

WORLD TRADE ORGANIZATION

RESTRICTED

G/SG/M/9

30 July 1997

(97-3243)

Committee on Safeguards

MINUTES OF THE REGULAR MEETING HELD ON 5 MAY 1997

Chairman: Mr. A. Buencamino (Philippines)

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A. <u>Observers: International Intergovernmental Organizations</u>	

3. The Chairman recalled that, under the procedures adopted by the General Council for observer status for international intergovernmental organizations (WT/L/161, Annex 3), requests for observer status were to be considered on a case-by-case basis by each WTO body to which a request had been addressed, taking into account such criteria as the nature of the work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization had been involved in the past with the work of the GATT. At its meeting on 7 February, the General Council had noted that the IMF and the World Bank had been given observer status in WTO bodies pursuant to the Agreements between the WTO and these two institutions. With regard to other international intergovernmental organizations, the General Council had agreed: (a) that the organizations which already had observer status in the General Council on an ad hoc basis be granted observer status immediately; (b) that for international intergovernmental organizations whose requests had not yet been considered the Chairman would conduct consultations; (c) to invite the other WTO bodies to proceed in a similar way. As indicated in document G/SG/W/182, the ACP Group, IMF, OECD, UNCTAD, and World Bank had requested observer status in this Committee.

4. The Committee took note of the observer status of the IMF and the World Bank. The Committee further decided to grant regular observer status to UNCTAD on the basis that there would be reciprocity with respect to documents, proceedings and other aspects of observership.

5. With respect to the request by the OECD, the representative of Thailand indicated that his views were the same as those expressed by his delegation in the meetings of the Committees on Subsidies and Countervailing Measures and on Anti-Dumping Practices, that is that consideration of the OECD's request should be postponed to a later date, and that in the meantime, the OECD's ad hoc status should be maintained. The representative of Brazil stated that further reflection was needed within the Committee before taking a decision on the issue, and that any decision to grant the OECD permanent observer status should be done on the basis of reciprocity. The representative of India expressed his support for the views offered by the other two delegations.

6. The Chairman proposed that the Committee defer action on the OECD's request for regular observer status until a later date. In the interim, he proposed that the OECD continue to be invited to attend the Committee's meetings on an ad hoc basis.

7. The Committee decided to defer action on the request of the OECD for regular observer status and to continue to invite this organization to its meetings on an ad hoc basis.

8. Regarding the ACP Group's request, the Chairman noted that the ACP Group, which had not had ad hoc observership in this Committee, had requested observer status in several WTO bodies, and that the Chairmen of those bodies, including the General Council and the CTG, were consulting with Members concerning the ACP request. The Chairman proposed to conduct consultations on the ACP Group's request for observer status in the Committee, and to report back to the Committee at a later date.

9. The Committee so decided.

B. National legislation

(i) Review of New or Amended Notifications not Previously Reviewed

10. The Chairman recalled that questions concerning newly notified legislations were to have been submitted to the Member concerned and the to Secretariat no later than 14 April 1997. He also noted that the timeliness of submission of questions had improved and urged Members to respect the deadlines established.

11. The Chairman reminded Members that follow-up questions could be asked orally at the meeting, and that if written answers to such questions were desired, the questions should be submitted in writing to the Member whose notification was being reviewed, and to the Secretariat, no later than 2 June 1997. Written answers to all questions submitted in writing should be submitted to the Secretariat no later than 7 July 1997.

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

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

G/SG/Q1/ARG/5 (Submitted by Mexico)

G/SG/Q1/ARG/6 (Submitted by the EC)

G/SG/Q1/ARG/7 (Submitted by Korea)

G/SG/Q1/ARG/8 (Submitted by the US)

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

G/SG/Q1/ARG/9

14. No questions were posed concerning the legislative notifications of Botswana, Brazil, Brunei Darussalam, Ghana, Liechtenstein, Senegal, or Uganda.

15. The representative of the United States expressed concern that answers to written questions previously posed by his delegation to the delegations of Côte d'Ivoire, Kenya and Nigeria had not yet been received.

(ii) Written questions regarding the previously-reviewed legislation of the Republic of Korea

16. The Committee turned to the written questions posed by Canada regarding Korea's previously - reviewed legislation. These questions can be found in document G/SG/Q1/KOR/1.

