
Council for Trade in Goods

MINUTES OF THE MEETING

Held in the Centre William Rappard on 17 October 2001

Chairperson: Ambassador István Major (Hungary)

The meeting of the Council for Trade in Goods was convened by WTO/AIR/1646. Document G/C/W/314 contained the proposed agenda which was adopted.

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I.	REQUESTS FOR A WAIVER UNDER ARTICLE IX OF THE WTO AGREEMENT	
-	DOMINICAN REPUBLIC WAIVER FOR MINIMUM VALUES UNDER THE CUSTOMS VALUATION AGREEMENT (G/C/W/286, G/C/W/310)	

1.1 The Chairman drew attention to document G/C/W/286, which contained a request for a waiver for minimum values under the Customs Valuation Agreement, and G/C/W/310, which contained the relevant draft decision, circulated to assist the Council in its consideration of this request.

1.2 There were no statements. The Council approved the request and recommended that the draft decision contained in document G/C/W/310 be forwarded to the General Council for adoption.

It was so agreed.

- **CUBA - EXTENSION OF WAIVER CONCERNING GATT ARTICLE XV:6
(G/C/W/303 AND CORR.1, G/C/W/308)**

1.3 The CTG considered the request by Cuba for an extension of a waiver concerning GATT Article XV:6. This request, contained in document G/C/W/303 and Corrigendum 1, was introduced by Cuba at the last meeting. Members also had before them document G/C/W/308, which contained a draft decision to assist the Council in its consideration of this request.

1.4 The representative of the United States did not object to this waiver but did not agree with all of the contents of the document in G/C/W/303.

1.5 The Council took note of the statements made and approved an extension of the waiver for Cuba and recommended that the draft decision contained in document G/C/W/308 be forwarded to the General Council for adoption.

It was so agreed.

**II. REQUEST BY THE SLOVAK REPUBLIC – CONSIDERATION OF THE
NOTIFICATION BY POLAND UNDER ARTICLE 12.5 OF THE AGREEMENT ON
SAFEGUARDS (G/L/453 – G/SG/35, G/C/W/312, G/C/W/313)**

2.1 The Chairman said that at the meeting on 5 October both the Slovak Republic and Poland made statements on the issue under consideration. These statements had since been circulated to the CTG. The Slovak Republic had attached a draft decision in document G/C/W/312 regarding the measure notified by Poland, for consideration by the Council.

2.2 The representative of the Slovak Republic said that at a previous meeting of the CTG his delegation had made a statement in which it explained the position of the Slovak Republic with respect to the suspension of concessions by Poland on imports of margarine and butter from the Slovak Republic as presented in Notification by Poland circulated in document G/L/453. His delegation proposed a draft decision for consideration of the CTG which had been circulated together with its statement. He had listened carefully to the statement made by the representative of Poland which had been subsequently circulated in document G/C/W/313. In the light of both statements, he wanted to focus attention on the decision-making process. In its statement, Poland had stated that suspension of concessions was applied in conformity with Article 8.2 of the Safeguards Agreement and that Article 8.3 was not applicable since one of its conditions was not met by Slovakia; the safeguard measure on imports of sugar did not conform to the provisions of the agreement. The action taken by Poland was based only on a unilateral evaluation of the conformity of the Slovak safeguard measures with the provisions of the safeguard agreement, without approval or authorization by a relevant WTO body. The general principle must be observed by the WTO Members which prohibited unilateral actions by WTO Members to redress alleged violations of obligations or nullification or impairment of benefits under any of the WTO Agreements. A unilateral approach in the decision-making process could have serious negative implications on the rules-based multilateral trading system. He reiterated his request that the CTG reject actions based on unilateral determination before prior authorisation by WTO bodies and disapprove the measure taken on the unilateral determination by Poland.

2.3 The representative of Poland had previously indicated certain systemic inconsistencies in the WTO Agreements and recognized that the final decision as to the conformity or non-conformity of the safeguard measure applied by Slovakia with WTO rules should be taken by the relevant WTO bodies. Poland consequently initiated WTO dispute settlement procedures. He had drawn the attention of the CTG to the fact that article 8.2 of the Safeguard Agreement was very clear as to the time-frame within which the suspension of concession must be applied: not later than 90 days after the entry into force of the original safeguard measure. It was impossible within the current DSU procedures to receive a decision of a WTO panel as to the conformity with the safeguard measure within three months after its imposition, and he had also indicated that Articles 8.2 and 8.3 seemed to be internally inconsistent. Poland could not give up the right to any permissible interpretation of the WTO Agreements to meet its concerns. Poland could not accept the draft decision proposed by Slovakia. This case demonstrated a need for improvement of the Safeguard Agreement, perhaps in the framework of the new round.

