
Committee on Safeguards

**MINUTES OF THE REGULAR MEETING
HELD ON 29–30 APRIL 2002**

Chairman Mr. Martin Pospíšil (Czech Republic)

1. The Committee on Safeguards (the "Committee") held a regular meeting on 29-30 April 2002.
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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 Chairman recalled that questions regarding legislative notifications were to have been submitted to the Member concerned and to the Secretariat no later than 8 April 2002. The Chairman noted that written questions had been submitted by the United States regarding the legislative notifications made by Lithuania, Moldova and Poland.

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 20 May 2002. Written answers to all questions submitted in writing by that deadline should be submitted to the Secretariat no later than 10 June 2002.

(a) Georgia

5. There were no comments or questions regarding the "nil" notification submitted by Georgia in document G/SG/N/1/GEO/1.

(b) Korea

6. There were no comments or questions regarding Japan's legislative notification contained in document G/SG/N/1/KOR/5.

(c) Lithuania

7. Lithuania's legislative notifications are contained in documents G/SG/N/1/LTU/1 and G/SG/N/1/LTU/2.

8. Written questions regarding this notification were received from the United States. These questions can be found in document G/SG/Q1/LTU/1. Lithuania's replies are contained in document G/SG/Q1/LTU/2.

(d) Moldova

9. Moldova's legislative notification is contained in document G/SG/N/1/MDA/1.

10. Written questions regarding this notification were received from the United States. These questions can be found in document G/SG/Q1/MDA/1.

(e) Poland

11. Poland's legislative notification is contained in document G/SG/N/1/POL/3.

12. Written questions regarding this notification were received from the United States. These questions can be found in document G/SG/Q1/POL/4.

13. 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.

14. The Chairman informed the Committee that there were still 33 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, China, Chinese Taipei, Djibouti, Gabon, the Gambia, Grenada, Guinea Bissau, Guyana, Kuwait, Malawi, Mali, Mauritania, Mozambique, Niger, Papua New Guinea, Rwanda, Saint Kitts & Nevis, Saint Vincent & the Grenadines, Sierra Leone, Solomon Islands, Swaziland, Tanzania and Togo.

15. 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.

16. The Committee took note of the statements made.

B. NOTIFICATIONS OF ACTIONS RELATED TO SAFEGUARD MEASURES

17. 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 20 May 2002. Written answers should be submitted to the Secretariat no later than 10 June 2002.

(a) Bulgaria – Crown Corks

18. The Chairman noted that the notification made by Bulgaria regarding the initiation of an investigation on crown corks is contained in document G/SG/N/6/BGR/2.

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

(b) Bulgaria – Ammonium Nitrate

20. The Chairman noted that the notification made by Bulgaria regarding the initiation of an investigation on ammonium nitrate is contained in document G/SG/N/6/BGR/3.

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

(c) Canada – Steel

22. The Chairman noted that Canada had notified the initiation of an investigation on steel, as set forth in document G/SG/N/6/CAN/1.

23. The representative of the European Communities expressed his understanding regarding the background to the initiation of Canada's investigation. Nevertheless, he expressed concern regarding this investigation. The European Communities highlighted four points of concern regarding Canada's investigation on steel. First, the European Communities considered that there had been a significant reduction of approximately 30 per cent in the volume of imports of steel into Canada. Second, it also considered that there was no clear definition of the like and directly competitive products in the investigation. Third, the European Communities noted that it was not clear what the treatment accorded to imports from other NAFTA countries in the investigation would be. Fourth, the European Communities also noted that some of the products subject to the safeguard investigation were already covered by anti-dumping measures.

24. The delegate of Brazil stated that they would be closely following the development of Canada's investigation.

25. The representative of Canada assured Members that Canada would fully abide by its obligations in the area of safeguards. He also asserted that Canada's steel investigation was initiated as a result of concerns about global steel trade and the trade diversion effect which could be caused by measures taken by the United States, the European Communities and Mexico.

(d) Chile – Steel

26. The Chairman noted that Chile had made a number of notifications regarding its investigation on steel, as set forth in documents G/SG/N/6/CHL/7, G/SG/N/9/CHL/5 and G/SG/N/6/CHL/8.

27. The representative of the European Communities expressed his understanding regarding the background of Chile's investigation on steel. The EC delegate also mentioned that he was puzzled about the evolution of this action given that there had been an initiation, followed by a termination of the investigation and a subsequent initiation *ex officio* regarding the same product. The EC delegate questioned whether there were any differences in scope or any other differences that prompted the reinitiation of the investigation.

28. The delegate of Brazil considered that some of the requirements for the adoption of a safeguard measure were not present in the case of Chile's steel investigation.

29. The representative of Chile stated that given the latest developments in the world steel market it was considered necessary to reinitiate the investigation and review the evolution of the imports.

(e) Chile – Lighters

30. The Chairman noted that Chile had made two notifications regarding its investigation on steel, as set forth in documents G/SG/N/6/CHL/4 and G/SG/N/9/CHL/4.

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

(f) Costa Rica – Rice

32. The Chairman noted that Costa Rica had made a number of notifications regarding its investigation on rice, as set forth in documents G/SG/N/6/CRI/1, G/SG/N/7/CRI/1 and Suppl. 1.

33. The representative of the United States noted that it had strong exporter interest in this investigation and expressed serious concern. He also mentioned that they would submit written questions.

34. The representative of Costa Rica looked forward to receiving the US questions and noted that they were working on other alternatives that would allow the termination of the measure.

(g) Czech Republic – Cocoa Powder

35. The Chairman noted that the Czech Republic had made a number of notifications regarding its investigation on cocoa powder as set forth in documents G/SG/N/6/CZE/4, and G/SG/N/7/CZE/3. Additional notifications regarding Article 12.3 consultations in respect of this investigation were contained in documents G/SG/39 and G/SG/39/Suppls.1 and 2

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

(h) Czech Republic – Citric Acid

37. The Chairman noted that the Czech Republic had notified the initiation of an investigation on citric acid, as set forth in document G/SG/N/6/CZE/5.

38. The delegate of China expressed his concern regarding this investigation. The delegate of China mentioned that if a measure was adopted it would hurt the interests of Czech consumers of citric acid. He also was of the opinion that there was no surge in imports of the product and that any problems which the Czech domestic industry may be suffering were not attributable to imports.

39. The delegate of the Czech Republic took note of the Chinese statement.

(i) Czech Republic – Wire, Ropes and Cables

40. The Chairman noted that the Czech Republic had notified the initiation of an investigation on wires, ropes and cables, as set forth in document G/SG/N/6/CZE/6.

41. The representative of the European Communities expressed the EC interest in the case and mentioned that the EC expected to be consulted. He was also of the view that the scope of the measure was too broad.

42. The delegate of the Czech Republic took note of the EC statement.

(j) Czech Republic – Tubes and Pipes

43. The Chairman noted that the Czech Republic had notified the initiation of an investigation on tubes and pipes, as set forth in document G/SG/N/6/CZE/7.

44. The representative of the European Communities expressed the EC interest in the case and mentioned that the EC expected to be consulted. He also noted that there were a number of measures affecting this product.

(k) European Communities – Steel

45. The Chairman noted that the European Communities had made a number of notifications regarding its investigation on steel. These notifications were contained in documents G/SG/N/6/EEC/1, G/SG/N/7/EEC/1, and G/SG/N/11/EEC/1. Additional notifications regarding Article 12 consultations were contained in documents G/SG/42, and G/SG/42/Suppls. 1 through 4.

46. The representative of the European Communities stated that the measure had been adopted in order to prevent diversion resulting from US measures on steel. The EC delegate considered that the

EC industry had been affected by US protectionism. The EC representative noted that the measure had been taken in the form of a tariff rate quota with a very high level of imports not affected by the tariff surcharge. The EC intention was not to indulge in protectionism but to prevent a flood of imports. The EC delegate noted that this was the first time that safeguard measures had been used by the EC because it confronted an emergency situation. Nevertheless, the EC attitude against the use of safeguard measures was maintained. The EC delegate also noted that in order not to cause undue damage to trade in steel the scope of the measure had been narrowly defined and that imports from developing countries which were below 3 per cent of total imports were excluded even if taken together imports under 3 per cent represented more than 9 per cent of total imports.