17. Korea's answers to these questions can be found in document G/SG/Q1/KOR/2.

18. The Chairman reminded Members that Korea's legislation automatically would be placed on the agenda of the Committee's next regular meeting. Thus, any further written questions with respect to this legislation should be submitted in writing to Korea, and to the Secretariat, no later than six weeks before the next meeting, or by 8 September 1997. Korea was asked to provide answers to any such questions, in writing, no later than two weeks before the meeting, or by 6 October 1997.

19. The Chairman also reminded Members that these same deadlines would apply with respect to consideration, at the Committee's next meeting, of any other previously-reviewed legislations. For such legislations to be placed on the agenda for that meeting, written questions would need to be received by the Member in question, and by the Secretariat, by 8 September 1997. The deadline for written answers to those questions would be 6 October 1997.

20. The Chairman reminded Members of some of the elements of the Ministerial Declaration adopted at Singapore in December 1996. The declaration noted that Members were "mindful of their obligations to complete their domestic legislative process without further delay," and reminded Members that "each Member should carefully review all its existing or proposed legislation ... to ensure ... full compatibility with the WTO obligations, and should carefully consider points made during review in the relevant WTO bodies regarding the WTO consistency of legislation ... and make appropriate changes where necessary." In this regard, the Chairman believed that the Committee might need to consider whether and how it could report on what Members were doing in order to comply with these aspects of the Ministerial Declaration. He suggested that Members take this matter under consideration, and consult with each other and the Chairman as to how this could be accomplished, with a view to discussing the issue before the issuance of the Committee's Annual Report in October.

21. The Committee took note of the statement made.

(iii) Status of Legislative Notifications

22. The Chairman reported that there were still a large number of Members who had yet to make the required legislative notification. In particular, notifications had not been received from the following 46 Members: Angola, Antigua & Barbuda, Bahrain, Bangladesh, Barbados, Belize, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Cyprus, Djibouti, Dominica, Fiji, Gabon, Gambia, Grenada, Guinea Bissau, Guyana, Haiti, Jamaica, Kuwait, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mongolia, Mozambique, Namibia, Niger, Papua New Guinea, Qatar, Rwanda,

Saint Kitts & Nevis, Saint Vincent & Grenadines, Sierra Leone, Solomon Islands, Suriname, Swaziland, Tanzania, Togo, and Zaire.

23. This situation continued to create a very unfortunate gap in transparency with respect to legislative notifications. The Chairman once again urged all Members who had not yet done so to make the required notification. He similarly urged all other Members to encourage those that had not yet notified to do so.

24. The Committee took note of the statement made

C. Notifications of actions related to safeguard measures

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

25. The Chairman noted that since the Committee's last meeting, one initiation of an investigation pertaining to serious injury or threat thereof and the reasons for it had been notified, by Argentina, concerning footwear. (G/SG/N/6/ARG/1 and Suppl.1.)

26. The representatives of the United States and the European Communities indicated that they had concerns over this initiation, but would raise their questions regarding this investigation under other Agenda item as appropriate.

27. The Committee took note of the statements made.

(ii) Notifications Regarding Application of Provisional Measures

28. The Chairman noted that since the Committee's last meeting, one notification regarding application of a provisional measure had been received. This notification concerned a provisional measure applied by Argentina on footwear. (G/SG/N/7/ARG/1 and Suppl.1)

29. The United States representative said that his delegation had serious questions as to Argentina's compliance with the Agreement with respect to the provisional duty on footwear. Data provided by Argentina showed that although actual imports of footwear had increased from 1991 to 1993, these imports had declined both in value and quantity from 1994 to 1995. Imports also had declined in quantity from 1993 to 1994. It was not clear how a declining trend in recent imports supported the existence of "clear evidence" that increased imports had caused or were threatening to cause serious injury, or Argentina's conclusion that without immediate duties, there would be "damage ... difficult to repair", as provided for in Article 6 of the Agreement.

