocco - bananas**

36. Morocco informed the Committee that its investigation was initiated on 26 June 2000, following an examination by the Consultative Committee on Imports of an application submitted by the domestic producer. According to Morocco, preliminary results indicate that banana imports increased by 169 per cent during 1999. The market share of imported bananas has grown from 5.2 per cent in 1997 and 4.3 per cent in 1998, to 11 per cent in 1999. According to unverified data from domestic producers, their profits fell from 180 million dirhams in 1997 to 61.3 million dirhams in 1998, with a loss of 89 million dirhams in 1999. Furthermore, domestic prices dropped from 6.5 dirhams per kilo in 1997 to 5.5 dirhams per kilo in 1998, and to 4 dirhams per kilo in 1999.

37. Ecuador expressed concern regarding the investigation initiated by Morocco. Ecuador asked Morocco to make available to the Committee all information available to it.

**(vii) El Salvador - rice**

38. The United States noted that it is a principal supplier of the product under investigation, and asked El Salvador to update the Committee on the status of the investigation.

**(viii) United States - extruded rubber thread**

39. The United States informed the Committee that on 3 October 2000 the USITC determined that increased imports of extruded rubber thread are not a substantial cause or threat of serious injury to domestic producers. Accordingly, the investigation was terminated. A public report concerning the investigation will be available after the USITC submits its findings to the President of the United States, which will occur by 4 December 2000.

**2. Notifications of application of provisional safeguard measures**

40. The Chairman noted that, since the last meeting of the Committee, Chile has notified provisional safeguard measures on liquid / powdered milk (G/SG/N/7/CHL/3 and Suppl.1) and synthetic socks (G/SG/N/7/CHL/4), and Egypt has notified a provisional measure on powdered milk (G/SG/N/7/EGY/2). Since Chile's notification on liquid / powdered milk and Egypt's notification on powdered milk have already been considered, the Committee addressed Chile's notification on synthetic socks.

41. Chile explained that although it had opened an investigation on both cotton and synthetic socks, the provisional measure only covers synthetic socks. The investigation on cotton socks has been terminated.

42. Colombia asserted that Chile's provisional measure is not consistent with Article 6 of the Safeguards Agreement or Article XIX of the GATT 1994. Colombia noted that Chile's current applied rate is 9 per cent, and that the provisional measure takes the form of a 13 per cent surcharge.



This amounts to a total duty of 22 per cent, which is less than Chile's bound rate of 25 per cent. Given that the provisional measure will be less than Chile's bound rate, Colombia asserted that Chile is not really applying a genuine safeguard measure within the meaning of Article XIX of the GATT 1994. Instead, it is applying a tariff surcharge. While this may not be inconsistent with Chile's WTO commitments, it is contrary to Chile's regional commitments. Accordingly, Chile should raise this matter in the appropriate regional forum, and not in the WTO Safeguards Committee.

43. Ecuador noted that its exports account for approximately 10 per cent of Chile's domestic synthetic sock market, and that bilateral consultations have taken place. Ecuador requested further information regarding the preliminary analysis undertaken by the Chilean authorities.

44. The United States put a number of questions to Chile (see document G/SG/Q2/CHL/6).

45. Chile stated that the issue raised by Colombia was addressed by Chile in document G/SG/N/10/CHL/2. Chile stated that the provisional measure was notified as a WTO safeguard measure, despite it being less than Chile's bound rate, since it is possible that any definitive measure will exceed Chile's bound rate.

3. Notifications of findings of serious injury or threat thereof caused by increased imports

46. The Chairman noted that, since the last meeting of the Committee, notifications of findings of serious injury or threat thereof have been received from Argentina on footwear (G/SG/N/8/ARG/1/Suppl.1 and Suppl.2) and from Latvia on swine meat (G/SG/N/8/LVA/1/Corr.1).

(i) **Argentina - footwear**

47. There were no comments regarding Argentina's notifications.

(ii) **Latvia - swine meat**

48. Latvia informed the Committee that this notification refers only to a minor technical amendment to an earlier notification. Latvia recalled that its definitive safeguard measure on swine has in any event been terminated (see document G/SG/N/10/LVA/2).

49. The United States recalled that a provisional safeguard measure had been applied on swine meat. The United States asked whether termination of the definitive safeguard included liquidation of duties collected while the provisional safeguard measure was in place.