47. The delegate of Japan expressed that he understood that the measure had been triggered by the US measure. He hoped that the concerns expressed by Japan in the course of the Article 12.4 consultations with the European Communities would be taken into account, including those regarding the definition of trade diversion.

48. The delegate of Korea also expressed understanding for the circumstances that had led to the adoption of the EC measure. However, he was not convinced that there were critical circumstances in this case that would justify the adoption of a provisional measure. Moreover, he was also not convinced that there had been an increase in imports.

49. The delegate of India noted that, with regard to electrical sheets, capacity utilisation for the EC industry was 105 and 98 per cent for the last two years of the period of investigation. Additionally, he noted that there was not a substantial price differential between the imports and the domestic like product. The delegate of India queried how the European Communities could have arrived at a preliminary injury finding in such circumstances.

50. The delegate of Brazil noted that it was going to hold Article 12.4 consultations with the European Communities and that during the consultations he would express why he considered the measures to be questionable.

51. The delegate of the United States expressed that he considered that a safeguard measure must stand on its own and that it could not just be a reaction to a measure taken by another Member. The US delegate queried the European Communities regarding the timing of the initiation notification as he had heard that an investigation had been carried out in January – February 2002. He also asked what the EC interpretation of "clear evidence" was under Article 6, and queried whether this requirement had been satisfied when the only information in the investigation had been provided by the EC producers. Another question by the US delegate was whether provisional measures could be taken without following the requirements under Articles 2 and 4. Finally, the US delegate wanted to obtain the EC views regarding its transparency and notification obligations.

52. In response to the query posed by the Indian delegation, the representative of the European Communities noted that the economic indicators in the resolution had to be seen as a whole and that taken together they justified the injury determination in the resolution. In response to the US questions, the EC representative clarified that what was conducted prior to the 27 March date of initiation of the investigation was an information-gathering exercise, and not a safeguard investigation. On the interpretation of the term "clear evidence", the EC considered that a full investigation was not required for the imposition of provisional measures and that the circumstances in their current steel investigation constitute "clear evidence" under Article 6. Regarding the requirements under Articles 2 and 4, the EC considered that a literal interpretation of Article 6 leads to the conclusion that the requirements in Articles 2 and 4 did not apply in the context of a provisional measure.

(l) India – Phenol

53. The Chairman noted that India had made a number of notifications regarding its investigation on phenol, as set forth in documents G/SG/N/6/IND/7/Suppl.1, G/SG/N/8/IND/6/Suppl.2 and G/SG/N/10/IND/5/Suppl.1.

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

(m) India – Acetone

55. The Chairman noted that India had made two notifications regarding its investigation on acetone, as set forth in documents G/SG/N/6/IND/8/Suppl.1 and G/SG/N/10/IND/6/Suppl.1.

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

(n) India – Gamma Ferric Oxide / Magnetic Iron Oxide

57. The Chairman noted that India had made one notification regarding its investigation on gamma ferric oxide / magnetic iron oxide, as set forth in document G/SG/N/10/IND/7.

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

(o) India – Epichlorohydrin

59. The Chairman noted that India had notified the initiation of an investigation on epichlorohydrin. India's notification was contained in document G/SG/N/6/IND/12.

60. There were no comments or questions on this notification.

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

61. The Chairman noted that Japan had notified the termination of its investigation on tatami-omote, welsh onion and shiitake mushrooms, as set forth in documents G/SG/N/9/JPN/1 and G/SG/N/11/JPN/1.

62. The delegate of Japan stated that they had consulted with China on this issue and concluded that there was no need for the imposition of safeguard measures on the investigated products and had therefore decided to terminate the investigation.

(q) Jordan – Magnetic Tapes

63. The Chairman noted that Jordan had made a number of notifications regarding its investigation on magnetic tapes. These notifications were contained in documents G/SG/N/6/JOR/1, G/SG/N/6/JOR/2, G/SG/N/7/JOR/1 plus Corr.1 and Suppl.1.

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

(r) Lithuania – Pastry Yeast

65. The Chairman noted that Lithuania had made two notifications regarding its investigation on pastry yeast. These notifications were contained in documents G/SG/N/8/LTU/1, and G/SG/N/10/LTU/1. Additional notifications regarding Article 12.3 consultations concerning this investigation were contained in documents G/SG/41 and Suppl.1

66. The delegate of Estonia stated that Estonia's only producer of this product had been greatly affected by the measure. Estonia had requested consultations regarding this measure but no solution had been reached. In the view of the Estonian delegate the Lithuanian measure was not in compliance with the requirements of Article 4.2(b) as other factors causing injury had not been taken into account in the investigation. Moreover, the Lithuanian authorities had rejected additional information supplied by the exporters in an unjustified manner.

67. The representative of Lithuania stated that in his view the measures were taken in conformity with the Agreement. He noted that imports had increased 500 per cent in 4 years and had caused more than serious injury to the Lithuanian producers of pastry yeast. Also he confirmed that Lithuania had consultations with Estonia on the issue and that it submitted written detailed responses to the questions and complaints of the Estonian side. He confirmed the readiness of Lithuania to continue consultations upon request of the Estonian side.

(s) Morocco – Rubber

68. The Chairman noted that Morocco had notified the termination of its investigation on rubber, as set forth in document G/SG/N/9/MAR/1.

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

(t) Philippines – Grey Portland Cement

70. The Chairman noted that the Philippines had made two notifications regarding its investigation on grey portland cement. The notifications were contained in documents G/SG/N/7/PHL/1 and G/SG/N/8/PHL/1.

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

(u) Philippines – Ceramic Tiles

72. The Chairman noted that the Philippines had made a number of notifications regarding its investigation on ceramic floor tiles. These notifications were contained in documents G/SG/N/7/PHL/2, G/SG/N/8/PHL/2 and Suppl.1, G/SG/N/10/PHL/1, and G/SG/N/11/PHL/1. Additional notifications regarding Article 12.4 consultations in respect of this investigation were contained in documents G/SG/38 and Suppl.1.

73. The delegate of Indonesia expressed regret on the increased use of safeguard measures. Regarding the measure taken by the Philippines he was of the view that these measures did not respect Article 2.2 and that there were obvious violations of the Agreement. He requested the delegate of the Philippines to confirm that its legislation was in compliance with the WTO Agreements.

74. The delegate of Malaysia shared the concerns of Indonesia.

75. The representative of the Philippines noted that the legislation should not be discussed at this point since this item did not refer to legislation review. Questions regarding the Philippines legislation had already been answered when the legislative review took place. The representative of the Philippines invited the delegate of Indonesia to provide any questions in writing. He also assured that the decision to impose a measure on ceramic floor tiles had been taken after careful consideration of the facts in the investigation.

(v) Philippines – Tomato Paste

76. The Chairman noted that the Philippines had notified the termination of its investigation on tomato paste, as set forth in document G/SG/N/9/PHL/1.

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

(w) Poland – Calcium Carbide

78. The Chairman noted that Poland had notified the initiation of an investigation on calcium carbide, as set forth in document G/SG/N/6/POL/2.

79. The delegate of the European Communities signalled the EC interest in the case and mentioned that it expected to be consulted.

80. The delegate of the Slovak Republic noted that the statistics in the notification showed no increase in imports for the period 1998-2000. The only increase showed was for the year 2001, but statistics for this year were not complete. The delegate of the Slovak Republic requested additional information on Poland's investigation.

81. The delegate of Poland, in response to the Slovak intervention, stated that the latest statistics for the full year 2001 show a substantial increase in imports of the product in question. The figure for the full year was 14,000 tons. He considered this to show a critical circumstances situation. In response to the EC intervention, Poland stated that it was aiming at a mutually agreeable solution to the problem and proposed to hold consultations in the near future on the subject matter.

(x) El Salvador – Fertilizer

82. The Chairman noted that El Salvador had notified the termination of its investigation on fertilizer, as set forth in document G/SG/N/9/SLV/3.

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

(y) Slovak Republic – Sugar

84. The Chairman noted that the 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/Suppl.1 and G/SG/N/10/SVK/1/Suppl.1.

85. The representative of the Slovak Republic informed the Committee that, during bilateral consultations with Poland regarding the safeguard measure imposed by Slovakia on the imports of sugar under Article 4 of the DSU, a mutually satisfactory solution within the meaning of Article 3.6 of the DSU had been reached and both parties had informed the DSB about this settlement in document WT/DS235/2. The Slovak Republic also wished to inform the Committee that, as the result of this bilateral consultation with the Poland, Slovakia had changed the safeguard measure for the import of sugar, which was notified on 21 December 2001 in document G/SG/N/8/SVK/1/Suppl.1. The increased level of quota for Poland and for other countries had been effective since 1 January 2002.