30. According to the data provided in the technical report prepared by the Argentine Federal Trade Commission, apparent domestic consumption of footwear as estimated by the petitioner had declined from 103 million pairs in 1992 to 75 million pairs in 1995. The Federal Trade Commission had noted that the alleged decline in consumption during the years 1993 and 1994 should be investigated because it coincided with years of strong growth in demand for consumer goods, total industrial production and gross domestic product. It was not clear how the Argentine government explained this 25% drop in apparent consumption over that four-year period. The Agreement on Safeguards provided that when factors other than increased imports were concurrently causing injury to the domestic industry, such injury should not be attributable to increased imports. The Commission's technical report stated that "if one were to accept the production and apparent consumption data, some of the decline in production would be attributed to the decline in consumption and only some would be attributed to increases in imports", and that "the evidence contained in the docket shows that at this stage injury might be attributable less to current imports than to consumption trends and industrial reorganization, which

were major according to figures for investment in new capital assets". It was not clear why the Under-Secretariat for Foreign Trade, in deciding to impose the provisional measures, had failed to address the dramatically falling consumption and industrial reorganization among the variables considered in its determination of the existence of critical circumstances, as listed in G/SG/N/6/ARG/1-G/SG/N/7/ARG/1.

31. Paragraph 6 of Argentina's notification to the Committee cited several variables, e.g. production, capacity and employment, showing an overall decline in the domestic footwear industry from 1991 to 1995. However, it was not clear how data through 1995 supported the need for emergency measures in 1997. Imports also had declined in both absolute and relative terms between 1993 and 1995, which made it even more difficult to justify an emergency safeguard action in 1997. Determinations of threat of serious injury were to be based on facts and not merely on allegation, conjecture or remote possibility. It was not clear what facts had been used by the Argentine authorities in making their determination, since the most recent information covered 1995. There was no indication that Argentine authorities had analyzed criteria on which determinations of clearly imminent threat are typically based, such as surging imports, rapidly increasing import inventories, excess foreign factory capacity and the like.

32. The provisional measures for most tariff items were nearly identical to the GATT-inconsistent specific duties that had been in effect until the imposition of the provisional safeguard measures. Thus it appeared that Argentina had employed provisional safeguard measures as an after-the-fact means to lend legitimacy to GATT-inconsistent duties rather than as an objective endeavour to address injury to domestic producers. Argentina's notification to the Committee supported such a conclusion. The notification stated that the provisional measure which was promulgated on 24 February 1997 was necessary because the mere absence of minimum specific duties would recreate the critical circumstances required for the adoption of provisional measures. The notification also stated that "the Ministry of Economy advocates the removal of minimum specific duties on footwear, which gives rise to the imminent possibility of serious injury or the threat of serious injury to the domestic industry". Thus, it appeared that the Government of Argentina had created its own critical circumstances by removing its specific duties. It was not clear why Argentina had imposed identical provisional safeguard measures to replace those specific duties. Since October 1996, the US had been engaged in consultations with Argentina to bring its temporary duties on footwear into conformity with WTO requirements. This raised the question why the provisional safeguard measures had been imposed when Argentina was engaged in discussions seeking to end or modify the specific duties and to bring them into conformity with WTO requirements. The representative asked whether the Government of Argentina had intended to impose the safeguards measures when it first engaged in the consultations with the United States.

33. The timing of these various actions heightened US concerns. The Decree removing the specific duties, issued on 24 February 1997, allegedly had necessitated the immediate imposition of provisional safeguard measures, also accomplished on 24 February 1997. The very next day, the Dispute Settlement Body had agreed to the formation of a WTO Dispute Settlement Panel to review Argentina's specific duties on the same imported goods. The US was concerned about these apparent abuses of the WTO Safeguards Agreement and wished to bring these issues to the attention of the Committee. The US was pursuing these issues in other WTO venues as well. The US representative offered to put these questions into writing, and to provide them to the Committee and to Argentina, so that Argentina could respond in writing.

34. The representative of Argentina said that his delegation understood that the application of a provisional safeguard measure might raise some concerns, and that this was the reason for including in the notification the offer to hold consultations under Article 12 of the Safeguards Agreement. Such consultations already had been held on a bilateral basis with other WTO Members. Without prejudice to this, and as an initial reaction, an analysis of the period of investigation (1991-1995), as shown in document G/SG/N/6/ARG/1, it was easy to detect that total imports of the investigated product had