50. Latvia asked the United States to put this question in writing.

4. Notifications of termination of an investigation with no safeguard measure imposed

51. The Chairman recalled that the Committee has received notifications of termination from Chile on cotton socks (G/SG/N/9/CHL/2), from the United States on crabmeat (G/SG/N/9/USA/2), and from Venezuela on cold-rolled and hot-rolled steel (G/SG/N/9/VEN/1 and 2).

(i) **Chile - cotton socks**

52. There were no comments regarding this notification.

**(ii) United States - crabmeat**

53. There were no comments regarding this notification.

**(iii) Venezuela - hot-rolled and cold-rolled steel**

54. There were no comments regarding these notifications.

**5. Notifications of a decision to apply a safeguard measure**

55. The Chairman recalled that, since the last meeting, notifications concerning a decision to apply a safeguard measure have been received from Argentina on footwear (G/SG/N/10/ARG/1/Suppl.4 and Suppl.5), from India on phenol (G/SG/N/10/IND/5), from Korea on garlic (G/SG/N/10/KOR/2 and Suppl.1), from Latvia on swine meat (G/SG/N/10/LVA/1/Corr.1 and G/SG/N/10/LVA/2), and from the United States on wheat gluten (G/SG/N/10/USA/2/Suppl.2).

**(i) Argentina - footwear**

56. The Chairman noted that Argentina's notifications concerning the application of a measure on footwear were followed by notifications regarding the non-application of a measure to developing countries (G/SG/N/11/ARG/1/Suppl.4 and Suppl.5).

57. Indonesia fully recognized the legitimacy of safeguard action taken to prevent or remedy injury and facilitate domestic industry adjustment. However, to ensure that the balance of rights and obligations in the Safeguards Agreement was not being impaired, Indonesia was of the position that the safeguard measure should not be applied so as to constitute abuse of the measure.

58. In this regard, Indonesia noted that Argentina's measure was an extension of an earlier measure, which was found to be inconsistent with the Safeguards Agreement in the context of WTO dispute settlement proceedings (see *Argentina - Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R)). According to Indonesia, there should be no extension of safeguard measures which have been condemned in this way. Therefore, Indonesia requested Argentina to remove its measure in order to facilitate the flow of trade of this product.

59. Thailand associated itself with Indonesia's comments.

60. The United States noted that, in accordance with Article 19.1 of the Dispute Settlement Understanding ("DSU"), the Dispute Settlement Body ("DSB") recommended that Argentina bring its measure into conformity with the Safeguards Agreement. The United States does not consider that this recommendation necessarily requires revocation of the condemned measure, or precludes modification of that measure. The United States asked Argentina to confirm whether the measure at issue is actually a modification of the condemned measure. In this regard, the United States also asked Argentina to demonstrate how it had complied with the requirements of Article 7.2 of the Safeguards Agreement (governing the extension of safeguard measures) when it extended its safeguard measure by 150 days pursuant to Resolution No. 122/2000. Can Argentina point to any finding by the panel or Appellate Body that the product coverage of its safeguard measure was inappropriate? Is there anything to suggest that the elimination of some, but not all, products from the coverage of the measure would be an appropriate means to bring the measure into conformity pursuant to Article 19.1 of the DSU? What is the basis for defining performance sports footwear based on brand name? Does the record contain any evidence to indicate that all the models sold under the covered brands are in fact performance sports footwear?

61. Argentina stated that it modified its safeguard measure in order to bring it into conformity with the Safeguards Agreement, consistent with Article 19.1 of the DSU. With respect to the US questions, Argentina asserted that the Safeguards Committee is not the appropriate forum for discussing Argentina's implementation of DSB recommendations.

62. Australia noted that a condemned measure may be able to be brought into conformity through modification, rather than elimination, but only in certain circumstances. However, Article 7 of the Safeguards Agreement is quite specific about the further application of new measures. In the present case, therefore, the only way for Argentina to bring the condemned measure into conformity is for Argentina to revoke that measure.

63. The United States asked Argentina to explain why, if this is not an appropriate forum to discuss this matter, Argentina made a notification in document G/SG/N/8/ARG/1/Suppl.1 raising these very issues. Since Argentina has brought such issues to the floor, it should respond to specific questions regarding these issues.

64. Argentina explained that its notifications refer to the extension of a safeguard measure, to findings of serious injury, and to the application of the measure in respect of developing country Members. They do not refer to the implementation of DSB recommendations.