(z) United States – Certain Steel Products

86. The Chairman noted that the United States had made a number of notifications regarding its investigation on certain steel products. These notifications were contained in documents G/SG/N/8/USA/8 and Suppl.1 through 3, G/SG/N/9/USA/4 and Suppl.1, G/SG/N/10/USA/6 and

Corrs.1 and 2 plus Suppls.1 through 4, G/SG/N/11/USA/5 and Corrs.1 and 2, plus Suppls.1 through 4. Additional notifications regarding Article 12 consultations in respect of this investigation were contained in documents G/SG/40, and G/SG/40/Suppls.1 through 17.

87. The representative of the United States stated that there had long been over-capacity in global steel production; there had been a glut of low-priced steel on world markets; and, in many cases, that had been due to government policies, subsidies, and other trade distorting practices. So, last June the United States launched a multilateral effort to address these root problems that have plagued the steel industry for so long. In addition, last June the President requested the US International Trade Commission to conduct a safeguard investigation with respect to certain steel products.

88. The delegate of the United States noted that the US ITC was an independent agency and that it had conducted a lengthy, voluminous, open, transparent and fair investigation. It heard from hundreds of interested parties, and developed a voluminous record, and after this lengthy detailed process the Commission found that increased imports of certain steel products were injuring, or threatening to injure, the domestic industry. The ITC issued a lengthy detailed report presenting its findings and then the President spent several months reviewing the report and considering very carefully what to do with respect to the steel issue. The United States consulted extensively with interested Members, and did its best to mitigate the effects of a safeguard measure, in part by excluding the greatest possible number of developing countries, economies in transition, and by limiting the safeguard to 3 years and, to the extent possible, addressing individual Member interests.

89. The United States was of the view that the ITC's investigation and the US steel safeguard measure were fully consistent with the WTO Safeguard Agreement. It took deliberate multilateral steps to address these challenges and believed that the WTO was the right place to resolve any differences. The United States had been conducting consultations under Article 12.3 with 11 Members, and these consultations were continuing. The United States had also held some dispute settlement consultations with several Members and noted that if there were any unresolved complaints that Members may have, those should be resolved in the WTO under multilaterally agreed dispute settlement procedures. The US delegate expressed his view that any threats of unilateral trade retaliation were deeply mistaken, contrary to the Safeguards Agreement and the Dispute Settlement Understanding.

90. The US delegate noted that the ITC had found both absolute and relative increases in steel imports during the period examined. The US delegate was of the view that those clear findings of the ITC should put to rest any argument that recourse to immediate suspension of concessions could be justified in response to the US steel safeguard under Article 8.3, and that if any Member considers that the ITC's findings on this point were incorrect – perhaps because a Member thought that the ITC should have examined imports under a different period – that Member must make its case through WTO dispute settlement procedures.

91. The US representative noted that the United States had reviewed and researched other safeguard measures and noted that there had been instances in which there had been disputes as to whether imports had increased, absolutely or otherwise, e.g., in the *Argentina – Footwear* case, and in those cases any arguments about whether there was an increase in imports were resolved in the dispute settlement process and not through any unilateral retaliation. The United States had noted one instance of a Member unilaterally retaliating in response to a safeguard measure, and that issue had been discussed at the Committee's last meeting and in the Council for Trade in Goods, where many Members had roundly criticized both unilateral retaliation, and the notion of one Member unilaterally determining that another Member had not complied with the Safeguards Agreement. So the US delegate was of the view that any kind of unilateral retaliation in this case would be against the WTO's dispute settlement rules, a violation of the Safeguards Agreement and the DSU.

92. The representative of the European Communities read a statement on behalf of China, the EC, Japan, Korea, Norway and Switzerland. China, the EC, Japan, Korea, Norway and Switzerland shared the same strong concerns about the US safeguard measure on steel. They shared the common view that the protectionist measures of the US violate the WTO requirement on safeguards. They also wished to convey their shared general concern about the systematic abuse by the United States of the safeguard instrument despite the condemnation by the WTO Appellate Body of all six measures applied by the United States since the entry into force of the WTO Agreement.

93. The EC delegate considered that in this case, concerning steel, the main violations of WTO requirements included: first, the definition of a like product – the United States had hit the wide universe of all steel products on the basis of an arbitrary definition of like products. Second, the requirements as regards increased imports – the US action was not justified by a certain, recent, sharp and significant increase in imports. Third, the causation test – the United States had failed to ensure that the injury caused by other factors was not attributed to imports. The analysis, as was the case for all the safeguard measures already condemned by the WTO, was limited to showing that increased imports were a cause of injury no less than any other cause, but other causes like increased competition, legacy costs, a reduction in demand, and their impact on injury, were not clearly and properly assessed. Fourth, the proportionality principle – as a result of the flawed assessment of other factors the US measures were disproportionate because they go beyond the extent necessary to remedy the injury caused by imports. Fifth, the exclusion of certain WTO Members from the scope of the measure – the United States had excluded imports from certain WTO Members from the measures in a manner incompatible with the relevant WTO provisions. The United States had violated the MFN principle enshrined in Articles I and XIX of the GATT 1994 and Article 2 of the Safeguards Agreement. Furthermore, the principle of parallelism between the scope of the investigation and the scope of the measures, so often affirmed by Panel and Appellate Body Reports, had not been respected. Sixth, the treatment of developing Members – the United States had failed to observe the obligation to grant equal treatment in excluding developing Members from the protectionist measures.

94. In the view of the European Communities all these violations repeated the inconsistencies found in the previous cases concerning US safeguards brought to the WTO. All of the six safeguards brought to the WTO had been condemned by the Appellate Body – *Wheat Gluten*, *Lamb* and *Line Pipe* on the basis of the Agreement on Safeguards; and *Underwear, Shirts and Blouses* and *Cotton Yarn* on the basis of the safeguards provisions in the Agreement on Textiles and Clothing.

95. For the EC delegate the fact that for certain products the US safeguard measures had not been taken as a result of an absolute increase in imports was of particular concern. Furthermore, these measures contradicted the objective of further trade liberalization resulting from the Doha Ministerial Declaration. China, the EC, Japan, Korea, Norway and Switzerland therefore called upon the United States for the immediate termination of their protectionist measure on steel.

96. The delegate of China emphasized that the United States had failed to observe its obligation to grant China equal treatment in excluding developing country Members from the safeguard measures. In the view of the representative of China, China as a developing country was entitled to enjoy the special and differential treatment under the WTO Agreements including the Agreement on Safeguards. He considered that reference to US domestic regulation to determine China's development status was absolutely unfounded and unjustified.

97. The delegate of New Zealand expressed serious concerns about the action taken by the US Government on 20 March to impose safeguard measures on certain steel products. New Zealand's concerns were not limited to the specific US measure but also related to the broader impact of the measure on the global steel trade and the multilateral trading system. With regards to the US measure, New Zealand shared a number of the concerns that had been expressed about how the

measure fits with the United States' WTO obligations and joined with other Members in calling for the United States to remove without delay the safeguard measures applying to certain steel products.

98. New Zealand was also aware of the repercussions of the US measure for the global steel trade. Other countries were taking, or considering, measures to protect themselves from the diversionary effects of the higher US tariffs. This resulted in a high degree of uncertainty for steel exporters, and made an already difficult situation even worse. New Zealand urged countries considering whether to apply safeguard measures on steel, or raising tariffs by other means, to show restraint. In the view of New Zealand it was essential that Members contemplating safeguard action should recognize the importance of the disciplines on safeguard measures set down in the WTO. Such measures were designed for true emergency situations and should not be taken lightly.

99. New Zealand commented on its concerns arising from the US measure and the flow-on effects seen in other countries. In the view of New Zealand, the imposition of such safeguard measures at that time sent a bad signal about the commitment of WTO Members to fulfil the objectives of the Organization. This was an important time for the multilateral trading system. The work required to follow through and implement the work programme agreed by Ministers at Doha in November last year had only just started to gather momentum. Ready resort to trade remedies, rather than the adoption of domestic measures designed to address the root causes of the problems being faced by the industry, was not helpful. Actions of this sort undermined the credibility of multilateral negotiations and the capacity to liberalize trade and strengthen trade rules.