increased from 8.86 million pairs to 15.11 million pairs, an increase of 72%, from 1991 to 1995. For the same period, the c.i.f value of imports had increased from US\$44.4 millions to US\$114.2 million, or by 157%. Argentina could not accept the comment made by the United States that this measure was being used to legitimize *ex-post* other types of measures, and did not agree that the other measures were WTO-inconsistent. The measures referred to by the US were not a proper topic for discussion within the Safeguards Committee. Argentina did not accept that there had been an abuse of the Agreement on Safeguards. Argentina had always respected both the letter and the spirit of the Agreement. First, Argentina had approved the regulatory decree implementing the procedures contemplated in the Agreement, which decree had been successfully reviewed by the Committee. Second, in analysing the first petition presented by a domestic industry, the Argentine authorities had acted with the greatest responsibility and seriousness, taking into account the exceptional character of a safeguards measure. Third, before deciding to open the investigation and apply a provisional measure, all elements of fact and law with respect to which evidence was on the record of the investigation had been evaluated. Finally, regarding the questions posed by the United States, Argentina would provide written answers to any written questions received. (Subsequent to the meeting, the written version of the United States' questions was circulated in document G/SG/Q2/ARG/1. Argentina's answers were circulated in document G/SG/Q2/ARG/2.)

35. The Committee took note of the statements made.

(iii) Notifications of Findings of Serious Injury or Threat Caused by Increased Imports

36. The Chairman noted that since the last meeting of the Committee, three notifications had been received reporting findings of serious injury caused by increased imports. One of these notifications was from Brazil, with respect to toys, and two were from Korea, on dairy products and on bicycles. These notifications were contained in G/SG/N/8/BRA/1, G/SG/N/8/KOR/1 and G/SG/N/8/KOR/2, respectively.

37. The representative of the European Communities reminded the delegation of Brazil that written answers were pending on questions the EC had posed bilaterally regarding Brazil's notification of a serious injury finding in the case of toys (G/SG/N/8/BRA/1), and that Brazil had promised to provide answers before applying a measure. The EC's doubts remained regarding the finding of serious injury. The representative of Brazil said that he understood that written answers had been supplied during consultations held in December, and that Brazil would be happy to provide any further explanations or clarifications required. The representative of the European Communities indicated that he would check the record of the consultations, and would clarify the situation bilaterally with Brazil if necessary.

38. The representative of the European Communities reminded the Korean delegation that the EC maintained serious doubts regarding Korea's serious injury finding on dairy products (G/SG/N/8/KOR/1).

39. The Committee took note of the statements made.

(iv) Notifications of Safeguard Investigations Terminated with No Safeguard Measure Imposed

40. The Chairman noted that since the Committee's last meeting, one notification had been received of a termination of a safeguard investigation with no safeguard measure imposed. This notification was from Korea, concerning its investigation of bicycles (G/SG/N/9/KOR/1 + Corr.1). No questions were raised with respect to this notification.

(v) Notification of Decisions to Apply Safeguard Measures

41. The Chairman noted that since the last meeting of the Committee, three notifications had been received regarding decisions to apply safeguard measures. The first was from Brazil, regarding toys (G/SG/N/10/BRA/1). The second was from Korea, regarding dairy products (G/SG/N/10/KOR/1 + Corr.1 + Suppl.1 + Suppl.1/Corr.1). The third was from the United States, concerning broom corn brooms (G/SG/N/10/USA/1).

42. The representative of the European Communities indicated that his delegation was seriously considering having the Brazilian measure examined further, given EC concerns over the way safeguard measures were being employed by a number of WTO Members. Safeguards seemed to have become a means of countering simple increases in imports, with little examination of the conditions under which those imports had taken place. The EC was reflecting on how best to protect WTO rights in this regard.