**(ii) India - phenol**

65. India clarified that the final and detailed findings of the Director-General of Safeguards have already been circulated under Article 12.1(b) (see document G/SG/N/8/IND/6), and that the present notification is merely a governmental communication confirming the recommendations of the Director-General of Safeguards.

**(iii) Korea - garlic**

66. The Chairman noted that Korea's notifications were followed by notifications regarding the non-application of a measure to developing countries (G/SG/N/11/KOR/2 and Suppl.1).

67. The United States expressed concern regarding the magnitude of Korea's safeguard measure, which takes the form of a duty of up to 456 per cent. The United States considers that such a high duty could be prohibitive of imports, and therefore fail to assist the domestic industry in adjusting to competition from imports. The United States put a series of technical questions to Korea (see document G/SG/Q2/KOR/1).

68. Korea asserted that its safeguard measure is consistent with the Safeguards Agreement.

**(iv) Latvia - swine meat**

69. Latvia recalled that it has now terminated its measure on swine meat.

**(v) United States - wheat gluten**

70. The Chairman noted that the US notification regarding the application of a measure on wheat gluten was followed by a notification regarding the non-application of a measure to developing countries (G/SG/N/11/USA/2/Suppl.2).

71. The European Communities made a number of preliminary comments on the US answers (see document G/SG/Q2/USA/10) to previous EC questions (see document G/SG/Q2/USA/8). With regard to Question 1, the European Communities was pleased to note that the US measure had not

been extended to cover pet-food mix. With regard to Question 2(a) and (b), the European Communities remains concerned that the imposition of the new US quarterly quota was not in accordance with WTO disciplines, especially Article XIII.3(b) of the GATT 1994 concerning shipments en route. The European Communities disputed the US assertion that the new quarterly quota remedies the trade distortion resulting from the former annual quota. The European Communities referred to a statement of US policy regarding first-come-first-served quota in circumstances of high demand contained in a paper submitted by the United States in 1997 in the context of the Agriculture Committee's Analysis and Information Exchange Process. In that paper, the United States asserted that if first-come-first-served is used when the "quota is small and demand is high", there is likely to be a "chaotic rush to import on the day the tariff rate quota is opened", and that this can give rise to uncertainty for traders which "could diminish the value of the concession". According to the European Communities, therefore, the United States was clearly aware of the negative effect on trade that first-come-first-served quota would have. The European Communities explained that, for this reason, it had proposed the constructive solution of limiting release from warehouse on a quarterly basis, while allowing traders to know for the whole year how much wheat gluten would be admitted. The United States rejected this solution, despite it knowing that the wheat gluten business relies on forward contracting. According to the European Communities, it is difficult not to conclude that the creation of maximum uncertainty through the use of four quarterly first-come-first-served quota was not deliberate.

72. The United States explained that in the second year of the three-year measure, imports filled the entirety of the annual quota in the first two weeks after it opened. This sudden entry of imports disrupted the US wheat gluten market, and prevented the achievement of the goals of the measure: the remedy of serious injury and the facilitation of domestic industry adjustment. Information available to the United States suggested that imports accounting for the entirety of the even larger third-year annual quota would enter on the day the quota opened. To prevent the disruption that would accompany a one-day massive influx of imports, the United States divided the third-year quota on a quarterly basis. Furthermore, Article XIII.3(b) of the GATT 1994 requires the entry of merchandise in transit at the time a quota is imposed, only to the extent that it is practicable to count that amount against the quota for the period, and as necessary the quota for subsequent periods. If the United States had allowed entry of all products in transit, and counted any excess against quota for subsequent periods, it would have filled all four quarters of the third-year quota on the first day of that quota, thereby rendering the quota ineffective. Thus, it was not practicable to allow entry of all products in transit. Instead, importers had the option of warehousing any imports that did not enter into the first quarter quota. Those imports would then be eligible for entry under subsequent quota as they opened, and for unrestricted entry upon termination of the measure.

6. Notifications regarding the non-application of a safeguard measure to developing countries

73. The Chairman noted that since the last meeting, notifications on the non-application of a safeguard measure to developing countries were received from Argentina on footwear (G/SG/N/11/ARG/1/Suppl. 4 and 5), from Korea on garlic (G/SG/N/11/KOR/2 and Suppl.1), and from the United States on wheat gluten (G/SG/N/11/USA/2/Suppl.2). Since these notifications were all addressed in the context of the preceding agenda item, the Committee moved on to the next agenda item.