100. The delegate of Brazil noted that Brazil and the United States had held two consultations on this matter. The first one took place in Washington on 1 March and the other in Geneva on 19 March. The Brazilian Government had conveyed its concerns on what, according to its understanding, constituted inconsistencies of the US measures with the provisions of the Agreement on Safeguards, and reserved its right on the matter under the WTO Agreements. Brazil was studying possible courses of action admitted by these Agreements.

101. The representative of Malaysia raised his concern over the US steel safeguard measure. This referred to the special and differential treatment rights accorded under Article 9.1 of the Safeguards Agreement. According to Malaysia, this provision makes it very clear that safeguard measures shall not be applied against a product originating in a developing country Member, as long as its share of imports of the product does not exceed 3 per cent, and collectively 9 per cent. The provision of Article 9.1 of the Safeguards Agreement is classified as an obligation of results and is meant to prevent Members from applying safeguard measures when the conditions in that provision have been fulfilled. Therefore, Malaysia viewed the fact that the United States imposed measures on certain developing countries' imports as a violation of Article 9.1. Malaysia sought some clarification from the United States as to what criteria they used in defining developing countries, since under the WTO these countries had been accorded recognition of their status as developing countries, and questioned whether this would constitute a denial of the rights of developing countries under the WTO Agreements. Malaysia noted that it had sought safeguard consultations with the United States, that they had met twice in Washington, and that Malaysia was hoping for a favourable outcome on this issue.

102. The delegate of Venezuela expressed concerns with respect to the measures taken by the United States and the effect on Venezuela's national production. Venezuela believed that the measures should be closely followed. Venezuela hoped that the United States would continue the efforts it had made to take into account of the Members' concerns so that a solution could be found that was compatible with the WTO Agreement.

103. The representative of the United States noted the comments from the other delegations and stated that the United States had been in consultations with many, if not all, of these delegations and

had addressed many of the particular issues that had been raised. With regard to the developing country issue raised by Malaysia and China, the United States asserted that it identified countries as being eligible for this exclusion based upon whether or not they appeared on the US list of GSP beneficiaries. By taking this approach, the United States considered it applied an objective and certain standard that allowed all Members, importers, exporters and other interested parties to assess whether or not they were likely to be subject to a safeguards measure. This was an important factor in those interested parties' decision about whether to participate in the safeguard investigation and Article 12.3 consultations. The United States noted that it had consistently applied the GSP test in all safeguard measures that it had imposed since the entry into force of the Agreement.

104. With respect to the statement made by the delegate from the European Communities on behalf of a large number of Members, the United States noted that it had addressed many of these particular issues during consultations. The United States was of the view that the characterisation of the Appellate Body reports was somewhat overstated, as these decisions on safeguard issues were narrowly circumscribed and did not condemn US practice in general. The United States stated that it had taken these Appellate Body reports into account, and had addressed specific issues that had been identified in previous Panel and Appellate Body reports. The United States therefore believed that the US measure and the ITC investigation were conducted in accordance with the Agreement.

105. The United States also expressed concern about the effects of other Members' reactions on the multilateral trading system. The United States mentioned that it was fully committed to the multilateral trading system and the course of trade liberalization that had been charted at Doha. The United States also stated that as Members worked together to dismantle the world's remaining trade barriers, US workers and industries would continue to need the assurance that trade rules would give them a reasonable chance to respond to the challenges and opportunities of the global marketplace.

(aa) United States – Lamb Meat

106. The Chairman noted that the United States had made a number of notifications regarding its investigation on lamb meat. Those notifications were contained in documents G/SG/N/10/USA/3/Suppl.2 and G/SG/N/11/USA/3/Suppl.2.

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

(bb) United States – Wire Rod

108. The Chairman noted that the United States had made a notification regarding its investigation on wire rod as set forth in documents G/SG/N/10/USA/4/Suppl.1.

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

(cc) Venezuela – Paper

110. The Chairman noted that Venezuela had notified the initiation of an investigation on paper, as set forth in document G/SG/N/6/VEN/4.

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

(dd) Venezuela – Iron/Steel U Sections

112. The Chairman noted that Venezuela had notified the initiation of an investigation on iron/steel U sections, as set forth in document G/SG/N/6/VEN/5.

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

114. The Committee took note of the statements made.

C. NIGERIA – PRE-EXISTING MEASURES

115. The Chairman recalled that at the last regular meeting of the Committee, Nigeria was invited to update the Committee on the status of certain "pre-existing" measures described in document G/SG/N/2/NGA. In its response, circulated as document G/SG/N/2/NGA/Suppl.1, Nigeria had informed the Committee that wheat flour, sorghum, millet and kaolin were still under import prohibition. The Chairman noted that, in accordance with Article 11.2 of the Safeguards Agreement, pre-existing safeguard measures shall be "phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement". The Chairman requested the delegation of Nigeria to inform the Committee for how long its pre-existing measures were likely to remain in force.

116. The delegate of Nigeria informed the Committee that he did not have any new information regarding the status of the four items still on the list, namely wheat flour, sorghum, millet and kaolin. As soon as new information became available, the Nigerian delegation would notify the Committee.

117. The Committee took note of the statements made.

D. SYSTEMIC ISSUES REGARDING THE OPERATION OF ARTICLES 8.2 AND 8.3

118. The Chairman recalled that at the last regular meeting of the Committee, Members identified a number of systemic issues regarding the operation of Articles 8.2 and 8.3 of the Safeguards Agreement. These issues were raised in the context of action taken by Poland under Article 8.2. Since, similar issues had been raised by Members at the 5 October 2001 meeting of the Council for Trade in Goods. Subsequently, the Chairman of the Council for Trade in Goods had undertaken to hold informal consultations on those issues, and the Committee had agreed to revert to this issue at a later date, following further consideration of this issue by the Council for Trade in Goods. However, since Poland subsequently withdrew its Article 8.2 action, the Council for Trade in Goods had not considered those issues further. The Chairman noted that even though Poland withdrew its Article 8.2 action, the systemic issues raised by certain Members at the last regular meeting remained. The Chairman asked Members whether they wished to pursue these issues, at that date, or at some future date, in informal mode.

119. The delegation of the United States noted that, under Article 8.3, the right to suspend concessions under Article 8.2 shall not be exercised for the first three years that the safeguard measure is in effect, provided that the measure has been taken as a result of an absolute increase in imports and that the measure conforms to the provisions of the Agreement. Now, almost all Members understand and accept the fact that an exporting Member cannot unilaterally determine for itself whether the second criteria in Article 8.3 has been met, i.e., whether a safeguard measure conforms to the provisions of the Agreement. Such a unilateral determination as to whether another Member had violated the Agreement would be inconsistent with the Agreement and the DSU. As previously noted by the United States, this question was raised last autumn in this Committee and in the CTG with respect to the issue between Poland and the Slovak Republic. During that discussion a number of Members expressed great concern over a Member unilaterally determining for itself whether another Member had conformed with the Agreement, and a number of Members criticized this as contrary to the WTO as a multilateral rules-based system.

120. With respect to the first criterion of Article 8.2 regarding an absolute increase in imports, the question had been raised as to whether in effect an exporting Member can disregard the findings of

the importing Member's competent authority that imports increased in absolute terms, and whether that affected exporting Member can, notwithstanding the determination by the competent authority, determine *for itself* whether there was an absolute increase in imports or not, and whether the measure was taken as a result of an absolute increase in imports or not. And then, if this affected exporting Member unilaterally makes these determinations, whether it can then proceed unilaterally to suspend concessions under the terms of Article 8.2, based on its unilateral determination that this limitation in Article 8.3 does not apply.

121. The United States was of the view that such a unilateral action would breach the Agreement and the DSU, and noted that, looking at the context of the Agreement, there are other provisions of the Agreement that make it clear that it is the importing Member that has the authority to determine whether there has been an absolute increase in imports, and there is no provision of the Agreement that exporting Members may unilaterally substitute their judgements on this issue for those of the importing Member's competent authorities. The United States also noted that an importing Member under the Agreement must follow specific investigative procedures and explain its legal and factual findings. The ITC made a voluminous investigation and published a detailed report in the steel case. So it would therefore be anomalous to suggest that an affected exporting Member could unilaterally reopen these issues without being subject to any such procedural or subsequent constraints, and then substitute its judgement for that of the importing Member's competent authority's.