43. Regarding Brazil's notification, the representative of Japan asked for clarification of certain aspects of Brazil's written responses to Japan's written questions (G/SG/Q2/BRA/2). Brazil had indicated in those answers that imports from developing country Members, including Paraguay and Uruguay, which were Mercosur members, were exempt from the measure in accordance with Article 9 of the Safeguards Agreement. It was not clear whether or not the imports originating in Argentina were exempt from the safeguard measure, and if so, how this was justified under the GATT 1994 and the Agreement; from Brazilian statistics available, the imports of some toys originating in Argentina exceeded 3% of Brazil's 1995 imports of total imports of the product. There seemed to be a contradiction between what Brazil had said at the last regular Committee meeting (i.e., that the measure applied to all countries, but that due to the Mercosur Treaty, the effect of the measure on those countries was nil), and Brazil's answers to Japan's questions. Second, the language of Article 2 of the Agreement required that a safeguard measure could only be applied on an individual product basis, but Brazil's answers to Japan's questions seemed to imply that Brazil had not conducted a product-by-product examination. Rather, Brazil had treated all toys as the belonging to the same class. Further clarification was requested on how Brazil justified this. Third, Japan was not satisfied with Brazil's interpretation of the concept "directly competitive product" and its application to this case. There seemed to be no cross-elasticity of demand between the different product types investigated, for example between wheeled toys and video games. The assertion that all toy products covered by the safeguard measure directly competed with each other might not be supported by market analysis. Thus, distinctions should be made between the different categories on the basis of factors such as age levels and sexes of users, prices, etc. A more extensive market analysis should have been made to determine whether imports of each category of toys were directly substitutable for domestic toys. Japan was concerned in this regard about the views expressed by Brazil, and reserved its rights under the WTO Agreements to pursue this issue.

44. The representative of Brazil, in response to the EC's question, stated that there had been two opportunities for consultations with the EC, and that Brazil had tried in the most constructive manner possible to present all information relevant to the investigation, and would provide further data if necessary. The documents that had been supplied to the Committee were quite complete and self-explanatory, and in them the EC and other interested Members would find the necessary information concerning why Brazil had taken safeguard action.

45. Regarding Japan's questions, the representative of Brazil replied first that there was no contradiction between Brazil's written answers to Japan and Brazil's statements at the October meeting as reflected in the minutes from that meeting. The safeguard measure did not apply to Paraguay and Uruguay (two Mercosur members) because their total imports were both below the 3% de minimis level. No different treatment had been accorded to Mercosur members than to any other WTO Members during the investigation. As was true for Argentina, had imports from Uruguay and Paraguay been above the de minimis level, the measure would have applied to but had no effect on these two countries.

because of the 0% tariff preference these countries enjoy as members of Mercosur. A meeting of the Committee on Regional Trade Arrangements had been held the previous week, and interested Members could have put questions to Brazil regarding Mercosur during that meeting. Second, concerning the analysis of the selected variables on the basis of all toys as one class, a detailed explanation on this issue had been provided in Brazil's answers to Japan and in its notifications to the Committee. Third, the Agreement referred to but did not define "directly competitive product". In Brazil's investigation, this term was understood to refer to those products competing for the same market, for the same end uses, that is products that were directly substitutable. Toys were all directly substitutable among themselves. Brazil would be happy to provide fuller written answers to Japan on these points.

46. Regarding Korea's notification on dairy products, the delegate of New Zealand thanked Korea for its notification G/SG/N/10/KOR/1/Suppl.1, which represented an effort to respond to questions and concerns raised by Members over Korea's safeguard action on milk powder blends, and also for the inclusion of data for the first half of 1996 in its calculations of the import quota level, to take into account more recent import trends. However, having reviewed the notification, New Zealand maintained that the initial decision to impose a safeguard measure could not be substantiated on the available evidence. GATT Article XIX specifically required that Korea demonstrate that the increase in imports was due to unforeseen developments, and the effect of obligations incurred including tariff concessions, before safeguards could be implemented. These matters, and in particular, unforeseen developments, had not been adequately addressed by Korea in making its decision on safeguard action. The substantiation of the existence of a causal link between the increased imports and injury was questionable, given that the use of aggregated annual statistics for stock levels and prices could be misleading. A monthly analysis would show that any injury was not due to increased imports. The other possible factors contributing to injury had not been adequately examined. There was no onus on other Members (as implied by Korea) to identify the major cause of injury to the domestic industry. The burden of disproving other possible sources of injury besides increased imports rested with the country seeking to invoke a safeguard action, and Korea had not met this requirement. The Government of Korea had not produced any solid evidence to discount the finding in the Korean Food Industry Association analysis that any injury caused to the domestic industry was unrelated to the increase in imports. New Zealand remained unconvinced that Korea had satisfied the requirements under the Safeguard Agreement in justifying the present safeguard action.

47. The delegate of Australia concurred with the remarks of New Zealand. Australia thanked Korea for the additional information that had been provided to them, and for including data for the first half of 1996. But Australia shared the concerns of New Zealand regarding the establishment of a causal link, and over the fact that other possible contributing factors causing of injury had not been adequately examined when coming up with a finding. Thus, Australia was not convinced that Korea had satisfied the requirements under the Safeguards Agreement in justifying the present action. Australia was examining what action it might take in order to rectify that situation.