7. Notifications regarding proposed suspensions of concessions and other obligations

74. The Chairman noted that the Committee received six joint notifications concerning the proposed suspension of concessions since the last meeting: from Argentina and Indonesia in respect of Argentina's measure on footwear (G/SG/N/12/ARG/2 & G/SG/N/12/IDN/1), from Brazil and the European Communities in respect of Brazil's measure on toys (G/SG/N/12/BRA/1/Add.1 and Corr.1

& G/SG/N/12/EEC/2/Add.1 and Corr.1), from the United States and the European Communities in respect of the US measure on steel wire rod (G/SG/N/12/USA/2 & G/SG/N/12/EEC/4), from the United States and the European Communities in respect of the US measure on line pipe (G/SG/N/12/USA/3 & G/SG/N/12/EEC/5), from the United States and Japan in respect of the US measure on steel wire rod (G/SG/N/12/USA/4 & G/SG/N/12/JPN/1), and from the United States and Japan in respect of the US measure on line pipe (G/SG/N/12/USA/5 & G/SG/N/12/JPN/2).

**(i) Argentina / Indonesia - footwear**

75. Indonesia informed the Committee that it was in consultation with Argentina under Article 8.1 with a view to maintaining a substantially equivalent level of concessions and other obligations through compensation. Indonesia had proposed the level of compensation in terms of quantity of pairs to be given by Argentina and looked forward to receiving a positive response to its proposal in the next bilateral consultation.

76. Argentina confirmed that it is holding Article 8.1 consultations with Indonesia. Argentina recalled that it is still waiting for certain information it had requested from Indonesia.

**(ii) Brazil / European Communities - toys**

77. The United States noted that Brazil has still not responded formally to the US request to extend the 90-day period provided for in Article 8.2, even though it has again agreed to extend the Article 8.2 period for the European Communities. The United States also asserted that it is unconvinced that the Brazilian toy industry continues to require safeguard protection, given the fact that it has benefited from four years of protection, and that imports have declined.

78. Brazil stated that it had replied to all questions from the United States on this matter at the last regular meeting of the Committee. Brazil asked the United States to put any additional questions it may have in writing.

**(iii) United States / European Communities - steel wire rod**

79. There were no comments regarding this joint notification.

**(iv) United States / European Communities - line pipe**

80. There were no comments regarding this joint notification.

**(v) United States / Japan - steel wire rod**

81. There were no comments regarding this joint notification.

**(vi) United States / Japan - line pipe**

82. There were no comments regarding this joint notification.

83. The Committee took note of all statements made under agenda item C.

D. OTHER BUSINESS

(i) **Issues concerning the application of the Safeguards Agreement**

84. Egypt proposed that the Committee consider establishing a working party, or group, to address issues concerning the application of the Safeguards Agreement. Egypt asserted that the Safeguards Agreement contains a number of grey areas that could be subject to contradictory interpretations. In order to reduce the risk of contradictory interpretations, Egypt suggested that a forum could be established within which Members could discuss their practices, and possibly reach understandings on the application of various provisions of the Safeguards Agreement.

85. The European Communities supported Egypt's proposal, noting the positive experience of Members in the Ad Hoc Group on Implementation of the Committee on Anti-Dumping Practices ("Anti-Dumping Ad Hoc Group"). Although from the outside progress in the Anti-Dumping Ad Hoc Group may appear slow, discussions within the Anti-Dumping Ad Hoc Group have been extremely useful and educational. A forum in which to exchange views on various issues relating to safeguard investigations would be equally useful, especially as the Safeguards Agreement provides less detailed procedural guidance than the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures. The European Communities suggested that the Chairman consult informally with Members on this matter.

86. Mexico asked whether it is necessary to establish a separate forum for discussing matters concerning the application of safeguard measures, given that the Committee could simply discuss such matters in informal mode.

87. Australia joined the European Communities in supporting Egypt's proposal, noting the potential benefits of Members exchanging views on safeguard matters. Australia asked the Chairman to hold consultations on this matter. With regard to the issue raised by Mexico, Australia suggested that the establishment of a separate forum, with separate working papers etc., may result in more streamlined discussions than if discussions were held within the Committee *per se*. Australia asserted that consideration would have to be given to the terms of reference of any separate forum, and to the possibility of recommendations being made within that forum.

88. Nigeria supported Egypt's proposal.

89. Chile expressed preliminary support for Egypt's proposal, and asked Egypt to explain what it considered would be the product of the proposed working party / group.