122. The United States also commented on the suggestion that whether there had been an absolute increase in imports or not is a simple question involving a straightforward comparison of import statistics at the beginning and end of the relevant period, and that any Member should be able to conduct such an investigation and that there is no need for any further analysis, regardless of what the importing Member's competent authority found. The United States noted that this view was not consistent with the Agreement. Among other things, a determination as to whether there had been an absolute increase in imports was *not* in fact a simple mathematical calculation. There were a number of steps where an importing Member must apply legal standards and judgement, and there have been several dispute settlement reports that have dealt with the question of increased imports, and what the period is, and how they are determined. As an example, the United States referred to the reports on *Argentina – Footwear* and *United States – Line Pipe*. In the view of the United States, there were a number of distinct legal considerations and various factors that competent authorities must take into account in determining the length of the period of time for examining whether imports had increased in absolute terms, and beginning and ending points, and several other considerations. So these factors show that a case-by-case determination was required for determining whether imports increased in absolute terms.

123. The United States was of the view that for an exporting Member to declare unilaterally that a competent authority's finding of an absolute increase in imports was incorrect, would be making a determination that the Member had acted inconsistently with the Agreement. Therefore, the exporting Member would be prejudging the issue of whether a safeguard measure conformed to the Agreement. As noted by the United States, this it also considered contrary to the provisions of the Dispute Settlement Understanding, which states that Members are to *not* make a determination to the effect that a violation of an Agreement has occurred, and that these disputes are to be resolved under the Agreement.

124. The United States mentioned that it had looked at the definitive safeguard measures that had been applied, and while there had been cases in which there had been disputes as to whether there was an absolute increase in imports, no Member had made a unilateral determination purporting to override a competent authority's determination, and no Member had proposed unilateral retaliation based on overriding a competent authority's finding of an absolute increase in imports.

125. The delegate of the European Communities was of the view that the United States was indeed correct in many of the things that it had said. However, the European Communities believed that some different interpretations were possible with respect to the second criteria which had been mentioned by the United States – the lack of absolute increase. The European Communities noted that the fact that there were two criteria mentioned in Article 8.3 suggested that there must be a difference between the two. The difference would be that the second one is an issue of law, the WTO consistency; while the first one is more an issue of fact. That, in the opinion of the European Communities, meant that recognizing that the first criteria is an issue of fact can suggest that multilateral determination, as it was done for legal issues, may not be necessary. The European Communities noted that the right to rebalance concessions was intrinsic in the safeguard provisions, as it was intrinsically linked to the nature of safeguards. It followed the same logic as a Member's right to withdraw concessions under Article XXVIII of the GATT and Article XXI of GATS in the case of an unbinding procedure. Therefore, in the view of the European Communities, since Article 8.3 and the suspension of this right for three years is an exception to the original rights to suspend concessions, this exception must be interpreted narrowly, and therefore the exception to the exception must be interpreted broadly.

126. The European Communities was of the view that an absolute increase on imports was not an issue that was decisive for the legality of the safeguard measure, as it was possible, under Article 2 of the Agreement, to impose a measure based on a relative increase. The delegate of the European Communities noted that Article 2 mentions that safeguard measures may be imposed when imports are increasing in such quantities, absolute *or* relative to domestic production. Therefore, a relative increase in imports was a sufficient basis to take safeguard action and a panel could not be requested to rule against that measure, in case such a measure was taken. For the European Communities, if the US interpretation was followed, the first condition of Article 8.3 could only apply if the Member applying the safeguard measure itself had found a lack of absolute increase in imports, which was very unlikely. If the interpretation was so narrow, the safeguard action would very easily be subject to abuse. According to the European Communities, there was no specific procedure under the DSU to make a multilateral determination of whether or not there was an absolute increase and, in addition, the absolute increase was probably the most factual issue of all the issues that were examined under the Agreement. A Member would have to look at numbers in one period and in subsequent periods. The European Communities believed therefore that these considerations may lead to a different conclusion from the one suggested by the United States and that in certain circumstances multilateral determination on this specific issue may not be necessary, unilateral appreciation may be sufficient and may therefore afford to Members the right to suspend concessions. This was considered by the European Communities a right embodied in the Agreement, embodied in the safeguard measure, and intrinsic to their nature, and therefore any exception to this right must be interpreted very narrowly.

127. The delegate of Japan was of the view that, since there was a particular case at hand, which the US delegation had alluded to, it was not appropriate to go too deeply into the Article 8.3 issue at that juncture. Japan commented that the US intervention sounded as if Article 8.3 was not a useable provision and that it should be disregarded altogether. If the US was hinting that the two conditions in Article 8.3 should always be determined through the dispute settlement procedure and that there was no possibility for these two conditions to be determined by the Members, Japan disagreed with this interpretation. Japan disagreed in the sense that the US interpretation was tantamount to saying that Article 8.3 was useless, since everything should go through the dispute settlement. Japan was of the view that there were some cases where Members could determine a factor or existence of a condition, and that if this was not the case, then Article 8.3 would be an unnecessary provision.

128. The delegate of Brazil, like Japan, took the stance that as there was a specific case being alluded to he would not go into too much detail. In the view of Brazil, the main issue under consideration was if an exporting Member could determine unilaterally that an absolute increase in imports had not occurred subject to an *ex post* multilateral control or to an *ex ante* multilateral decision. This allowed for an undoubtedly relevant debate not only for the proper operation of the

Agreement but also of the multilateral trading system as a whole. Brazil was examining the issue and would act according to its conclusion. Brazil also expressed concern at the multiplication of actions under the Agreement, which raised serious doubts about their consistency with multilateral norms. All Members, and in particular the main economic powers, shared the duty of reconciling domestic, economic and political needs with the strict respect for multilateral rules. For Brazil, any answer that may be given should be necessarily compatible with the political and legal imperative of preserving and strengthening multilateralism.

129. The delegate of India noted that there were risks involved in allowing unilateral determinations that a safeguard measure did not conform to the provisions of the Agreement by any affected Member country. India felt that this had the potential of undermining the multilateral system, and therefore would be interested in the discussion as it unfolded in the future.

130. The delegate of Japan clarified that in his previous intervention he was of the view that through a certain reading of Article 8.3 the right subscribed in 8.2 might also be nullified.

131. In response to the question raised by the delegation from Japan, the representative of the United States noted that, under Article 8.3, if the importing Member imposes a safeguard measure following an investigation where the authority has found that imports have increased relative to domestic production but has found no absolute increase in imports, so that the measure has been taken *not* on the basis of an absolute increase in imports but on the basis of a relative increase, then affected exporting Members may look at the competent authority's report and the measure and determine for themselves that, given the authority's report, the measure has not been taken as a result of an absolute increase in imports. Under those circumstances the Members may invoke Article 8.2 and suspend concessions. So, this was not a case in which there were no circumstances under which these exceptions under Article 8.3 could apply. Therefore, Article 8.3 clearly is a useable provision.

132. The delegate of Poland drew the Committee's attention to some consequences of taking the position endorsed by the United States, in light of the 90-day deadline stipulated by Article 8.2 for the suspension of obligations. Poland was of the view that there must be an interpretation which would at the same time respond to two sets of concerns of the Members – one which is directly related to unacceptability of a unilateral determination of another Member's conformity or not conformity with the WTO rules; and the other being the right of a Member affected by a safeguard measure to respond adequately, that is to restore the balance. If it is indispensable to turn to panel proceedings, which take at least a couple of months, then there may be a problem with safeguarding the basic right to suspend equivalent concessions. Therefore, Poland asked the United States how to reconcile these two sets of obligations and rights.

133. The representative of the United States, in response to the question posed by Poland, noted that there had been a suggestion that a Member might forfeit its right to suspend concessions if it did not exercise that right within the 90-day period in Article 8.2 and, therefore, a Member must notify and exercise the suspension during the 90-day period. The United States was confident that as a textual matter Members would not waive their rights to suspend concessions if they did not do so within the 90-day period.