48. The delegate of the European Communities indicated that the EC authorities shared almost all of the concerns identified by Australia and New Zealand, and recalled that his delegation had requested a special meeting of the Committee, which took place in February 1997, to examine this determination. The results of that meeting and of all of the examinations conducted by this Committee so far had been unsatisfactory, in terms of removing these concerns. The use of safeguard measures, which should be exceptional in the WTO context, in a way which raised at the very least concerns about their WTO compatibility, and coinciding with the so-called "frugality campaign" being conducted in Korea for which the EC's position had already been stated in other WTO bodies, increased the concerns. The EC authorities were considering what steps to take to protect their rights under the WTO.

49. The representative of Korea recalled that an entire session of the Committee had been devoted to a discussion of this single issue in February, and that Korea had provided full information in detail

to the countries concerned, which had been circulated as a WTO document. There was little to add in response to the statements made. While taking note, and reserving the right to make further responses (for example, regarding the reference to "unforeseen developments"), most of the concerns and points had been addressed and fully covered by Korea's presentation at the February special meeting and the supplemental notification that had been made. In addition, the issue of the safeguard measures had little to do with the frugality campaign.

50. Regarding the safeguard measure on broom corn brooms notified by the United States, the delegate of Colombia reiterated the serious concerns which had already been raised in the Committee's February special meeting, over the manner in which this measure had been adopted. Because this measure was contrary to the procedures and requirements established in the Safeguards Agreement for the adoption of a measure, and because it was causing serious prejudice to Colombian exporters of this product, Colombia had requested consultations in the framework of the DSB, with the aim of clarifying the justification for the measure, and finding a positive solution to this matter. The substantive questions over the adoption of this measure and its merits would be posed in the framework of the above mentioned consultations.

51. The representative of Mexico indicated that as had been stated on prior occasions, the US investigation in question was improper, and did not correspond with the United States' international obligations. Mexico had taken a series of steps to defend its interests and rights, which it would continue to pursue wherever it was most convenient. Mexico expected that the United States would correct the situation as soon as possible.

52. The representative of the United States indicated that he would communicate to his authorities the concerns that had been expressed. Regarding Colombia's request for dispute settlement consultations, a letter would be provided later that day accepting the request for consultations, which should be conducted in due course.

53. The Committee took note of the statements made.

(vi) Notifications of non-application of safeguard measures to developing countries

54. The Chairman noted that since the last meeting of the Committee, three notifications had been received concerning non-application of safeguard measures to developing country Members whose imports were below the relevant threshold levels. These notifications were from Brazil on toys (G/SG/N/11/BRA/1), from Korea on dairy products (G/SG/N/11/KOR/1), and from the United States on broom corn brooms (G/SG/N/11/USA/1).

55. Regarding the United States' notification on the broom corn broom measure, the representative of Hong Kong, recalling Hong Kong's intervention at the February 1997 special meeting, voiced concern over the unilateral and arbitrary manner in which the United States had applied the developing country provision in Article 9.1 of the Safeguards Agreement. On 28 November 1996, the US imposed a temporary increase in the tariff on imports of broom corn brooms from certain suppliers, including Hong Kong. Under Article 9.1 of the Safeguards Agreement, the US was required not to apply the measure to a product originating from developing countries, so long as such countries individually accounted for not more than 3% of total imports, and collectively less than 9% of total imports of the product concerned. Hong Kong's exports of the product to the United States were de minimis, amounting to US\$1,923 in 1994, US\$128 in 1995, and nil in 1996. Thus, Hong Kong should have been excluded from the measure. During the Committee's special meeting in February, the US had stated that the exemption list had been drawn up based on the list of beneficiaries of the US Generalized System of Preferences scheme, to which Hong Kong was not a party. Hong Kong had a principled objection to the United States' using this basis for determining its exemption list. GSP was a preferential