2.4 The representative of the United States had indicated in the last meeting that this issue should be examined in the Committee on Safeguards and she maintained that position. In addition, she had a number of questions of concern with respect to the action taken by Poland. As a start, she needed some clarification whether Poland actually made the notification to the CTG referred to in Article 8.2 of the Safeguards Agreement (to which Poland replied in the affirmative, citing G/L/453-G/SG/35). A number of other questions concerning the legitimacy of the action taken would be raised in due course. The suggestion that the Safeguards Committee should look at this and that it should have been brought there for discussion before it came to the CTG for discussion did not mean that the US rejected the proposal of the Slovak Republic. Her delegation had a number of questions concerning the role of notifications to this body, in particular with respect to actions taken under Article 8.2. She also shared the additional question raised by the Philippines, and had more questions for the parties. The US was not taking any position on the request from the Slovak Republic. It was still not clear whether under Article 12.10 there had been a notification even through the Safeguards Committee to the CTG. It was connected to the question of whether the CTG had properly before it the ability to disapprove the action taken.

2.5 The representative of Chile said that Article 8.2 contained the definition of compensation which implied major costs for the country which applied the safeguard measure, and Article 8.3, in giving the three-year possibility of refinancing, in a way did not make it operational for those three years. The last part of Article 8.3 placed conditions on the measure, so creating a problem which could be systemic. If a Member could unilaterally estimate that a measure was inconsistent with the WTO, this would go against the principles of the WTO, except that this Agreement did permit it. Therefore this subject should be an agenda item on the Committee on Safeguards.

2.6 The representative of the Philippines shared the same concern expressed earlier by the United States. He asked the Slovak Republic when they imposed the measure in question. Second, in respect of the Polish request to the CTG, when did the CTG receive the request from Poland? Third, whether or not Poland had already applied their retaliatory measures considering that they said that it was effective August 1 2001. Fourth, whether or not, prior to August 1 2001, the CTG had the opportunity to disapprove the proposed measure taken by Poland.

2.7 The representative of the Slovak Republic replied to the Philippines that the safeguard measure by the Slovak Republic was in force as of 1 May 2001 and had been duly notified to the Safeguards Committee.

2.8 The representative of Poland confirmed that Poland was acting in accordance with WTO procedures. Regarding the issue of the Committee on Safeguards, Poland had an open position but wanted to underline that a discussion in the Committee did not in any way affect its legal rights under the relevant articles of the Safeguard Agreement related to the right of suspending concessions. With

respect to the questions made on some details, he drew the attention of delegations to the content of Poland's notification. Poland was ready to answer any questions addressed to them in writing.

2.9 The representative of St. Lucia found the notion of a unilateral determination by a Member that a violation had occurred to be problematic in light of the rules of the multilateral trading system. Her delegation had concerns with that sort of approach to the issue.

2.10 The representative of the United States recognized that there were a number of situations in this house where they had had to deal with a similar question, but there had also been ways that Members have found to deal with somewhat ambiguous situations and she encouraged the parties to this dispute to explore those, but she did have a concern with respect to this specific Article, what exactly is allowed here.

2.11 The Chairman said it would be useful to have first informal consultations and in the light of the consultations to decide what form of follow-up to give to this issue. [Subsequently, it was decided to prepare for informal consultations by inviting Members to submit written questions to the parties concerned].

III. WORKING PARTY TO EXAMINE THE REQUEST FOR A WTO WAIVER CONCERNING THE NEW ACP-EC PARTNERSHIP AGREEMENT – ADOPTION OF THE TERMS OF REFERENCE

3.1 The Chairman said that at the informal meeting of the CTG on 11 October 2001, progress was made on the establishment of the working party for the examination of the request for a WTO waiver. The terms of reference were discussed and agreed at the informal meeting of 11 October and sent to Members in a fax communication of 12 October. They were: "To examine, under the relevant provisions of the WTO, the request for a waiver concerning the new ACP-EC Partnership Agreement, and to report to the Council for Trade in Goods."

3.2 The representative of the Philippines said that his delegation concurred with the terms of reference as stated by the Chair provided it was understood that terms relevant to provisions of the WTO would include, among others, the decisions cited by the European Communities in its request to a waiver, including but not limited to, the 1956 decisions.

3.3 The representative of Ecuador felt it was indispensable that the terms of reference allowed Members to use the 90 days established by WTO in order to establish all of the mechanisms necessary for this process within the Working Party.

3.4 The Chairman recalled that it was agreed that membership would be open to all Members wishing to serve on the working party. Regarding the Chairmanship of the working party, he said that his proposal for Chairperson of the working party, Margaret Liang, Deputy Permanent Representative of the Permanent Mission of Singapore, had met with the agreement of the membership.

3.5 The Council for Trade in Goods took note of the statements made and agreed to the establishment of a working party with the terms of reference and composition outlined.

IV. OTHER BUSINESS

Before closing the meeting, the Chairman said he would hold consultations to determine the date of the next meeting in the light of the progress in on-going consultations in the CTG.