134. The delegate of the United States noted that, as a practical matter, in previous cases Members imposing safeguard measures and affected exporting Members had been able to reach an agreement ensuring that the exporting Members lost no rights by waiting beyond the 90-day period. Several Members that had applied safeguard measures and exporting Members subject to those measures had developed a practice of entering into bilateral agreements to extend the 90-day period until three years after the safeguard measure goes into effect. By extending this period under Article 8.2 for suspension of concessions, Members may observe their obligations under Article 8.3 without sacrificing their rights under 8.2.

135. The United States was of the view that any doubts about whether the two Members could agree between themselves for an extension of a WTO deadline were misplaced. If an importing Member agreed that an affected exporting Member had the right to suspend substantially equivalent concessions up to a certain date, then that importing Member had committed itself to honour that right.

136. The Committee took note of the statements made.

E. IMPLEMENTATION – TIRET 84

137. The Chairman recalled that, by virtue of paragraph 12 of the Ministerial Declaration of 14 November 2001 (WT/MIN(01)/DEC/1), and section 13 of the Ministerial Decision on Implementation-Related Issues and Concerns of 14 November 2001, outstanding implementation issues "shall be addressed as a matter of priority" by the relevant WTO bodies. A list of these issues was compiled in document Job (01)/152/Rev.1. Section 9 of that document set forth tiret 84, which contained a proposed amendment to Article 9.1 of the Safeguards Agreement "so that safeguard measures are not applied to imports from developing countries which individually account for less than 7 per cent of total imports and 15 per cent collectively". This amendment was proposed by the delegation of Colombia. The Chairman also recalled that, in accordance with paragraph 12 of the Ministerial Declaration, the Safeguards Committee must report to the Trade Negotiations Committee on this issue "by the end of 2002 for appropriate action".

138. The Chairman offered the floor to Colombia to explain the basis for its proposed amendment.

139. The delegate of Colombia clarified that a copy of the statement containing the proposal by Colombia had been circulated to Members. She then proceeded to read the proposal, the text of which is hereby reproduced:

"Background: During the preparatory process for the Seattle Ministerial Conference, Colombia submitted for consideration by Members a proposal to increase the existing percentages indicated in Article 9 of the Agreement on Safeguards. Then, in the run-up to the Doha Ministerial Conference this proposal was fleshed out with the suggestion that the figures of 3 per cent and 9 per cent in Article 9 in the SG Agreement should be replaced by 7 per cent and 15 per cent respectively in the case of safeguards applied by a developed country to a developing country. This would increase by 6 percentage points the special and differential treatment provided for the developing world's trade, with the exception of emergency measures. It should be pointed out that under this proposal the present limits in Article 9.1 would be retained for cases in which a safeguard measure is applied by a developing country, and would be increased in the case that the Member applying the measure was a developed country. This proposal is taken up in general lines in the implementation issues under tiret 84 and has been referred to this Committee for study pursuant to the Ministerial Decision in paragraph 12 of the Doha Declaration. Pursuant to that Declaration, this Committee is to report to the Trade Negotiations Committee on the results of its analysis of this implementation-related proposal by the end of this year.

Taking this background into account, and with a view to promoting a broad debate on this proposal, I shall now explain the reasons that prompted Colombia to propose raising the figures in Article 9.1 of the Agreement on Safeguards. I shall then go on to identify the elements that were taken into account for specifically suggesting particular figures for this amendment of Article 9.1 of the Agreement and conclude by mentioning some other elements in addition to the percentage issue which we believe could also be analysed in greater depth.

So, the reasons for the proposal: Colombia believes that there are legitimate reasons that may force a WTO Member to suspend its multilateral commitments as a result of disorderly domestic market conditions. I therefore wish to reiterate that we consider the safeguard instrument to be both legitimate and important. Under Article 19 of the General Agreement, two conditions are required for imports into a specific market to give rise to the application of a safeguard measure. These requirements refer to the quantity of imports and the conditions under which they are taking place. As we understand it, the thinking behind this requirement is simply recognition of an economic reality that the introduction of small quantities in the market cannot have the power to modify conditions on that market and therefore cannot effect the domestic industry. However, there can be no question that the provision with which we are concerned in Article 9.1 is a development of the principle of special and differential treatment and is aimed at maintaining access conditions for developing countries in the event that an emergency measure is adopted. Accordingly, the increase in the figures set out in Article 9.1, as proposed by Colombia, would simply have the result of ensuring that if the developing countries have penetrated a specific market where a disorderly situation arises as a result of imports from developed countries this circumstance will not punish the developing country's export industry, in so far as their individual share does not exceed 7 per cent of total imports of the product covered by the investigation.

Colombia has occasionally been excluded from the application of safeguard measures because it has fallen within the limits established in Article 9.1, and that is why we attach great importance to this provision. We clearly appreciate its benefits and are therefore aware that increasing the imports' share margin will have real significance as regards market access.

The recent rise in the use of safeguards and the negotiations on market access for non-agricultural products are circumstances which we believe make it even more desirable to analyse this proposal. We should point out that, despite Colombia's small share of the world export market, in recent years our exports have been at the receiving end of safeguard measures. This experience has shown us that there is what might be called a "perverse incentive" in the multilateral rules, which favours the application of safeguards for relatively short periods – less than 3 years – since, pursuant to Article 8.3 of the Agreement on Safeguards, compensation is allowed only after the third year that a measure is enforced. Now, although in cases where the measure is not the result of an increase in imports in absolute terms, or its application is not consistent with the Agreement, the latter allows the suspension of some concessions. It is not easy to avail oneself of this provision especially in the case of developing countries.

The alternative of the dispute settlement mechanism as a way of addressing the negative effect of a safeguard measure may also present some drawbacks because, in a way, the delay in obtaining a final decision, in most cases on appeal, implicitly allows a grace period during which the domestic industry may be protected at immense cost for the exporting firms which are displaced from a given market. In these circumstances, during the preparatory work for the Doha Ministerial Conference, Colombia submitted the implementation proposal to which we have referred and also suggested that negotiations be held on safeguards in order to address these and other important issues, as well as to improve special and differential treatment for developing countries.

I will now turn to elements of setting the limits in the proposal. In the circumstances described above, and in response to the question of what the limits should be for excluding a developing country from the application of a safeguard measure, the reference in Article 12.3 of the Agreement to "substantial interest" provides an interesting element for this discussion. According to the multilateral practice, it is certainly recognised that a country has a substantial interest when its share of imports is around 10 per cent. Along these lines, any developed or developing Member country with a share of less than 10 per cent would not be allowed to participate in consultations under Article 12.3 of the SG Agreement, and this led us to consider a share of 10 per cent as an implicit limit for a developing country share below which a provision would be needed recognizing the marginal nature of imports at such levels and, hence, ensuring that they be excluded from the application of any type of measure. In other words, the figure of 3 per cent could be appropriate for trade among developing countries, but in the case of access to developed country markets it would be more logical to raise it to a figure of around 10 per cent as the limit below which imports would not be subject to safeguard measures.

To conclude, one or two other issues which will be analysed in connection with implementation of Article 9.1. Well, we should also like to draw Member's attention to the fact that there are other elements concerning implementation of Article 9.1 that could be the subject of an interpretive decision within the meaning of Article 9 of the Agreement establishing the WTO, such as the definition of the time-period to be used for calculating developing countries' shares and also the methodology to be used for calculating the limits in the abovementioned Article."

140. The delegate of Brazil stressed the importance of expediting the discussion of this issue in order that the deadline contained in paragraph 12 of the Doha Declaration would be met.

141. The delegate of the United States made some preliminary comments and formulated some questions regarding Colombia's proposal. First, he mentioned that in terms of the mandate of the Committee the United States noted that much of Colombia's proposal goes beyond the objective of tiret 84. As an example, the United States noted that the last paragraph of the proposal raised a number of issues that seemed to go far beyond tiret 84. The United States also noted that the proposal itself drew a distinction between developed and developing country importing Members that was not in Article 9 or in tiret 84. Therefore, the United States questioned what was the basis for that distinction and why this proposal should not apply to developing country importing countries as well.

142. The representative of Venezuela stated that the ideas contained in Colombia's proposal were a good point of departure for clarifying norms and disciplines in the Agreement, especially the development and application of special and differential treatment under Article 9.1, which seeks to maintain good access conditions for developing countries when safeguard measures are adopted. The delegation of Venezuela believed that the proposal from Colombia was a significant and timely contribution to the maintenance of market access conditions for developing countries at a time when there appeared to be a significant increase in the use of safeguard measures.