scheme, and the donor country thus arguably could have discretion in deciding the list of beneficiaries. But the situation was entirely different in the WTO context. It had been longstanding GATT practice that developing country status was self-elected, and this practice had not changed since the coming into force of the WTO. Hong Kong could not regard itself as a developed country when other developed countries did not regard Hong Kong as an equal. As an example, Hong Kong's textile product exports to some developed countries were still subject to quotas. Hong Kong opposed the United States' unilateral exclusion of Hong Kong from the developing country provision under Article 9.1 of the Safeguards Agreement merely on the grounds that Hong Kong was not included in the US list of GSP beneficiaries. Allowing a WTO Member to unilaterally, arbitrarily or selectively define or redefine another Member's status under the WTO should be of grave concern to all Members, particularly developing countries. Such a practice ran the risk of opening a back door to nullifying or impairing WTO benefits accruing to individual Members, which were associated with their status, and which had been negotiated under previous rounds of multilateral negotiations. Hong Kong had a principled objection to the United States' unilateral and arbitrary determination of Hong Kong's status in the WTO for purposes of Article 9.1 of the Agreement. The issue was of systemic interest to Hong Kong, which reserved its right to take the matter further if appropriate.

56. The delegate of the United States said that since there were no additional arguments with respect to Hong Kong's intervention in the February special meeting of the Committee, he was unable to add anything to the comments that had been made there, which seemed to have been well understood. Nevertheless, he would communicate Hong Kong's concern to his authorities.

57. The Committee took note of the statements made.

(vii) Notifications regarding consultations

58. The Chairman noted that since the last meeting, a number of notifications regarding consultations under Article 12 of the Agreement had been received. The United States had notified the results of its consultations on broom corn brooms with Colombia, Honduras and Mexico (G/L/136-G/SG/6). Requests for consultations from the EC, Australia and New Zealand to Korea concerning dairy products had been received, and the results of those consultations had been notified by Korea (G/SG/7, G/SG/8, G/SG/9, G/SG/10, and G/L/156-G/SG/11, respectively). Finally, the EC had notified a request for consultations with Argentina concerning footwear, and Argentina had notified its response to that request. (G/SG/12 and G/SG/13, respectively).

59. The representative of the European Communities reported that consultations held the previous week with Argentina concerning the provisional measure on footwear had been positive, but some concerns remained, so that further clarification would continue to be sought on this matter. The delegate of Argentina agreed to continue to consult, and hoped that the same constructive spirit could be maintained during the consultations.

60. The representative of Colombia stated, in regard to the United States' notification of the results of consultations on broom corn brooms (G/L/136-G/SG/6), that the US had not afforded adequate opportunities for consultations as set forth in Article 12.3 of the Agreement on Safeguards. The US notification mentioned three separate consultations, but the 16 August 1996 consultations had been with the private sector, and thus had nothing to do with Article 12.3 consultations, which are intergovernmental. Similarly, the consultations held 28 August 1996 did not satisfy the requirement of Article 12.3 that consultations be held once a decision had been taken to impose a safeguard measure, as to Colombia's understanding, this did not happen until 30 August 1996 when the US President decided to authorize the imposition of a measure and to direct USTR to within 90 days negotiate and conclude agreements relating to the exports of broom corn brooms to the United States. Within this period (30 August to 30 November), Colombia was invited to a meeting on 27 November which could

not be called a consultation, but rather a notification session of the measure to be adopted the following day. In this context, Colombia asked the United States to answer the following questions: As of what date did the US consider that consultations under Article 12.3 should be held? After the ITC's determination on serious injury? After the ITC's report to the US President? Or after the President decided to adopt a measure and authorized the USTR to negotiate and conclude agreements within 90 days relative to exports of broom corn brooms to the United States? (Subsequent to the meeting, Colombia's questions to the United States were circulated in document G/SG/Q2/USA/1).

61. The representative of Mexico stated that his delegation had no information regarding whether the consultations between Mexico and the United States reported in document G/L/136-G/SG/6 had actually taken place. Consultations might have been held under other provisions which regulate trade between the US and Mexico, but certainly these were not consultations under Article 12.3 of the WTO Safeguards Agreement.

62. The representative of the United States in reply to Colombia and Mexico stated that he had no information other than that contained in the notifications, and that he would communicate the questions back to his capital to try to clarify the situation. He asked Colombia to provide its questions in writing, and indicated that the US would try to reply in writing, and to provide more information to both Colombia and Mexico. Colombia's questions might be working at cross purposes, given Colombia's request for dispute settlement consultations, although Colombia did have a right also to raise those questions in this Committee. But if Colombia would provide the questions in writing, the United States would try to respond in writing by the deadline. (The United States' written answers to Colombia's written questions subsequently were circulated in document G/SG/Q2/USA/2).