90. India expressed a systemic concern regarding the establishment of a separate subsidiary body, given the difficulty of small delegations to service additional bodies and meetings. India also noted that there may be difficulties in determining how to deal with any recommendations resulting from any subsidiary body established by the Committee. India asked the Chairman to consult informally on the matter raised by Egypt. India suggested that the Secretariat prepare a note regarding the legal authority of the Committee to establish subsidiary bodies.

91. Uruguay associated itself with the concerns raised by India, and suggested that the Chairman consult informally on this matter.

92. Hungary expressed preliminary support for Egypt's proposal.

93. Venezuela expressed preliminary support for Egypt's proposal, and requested further clarification from Egypt regarding the objectives of its proposal.

94. Brazil expressed support for Egypt's proposal.
95. Argentina expressed support for Egypt's proposal, but shared other Members' concern regarding the proliferation of subsidiary bodies within the WTO.
96. Japan expressed its interest in Egypt's proposal.
97. Canada asked the Chairman to consult informally on this matter.
98. Egypt recalled the scope for varying interpretations of certain provisions of the Agreement, noting that varying interpretations had even been expressed during the course of this meeting. Egypt is not necessarily proposing the establishment of a subsidiary body akin to the Anti-Dumping Ad Hoc Group, nor the drafting of recommendations to be adopted by the Committee. Egypt is simply seeking to promote a discussion of certain grey areas of the Agreement. Egypt acknowledged the concern of certain delegations regarding the large number of meetings to be covered by smaller delegations, but noted that Egypt itself only has a small delegation with limited resources. Egypt asserted that it did not intend to circulate any written proposal for the time being, but simply wanted to place the issue on the table. Egypt encouraged the Chairman to hold informal consultations on this matter, with a view to reporting to the Committee at its next regular meeting.
99. In light of Members' reaction to Egypt's proposal, the Chairman indicated that he would hold informal consultations with Members on this matter. Furthermore, the Secretariat would prepare a note on the legal authority of the Committee to establish subsidiary bodies.

**(ii) Colombia - taxis**

100. Colombia informed the Committee that it recently submitted a notification to the Committee to the effect that it has terminated its investigation on taxis without imposing any safeguard measure. The investigation was terminated without imposition of any measure as a result of an absence of any causal link between increased imports and serious injury to the domestic industry.
101. The Committee took note of the statements made under this agenda item.

**E. PROGRESS IN PHASING OUT MEASURES COVERED BY ARTICLES 10 AND 11 OF THE AGREEMENT**

102. The Chairman noted that, by virtue of Article 13.1(d) of the Safeguards Agreement, the Committee is required to monitor the phase-out of measures covered by Articles 10 and 11.1 of the Agreement. Two Members - the European Communities and Korea - had notified pre-existing Article XIX measures covered by Article 10 by the deadline set forth in the Agreement. In addition, five Members - Cyprus, the European Communities, Korea, Slovenia and South Africa - had notified pre-existing grey-area measures covered by Article 11, along with the timetable for the phase-out of such measures, by the deadline set forth in the Agreement. The Annex to the Safeguards Agreement identified one additional such measure maintained by the European Communities with a termination date of 31 December 1999.

103. The Chairman recalled that the Committee decided at its special meeting of 24 February 1995 that Article 13.1(d) monitoring should be conducted on an annual basis, with the relevant Members submitting a report regarding their progress in phasing out the measures. The Chairman informed the Committee that all the abovementioned Members have confirmed (either at previous Committee meetings or in the build-up to this meeting) that their pre-existing measures have expired, consistent with Articles 10 and 11.2 of the Safeguards Agreement. The Chairman suggested, therefore, that there is no longer any need for the relevant Members to report further on this matter.

104. The Chairman further recalled that in 1998 Nigeria notified certain Article XIX measures which it claimed were covered by Article 10 (G/SG/N/2/NGA). The Chairman invited the representative of Nigeria to update the Committee on the status of these measures.

105. Nigeria stated that it will inform the Committee as soon as possible on the status of its notified measures.

106. The Committee decided that Nigeria should provide Members with a brief written report on the status of these measures as soon as possible, in order that the Committee could review this report at its next regular meeting.

F. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS

107. The Committee adopted its annual report to the Council for Trade in Goods (see document G/L/409).

G. DATE OF NEXT REGULAR MEETING

108. The Committee decided to hold its next regular meeting on Monday, 30 April 2001.

109. The meeting was adjourned.

---