143. The delegate of the European Communities noted that this was an issue of considerable practical importance as experience had shown that Article 9 was often applied when safeguard measures were imposed. It was clear to the European Communities that Colombia's proposal would substantially alter Article 9 since it more than doubled the *de minimis* threshold for mandatory exemption of individual developing country imports.

144. The European Communities brought to the attention of the Committee three main concerns of that delegation. The first one was that Colombia's proposal would result in a substantive extension of

a narrow exception to the general principle of *erga omnes* application of safeguard measures. Secondly, the exclusion of a substantial portion of imports from measures – according to the proposal up to 15 per cent, which referred to imports which might be causing serious injury – could diminish the efficiency of the instrument. Finally, and most importantly, the European Communities understood the proposal to apply only to safeguard measures applied by developed WTO Members. Developing countries using the instrument would enjoy lower thresholds. In the view of the European Communities, this would be a paradigm change unknown to current rules on trade defence instruments in general as it would create two different categories of users of trade defence instruments. The European Communities expressed serious concerns about this approach and did not believe that this was a desirable way to move forward.

145. The European Communities noted that the statement of Colombia also referred to interesting issues such as the determination of the reference period for thresholds under Article 9.1. The European Communities believed that there was scope for further fruitful exchange of views on this and expressed that it would be open to engage on a discussion of such issues.

146. The delegate of Canada formulated two preliminary questions, pending further review of Colombia's proposal. The first one referred to the initial proposal by Colombia which suggested changing the figures in Article 9.1 from 3 and 9 per cent and raising them to 7 and 15 per cent respectively. However, in the paper Colombia was noting a figure of 10 per cent. Therefore, Canada asked what the current position of Colombia was with regards to the figures that were currently in Article 9.1, and whether the change in figures constituted a revision of Colombia's original proposal.

147. In its second question Canada noted that one of the rationales put forward by Colombia for the proposal to increase the levels set out in Article 9.1 was based upon delays associated with taking a case to dispute settlement. Canada requested Colombia to expand upon this idea as it seemed that Colombia was pointing to issues relating to the implementation of Article 9.1, and not the actual levels contained in that provision.

148. The delegate of Egypt reserved the right to comment at a later stage.

149. The delegate of Japan commented that the figure proposed by Colombia was too big in the sense that it would diminish the effectiveness of the safeguard measure, and the spirit of the Agreement itself. Secondly, the delegate of Japan expressed doubts as to whether Colombia's proposal might not lead to a two-tiered system within the Agreement. Japan understood the obligation of special and differential (S&D) treatment, or the existence and spirit of S&D treatment, and was willing to do the maximum possible to obtain rules for S&D treatment. However, Japan was of the view that respecting S&D treatment and having a two-tiered system in the Rules area, including safeguards, was a different story. Japan expressed doubts as to whether this course of action would lead to a two-tiered system in the Agreement, meaning a distinction between developing countries and developed countries.

150. The delegate of China expressed his willingness to give a positive consideration to Colombia's proposal.

151. The delegate of Malaysia expressed the view that since the issue was one of implementation it was certainly incumbent upon the Committee to discuss the proposal made by Colombia. The Committee had a mandate to report back to the TNC and certainly it would be useful to continue the discussion on Colombia's proposal. Malaysia noted that Colombia had raised a number of points to support its proposal regarding market access of developing countries in the face of safeguard measures and the difficulty of recourse to dispute settlement by developing countries in the event of disputes. Malaysia believed that Colombia had mentioned a number of points that would be useful for

further discussion and therefore that it would be useful for the Committee to continue its discussions at the next meeting or in an informal session.

152. The delegate of the United States, in light of the intervention by Malaysia, questioned whether or not the proposal conforms with the mandate for the Committee as decided in the Doha Ministerial Conference. To the United States it seemed that Colombia's proposal incorporated elements which reached far beyond what the Ministers contemplated when they approved the implementation process. Therefore, as a preliminary matter, the Committee should make a determination as to whether or not this particular proposal fits within the mandate. The United States was willing to engage on informal consultations on that point.

153. The Chairman proposed to organize informal consultations on all issues raised regarding Colombia's proposal before the next regular meeting of the Committee, where all issues regarding consultations would be taken up including those raised by the United States. He also proposed that, in order to facilitate the exchange of views, Members could submit their views and questions on this issue in writing.

154. The delegate of Colombia answered some of the questions that had been raised by Members. Regarding whether the proposal was the same as that which was in the list of outstanding issues on implementation, in Colombia's view this was the proposal made for informal consultations. Colombia believed that S&D treatment was fundamental to market access and therefore attached great importance to raising the figures in Article 9.

155. Regarding the creation of two systems or a two-tiered system of obligations, Colombia was of the view that this situation already exists as Article 9.1 establishes two types of treatment depending upon whether the country is developing or not. Colombia thought that there was a need to recognise greater space for developing countries and this would not in principle change anything but would increase S&D treatment.

156. Regarding the 10 per cent threshold, Colombia remarked that it had not changed its proposal. Colombia had simply referred to the idea that around 10 per cent constitutes a substantial trade interest in this Organization. Colombia hoped that the discussion would be substantially broadened in the proposed informal consultations.

157. The Committee decided to hold informal consultations on the implementation issue raised by Colombia regarding Article 9 special and differential treatment.

F. OTHER BUSINESS

1. Preparations in Connection with paragraph 18 of the Protocol on the Accession of the People's Republic of China (Transitional Review Mechanism)

158. The Chairman recalled that the issue of "Preparations in Connection with paragraph 18 of the Protocol on the Accession of the People's Republic of China (Transitional Review Mechanism – TRM)" had been the subject of consultations and that certain Members would like to speak in respect of this issue.

159. The delegate of the United States was of the view that China's TRM review was properly on the agenda of the Committee and was a subject that needed to be discussed. The United States thought it was important that Members understand what was involved with this issue. The United States was not asking the Committee to conduct its review of the TRM at this meeting. The objective was to develop guidelines that would allow the year's TRM review to be conducted in the most meaningful and efficient way.

160. The United States noted that in terms of what was required by China's Protocol of Accession, not only for the Committee's review but also for the other TRM reviews to be conducted by WTO councils and committees, the Protocol required China to submit information specified in Annex 1A in advance of the TRM review. Subsequently, Members were to submit questions to China in advance of the TRM review, and the Protocol required China to submit responses to Members' questions in advance of the TRM review. China's Protocol of Accession Section 18.1, stated that China must provide "relevant information to councils and committees involved in the TRM". It did not attempt to identify all the relevant information that must be submitted but it did state that it included the information listed in Annex 1A of the Protocol. For the Safeguards Committee, one item was listed – implementation of China's regulation on safeguards. The Protocol further provided that China must submit this relevant information "in advance of the review to be conducted by these councils and committees". It did not however state how far in advance the information had to be provided, as that was a decision that was left up to Members. Next, the Protocol and Annex 1A of Part 7 explain that Members may ask specific questions of China in connection with the TRM, that is, Members notify their specific questions to the relevant council or committee and should do so in advance of that body's TRM review.

161. In the view of the United States Section 18.1 confirmed that both Members' questions and China's responses to Members' questions were to be provided in advance, as it provides that all Annex 1A information must be submitted by China in advance, and Part 7 of Annex 1A made clear that this included China's responses to Members' questions. If China's responses must be submitted in advance it meant that the question as to which China was responding must be submitted even further in advance. So, according to the United States the only issue left to Members to decide was how far in advance of the TRM meeting should Members' questions and China's responses to Members' questions be provided. What the United States proposed to do was to reach agreement on the three timing issues that the Protocol leaves open for Members to decide – how far in advance must China submit the relevant information set out in Annex 1A; how far in advance must Members submit their specific questions for China; and how far in advance must China submit its responses to Members' questions. For the United States, these issues should not be controversial, as Members agree on these types of issues routinely.

162. The United States noted that the US proposal was straightforward and entirely consistent with normal WTO practice. Under the US proposal, China would submit the information set out in Annex 1A 90 days in advance of the Committee's TRM meeting. After reviewing the submitted information, Members would submit a request for information in writing 60 days in advance of the meeting. China would then submit written answers and additional information 30 days in advance of the meeting. At the meeting, Members could submit additional questions and requests for information, if any, to China, orally or in writing, and then China would submit written answers or additional information within a timeframe set by the relevant council or committee. In the view of the United States, these guidelines were in everyone's interest and set forth the most reasonable and least intrusive procedures possible to establish an effective TRM. These guidelines would allow for a meaningful review of China's implementation efforts which would in turn help to ensure that China fully implements its accession commitments. The United States remarked that this was something that China's leaders had repeatedly stated as China's goal, and it was also the goal of other Members.