63. The Committee took note of the statements made

D. Notifications related to pre-existing Article XIX measures

64. The Chairman noted that since the last meeting of the Committee, two notifications related to pre-existing Article XIX measures had been received, from Liechtenstein and Senegal. Both of these were nil notifications, and as such were not required under the Agreement. No questions were raised regarding these notifications.

E. Notifications related to measures covered by Article 11.1

65. The Chairman noted that notifications also had been received from Liechtenstein and Senegal with respect to measures covered by Article 11.1. Both of these were nil notifications, and hence were not required under the Agreement. No questions were raised regarding these notifications.

F. Follow-up to Singapore Ministerial

66. The Chairman recalled that Ministers had made a number of statements in the Singapore Ministerial Declaration concerning implementation of the WTO Agreements, notifications and legislation, and the particular situation of developing country Members. These statements recognized that implementation and compliance with notification and legislation obligations would require further effort on the part of Members, suggested that the relevant bodies, such as this Committee, take steps to promote full compliance while considering practical proposals for simplifying the notification process, and noted the agreement of Ministers to improve the availability of technical assistance to developing countries. He also recalled the efforts of Members of the Committee and of the Secretariat in the area of implementation assistance in the contingent trade remedies area, including safeguards, had been discussed in some detail in the Committee on Anti-Dumping Practices earlier that week.

67. The representative from the United States proposed that given the disappointing quantity of notifications that had been received, it would be appropriate for the Chairman to send letters to non-notifiers posing the question of their notification directly, and offering the assistance of the Secretariat in completing the notifications.

68. The representative of Peru expressed the appreciation of her Government toward the Secretariat for a safeguards agreement implementation workshop which had been held in Lima in October 1996.

69. The Chairman agreed with the proposal by the United States, but before proceeding with those letters wanted to explore options to achieve similar results using the handbook on notification.

70. The Chairman proposed that the Committee join the Committees on Anti-dumping Practices and Subsidies and Countervailing Measures in expressing support for the programme of workshops and other training efforts conducted by the Secretariat in the area of contingent trade remedies.

71. The Committee so decided.

72. The Chairman also proposed that the Committee express encouragement for the support provided by Members, whether through financial contributions, or through assistance in kind, for the Secretariat's efforts in this regard.

73. The Committee so decided.

G. Recommendation of the Working Group on Notification Obligations and Procedures

74. The Chairman recalled that the Working Group on Notification Obligations and Procedures made certain recommendations, which were under consideration by the Council for Trade in Goods regarding the possible development by the Council of general guidelines providing for the regular review of questionnaires and formats and of the situation as regards compliance with notification obligations (G/L/112). The Goods Council, at its meeting of 11 March 1997, discussed this issue and requested the Secretariat to prepare a paper regarding possible guidelines with respect to the regular review of the situation as regards compliance with notification obligations (G/C/M/18).

75. The Chairman noted in this regard that this Committee, by taking stock of the situation regarding notifications at each of its regular meetings, already acted in accordance with the spirit of the Working Group's recommendation on this matter. On notification formats, although the Goods Council might not develop horizontal guidelines in this regard, the Working Group's recommendation nonetheless raised the question whether the Committee should return to its notification formats at some future point, in light of the experience in their use that was being acquired. If any Member had suggestions or ideas in this regard, they should contact the Chairman of the Committee so that these suggestions could be explored by Members.

H. Other business

No issue was raised under this item.

I. Election of officers

76. The Committee elected Mr. Seiichi Nagatsuka of Japan as Chairman, and Mr. Dmitrij Grcar of Slovenia as Vice Chairman, of the Committee.

J. Date of next regular meeting

77. The Chairman recalled that the Committee had agreed that its regular meetings normally would be held in the last week of April and the last week of October, in conjunction with the regular meetings of the Committees on Anti-dumping Practices and on Subsidies and Countervailing Measures. Given the number of days in the fall that would be needed for meetings covering anti-dumping issues, he proposed that the Committee's next regular meeting be held in the week of 20 October 1997.

78. The Committee so decided.

79. The meeting was adjourned.