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DISPUTE SETTLEMENT BODY  
29 March 1995

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## MALAYSIA - PROHIBITION OF IMPORTS OF POLYETHYLENE AND POLYPROPYLENE

### Request by Singapore for Establishment of Panel under Article XXIII:2 of the GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes

The following communication, dated 16 March 1995, sent by the Permanent Representative of Singapore to the Chairman of the Dispute Settlement Body (DSB), is circulated to the DSB Members with the request that the matter be inscribed on the Agenda of the DSB meeting scheduled for 29 March 1995.

On 10 January 1995 the Government of Singapore requested the Government of Malaysia to enter into consultations pursuant to Article XXIII:1 of the 1994 General Agreement on Tariffs and Trade (GATT) and Article 4.3 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) regarding the prohibition of imports of polyethylene (HS 3901.10.000 and 3901.20.000) ("PE") and polypropylene (HS 3902.10.300 and 3902.30.000) ("PP") instituted and maintained by the Malaysian Government under the Customs (Prohibition of Imports) (Amendment) (No 5) Order 1994 dated 16 March 1994 and which came into force on 7 April 1994. A copy of this letter was sent to the WTO for notification to the Dispute Settlement Body (DSB) in accordance with Article 4.4 of the DSU (see document WT/DS1/1).

Singapore requested consultations under Article XXIII:1 because its benefits under the Agreement are being nullified and impaired as a result of the institution and maintenance of the import prohibitions on "PE" and "PP" in violation of Malaysia's obligations under, *inter alia*: (i) Article XI of the GATT; (ii) Article X of the GATT; (iii) Article 3 of the Agreement on Import Licensing Procedures; and (iv) the notification requirements under paragraph 3 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (L/4907). As a result of these measures, Singapore's exports of "PE" and "PP" to Malaysia have been significantly reduced and its benefits under the Agreement have been nullified and impaired.

Malaysia filed a document dated 30 January 1995 notifying the WTO of its April 1994 import restrictions on "PE" and "PP", purportedly under the provisions of Article XVIII:C and the 1979 Decision on Safeguard Action for Development Purposes in violation of Singapore's rights under those provisions. In respect of the import prohibitions that have been in place ten months prior to their notification, Malaysia is not entitled to invoke Article XVIII:C, because Article XVIII:C requires (1) prior notification of "the special difficulties ... in the achievement of the objective outlined in paragraph 13 of this Article and ... the specific measure affecting imports which it proposes to introduce to remedy these difficulties" (Article XVIII:14); (2) prior consultations pursuant to Article XVIII:15, to Article XVIII:18 and (3) prior concurrence by the CONTRACTING PARTIES to the extent

Malaysia's tariff bindings on "PE" and "PP" are affected (Article XVIII:18). As none of these three procedural and substantive conditions has been met by Malaysia, Article XVIII:C remains inapplicable. The 1979 Decision on Safeguard Action for Development Purposes is likewise only applicable "after notification" of "unusual circumstances". Apart from the absence of such a notification and of such "unusual circumstances", the Decision explicitly states that it can justify only provisional deviations from Article XVIII:C.

Singapore has held consultations with Malaysia on 13-15 February 1995 and on 8-9 March 1995 with a view to reaching a mutually satisfactory resolution of the matter. Unfortunately the consultations have failed to settle the dispute within 60 days after the date of the receipt of the request for consultations. The Government of Singapore hereby requests the establishment of a Panel forthwith pursuant to Article XXIII:2 of the GATT and Articles 4.7 and 6 of the DSU upon the standard terms of reference as provided in Article 7.1 of the DSU. Singapore requests that the Panel consider and find that:

- (a) the Malaysian import prohibitions on "PE" and "PP" are inconsistent with Article XI of the GATT and not justified under Article XVIII:C and are also inconsistent with the 1994 Agreement on Import Licensing Procedures; and
- (b) Malaysia had failed to comply with the notification requirements under paragraph 3 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (L/4907).

In the light of the limited information available to Singapore on the administration of the import prohibitions, Singapore reserves the right to raise additional legal arguments before the Panel, if it should emerge that the import prohibitions are also inconsistent with GATT Article II, III, X and XIII.

The Government of Singapore submits this request for the establishment of a Panel for inscription on the agenda of the next meeting of the Dispute Settlement Body (DSB) on 29 March 1995.

Singapore requests that this communication be circulated to all members of the DSB.