163. According to the United States, a meaningful TRM would also help to avoid disputes in two ways, which was in everyone's interest. It would provide more clarity and help to foster a better understanding among Members of China's trade regime. Secondly, where real implementation problems existed, a meaningful TRM would act as a safety valve and help to avoid dispute settlement cases against China. The United States recalled that at the end of the TRM process each year the General Council would make recommendations and if China followed them it surely would avoid some potential dispute settlement cases.

164. One other more practical effect of the proposed guidelines was that, in the view of the United States, they would lessen the burden on China and other Members. For the United States, nothing in the Protocol requires a council or committee to conduct its TRM work in only one meeting per year. Any council or committee could devote multiple meetings to the TRM, but the guidelines proposed by the United States were designed to avoid that burden. They were designed to allow the various councils and committees to complete their work in only one meeting.

165. The United States believed that if procedures could not be agreed all Members would lose. The only option that would be left for Members was for each individual council and committee to hold multiple meetings to carry out its TRM work. That, according to the United States, was an enormous waste of everyone's time and effort, which the United States wanted to avoid. The United States was conscious that guidelines for all councils and committees involved in the TRM could not be agreed during the Committee's meeting, but guidelines could be agreed for the Safeguards Committee. The United States proposed to begin informal consultations so that agreement could be reached on these guidelines and to extend these guidelines to the other bodies involved in the TRM. The United States remarked that time was running short and any other approach would be unwieldy. In the view of the United States, Members needed to be in position for the General Council at its 13-14 May meetings to endorse general guidelines for all the bodies involved in the TRM. If not, the proper functioning of this year's TRM would be jeopardised, thus creating a climate of acrimony that would jeopardise the cooperative approaches that Members had taken to date when addressing China's implementation effort.

166. The delegate of China stated that the specific suggestions by the United States concerning the timing arrangement went far beyond the requirement of paragraph 18 of China's Accession Protocol. Therefore, they were unacceptable to China. China would stand by its commitment under paragraph 18, and as a matter of fact, China was making great efforts towards that goal. China had no difficulty in understanding the meaning of paragraph 18 of its Accession Protocol, but was surprised to see that some Members had put forward specific proposals and requirements far beyond what paragraph 18 stipulated. China stated that it would not be possible for it to do more than what paragraph 18 provided, because that was not part of China's obligation.

167. The delegate of China noted that if some Members were suggesting an increase in the obligations of China in conducting the transitional review, China would reject it. China understood the rationale of some Members had argued that we should follow the routine procedure of the Committee in dealing with this matter. However, China pointed out that the transitional review mechanism was not routine. It was something very special, something unique, as this transitional review mechanism was required only for China. China was the only WTO Member required to go through this, and therefore, normal procedures and normal routines were not applicable. China was of the view that the review could only be conducted strictly in accordance with paragraph 18 of its Accession Protocol.

168. China stated that, if some other Members wanted to submit questions in advance – whether 60 days, 90 days or 190 days in advance – China had no objection. But China had no obligation under paragraph 18 to provide answers within a specific timeframe. Because of the diverse views on the understanding on this issue and paragraph 18, China did not think that there should be any decisions concerning this matter. China reiterated its willingness to continue informal consultations with interested Members and hoped that an agreement could be reached through such consultations.

169. The Committee decided to continue the process of informal consultations with interested Members.

170. The delegate of the United States requested that all Members be apprised of all developments as they occur in the informal consultations.

2. Special and differential treatment

171. The Chairman informed the Committee that on 10 December 2001, Mr. Inumba, then Chairman of the Committee on Trade and Development, sent the Chairpersons of WTO bodies a letter inquiring about the activities of those bodies in respect of the special and differential treatment provisions of the relevant Agreements. The Chairman noted that he had informed the Chairman of the Committee on Trade and Development that the Committee was not engaged in any activities in respect of the special and differential treatment provisions of the Agreement on Safeguards.

3. Technical assistance and capacity building

172. The Chairman recalled that paragraph 41 of the Doha Ministerial Declaration instructs the Director-General to report to the Fifth Ministerial Conference on the adequacy and implementation of technical assistance and/or capacity building commitments contained therein, with an interim report to be provided to the General Council in December 2002. In this connection, a suggestion was made at the last meeting of the Committee on Trade and Development, which was supported by a large number of delegations, that in order to avoid an end-of-year rush to compile the aforementioned report, WTO bodies with technical assistance activities could put technical assistance as a standing item in the agendas for their meetings throughout the year. An understanding emerged on this suggestion at the last meeting of the Committee on Trade and Development. The Chairman brought this suggestion to the Committee's attention and sought the views of the Committee on this suggestion. He also noted that the mandate of the Committee did not expressly include technical assistance activities, so it did not appear necessary to include this issue as a standing agenda item.

173. There were no comments from delegations on this item. The Chairman took the absence of comments from Members to mean that the issue would not be inserted as a standing point in the Agenda of the Committee.

4. Notification process

174. The Chairman reminded Members that their notifications to the Committee should be communicated to the Chairman of the Committee via the Secretariat. This was to reduce the risk of notifications being "lost" in the system.

5. Turkey – Safeguards investigations on steel

175. The delegate of Turkey expressed serious concerns about the safeguard measures taken by various WTO Members regarding steel products. Turkey was of the view that these measures had not been adopted pursuant to the provisions of the Agreement. Appropriate means in which the interested parties could present evidence and their views were not allowed. Also, injury caused by the structural problems in the sector and by other factors was attributed to imports. Turkey noted that, in some cases, two or more trade policy measures were imposed on the same steel product. Turkey was of the view that with these safeguard measures these countries grant relief beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment. It seemed to Turkey that these measures had not been taken to eliminate the serious injury or threat of serious injury due to the increased imports, but with a concern to protect domestic industry or to retaliate to another Member country's action.

176. Turkey also noted that although these measures would have adverse effects on the markets of developing countries, on their development efforts, and on their foreign trade, determination of developing country status with regard to Article 9.1 was neither uniform nor consistent with the present WTO status of these countries.

177. Turkey acknowledged the right of Members to take appropriate measures to protect their domestic industries. However, in the view of Turkey, safeguard measures imposed by Members to protect their steel industries may cause, or were already starting to cause, a chain effect by leading other Members to take counter measures. As a result, these measures would restrict world steel trade, create an unfair competition environment, harm the multilateral trading system and create deadlock in the intergovernmental discussions carried out in other international fora on the real problems of the global steel market.

6. United States – Investigation by Ecuador on matches

178. The delegate of the United States questioned Ecuador regarding the status of a provisional measure on matches, of which the last notification was in late November 2000, G/SG/N/7/ECU/1. The United States asked whether the measure was still in force, whether it had been terminated and whether any findings had been made as to injury.

179. The representative of Ecuador stated that it would relay the US questions to capital and hoped to have an official response to this subject as quickly as possible.

7. United States – Egypt's definitive safeguard measures on fluorescent lamps

180. The delegate of the United States recalled that there was a notification in February 2001, G/SG/N/8/EGY/3, indicating that Egypt's safeguard measure on fluorescent lamps was being extended for one year. The United States questioned whether the measure had been terminated.

181. The delegate of Egypt informed the Committee that the measure had expired as of 27 February 2002.

182. The Committee took note of the statements made.

G. DATE OF NEXT REGULAR MEETING

183. The Chairman recalled that regular meetings would normally 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 Wednesday, 21 October 2002, and the Committee on Subsidies and Countervailing Measures would meet from 30 October to Friday, 1 November 2002, with a meeting of the Working Party on Subsidies Notifications scheduled for Tuesday, 29 October. Accordingly, he suggested that the Safeguards Committee meet on Monday, 28 October 2002.

184. The Committee so agreed.

H. ELECTION OF OFFICERS

The Committee elected Mr. Gustavo Lunazzi of Argentina as Chairman.

The Committee elected Ms. Ellen Kluijtmans of the Netherlands as Vice Chair.
