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Committee on Safeguards

MINUTES OF THE REGULAR MEETING HELD ON 20 OCTOBER 2003

Chairman: Mr. Pornchai Danvivathana (Thailand)

1. The Committee on Safeguards (the "Committee") held a regular meeting on 20 October 2003.

2. The following agenda was adopted:

A. NATIONAL LEGISLATION

3. The Chairman stated that the first item on the Committee's agenda was the review of notifications of national safeguard legislation and/or regulations, in accordance with the procedures adopted by the Committee at its special meeting in April 1996. The Chairman mentioned that as it had been indicated in the airgram convening the meeting, the Committee had received legislative notifications from four Members. The Chairman recalled that as indicated in the annotated draft agenda attached to his fax dated 15 September 2003, questions regarding these legislative notifications were to have been submitted to the Member concerned and to the Secretariat no later than 29 September 2003.

4. Concerning the procedure for this meeting, the Chairman stated that he would first give the floor to the Member whose legislation was being reviewed, to make any introductory statement that it wished. The Chairman would then invite that Member to present its answers to any written questions. The Chairman reminded Members of the Committee that in accordance with the procedures adopted

by the Committee, a written version of those answers had also to be provided after the meeting. The Chairman also reminded Members that follow-up questions could be asked at this meeting. Other delegations would also be given an opportunity to present questions orally at the meeting. After the meeting, there would be a period for the submission of written questions concerning any of the legislations reviewed in the meeting.

5. The Chairman mentioned that if Members wished to have written answers to questions, they had to ensure that all questions were presented in writing to the Member whose legislation was concerned, and to the Secretariat, no later than three weeks after the meeting, i.e., no later than 10 November 2003. Written answers to all questions submitted in writing by that deadline had to be submitted to the Secretariat no later than three weeks later, i.e., no later than 1 December 2003.

1. Mexico - Review of New Legislative Notification

6. The Chairman noted that Mexico's legislative notification was contained in documents G/SG/N/1/MEX/1/Suppl.1 and Corr.1.

7. The representative of Mexico stated that they had no introductory statement to make but that they would like to respond to the questions put by the European Communities regarding Mexico's notification (see document G/SG/Q1/MEX/1). The representative of Mexico stated that they would be providing their responses in writing at a later stage. The delegate of Mexico pointed out that it was extremely difficult to foresee the specific circumstances under which the measures envisaged in Article 89 (b) could be applied. Mexico had not adopted any of the safeguard measures provided for under the WTO in addition to the laws on the reform of the foreign trade law on 12 March 2003. In that regard, there had not been a provision to activate the mechanism referred to in this Article. According to the delegate of Mexico, this would probably be resolved on a case-by-case basis. Finally, the delegate of Mexico emphasized that the provisions that would apply in this regard were basically included in Article 89 (b) to the extent that they were relevant in the so-called common measures for procedures to be found in chapter 1-7 in the reform to the foreign trade law and in the law of July 1993 regarding the institution of proceedings and the rights of the interested parties.

8. The delegate of the European Communities stated that they would wait for the written answers before analyzing them further. The European Communities would only be able to make follow-up questions after this analysis.

9. The representative of Chile stated that the changes to the foreign trade law of Mexico that affected anti-dumping investigations and safeguards were a source of concern to their delegation. For that reason Chile had circulated a series of questions (see document G/SG/Q1/MEX/2). Most of these questions related to anti-dumping but two related to safeguards. The first question was in relation to *ex officio* investigations and the other related to public interest. The delegate of Chile stated that they expected Mexico to answer these questions either in the meeting or at a later appropriate stage.

10. The delegate of Mexico mentioned that the questions had been sent only a few days before the meeting. Thus, Mexico had not had the time to attend to them. However, on a preliminary basis the delegate of Mexico pointed out that in case the investigating authority decided to initiate an *ex officio* investigation under the WTO Safeguards Agreement, this investigation would be carried out in conformity with the requirements of that Agreement.

11. The Chairman stated that he had not mentioned about the questions from Chile because these questions had not come out within the deadline that was required by the Committee.

12. The delegate of Chinese Taipei sought clarification regarding Article 71 concerning the scope of exemption from the safeguard measures. Regarding point five of Article 71, the delegate of

Chinese Taipei recalled the provision that read "any other goods as may be designated by the Ministry". Chinese Taipei asked for clarification on the basis of examples. If, for example, a material or semi-processed good was introduced into that free zone and then re-exported, the representative of Chinese Taipei asked whether that kind of material or semi-processed good would be exempt from safeguard measures.

2. Indonesia - Review of New Legislative Notification

13. The Chairman noted that Indonesia's legislative notification was contained in document G/SG/N/1/IDN/2.

14. The delegate of Indonesia stated that they wished to describe some brief main elements of the Indonesian safeguard laws before switching to the issues raised by some Members. The representative of Indonesia referred to the Presidential Decree No. 84/2002 dated 16 December 2002 ("Safeguards Law") regarding the safeguarding of the domestic industry against the impact of increased imports. The representative of Indonesia stated that the Safeguards Law was an integral part of Law No. 7/1994 dated 2 November 1994 on the Ratification of Agreement on Establishing the World Trade Organization. Law No. 7/1994 had enforced all Agreements, commitments and decisions governing the international trade existing in the WTO to be an inseparable part of national regulations. As part of Law No. 7/1994, the WTO Agreement on Safeguards had actually been enforced as domestic regulation. However, to implement it operationally the Agreements had to be elaborated in the form of domestic procedures. Accordingly, Indonesia had introduced the Decree No. 84/2002 dated 16 December 2002. As a legal instrument this regulation was aimed to prevent or remedy serious industry and to facilitate structural adjustments for domestic industries rather than to limit competition in international markets. In order to implement the Presidential Decree, a Safeguard Committee had been set up. According to Article 32 of the Presidential Decree, the Committee was led by a chairman and consisted of the representatives of the Ministry of Industry of Trade, the Ministry of Finance, the Central Agency of Statistics, other related Ministers or non-governmental organizations, and experts of the product subject to investigation. Although most of the representatives were government officials, according to Article 33 of the Presidential Decree, the Committee was independent in carrying out its functions and duties.

15. Concerning the first question asked by the United States regarding "critical circumstances"(see document G/SG/Q1/IDN/2), the delegate of Indonesia stated that Article 9 of the Safeguards Law was intended to implement Article 6 of the Agreement on Safeguards. Indonesia believed that Article 9 of the Safeguards Law had to be implemented in accordance with Article 6 of the Safeguards Agreement as every provisional safeguard action needed to be taken in "critical circumstances" where delay would cause injury which would be difficult to repair. Therefore, the Government of Indonesia reassured Members that Indonesia would ensure that the implementation of Article 9 of the Safeguards Law was consistent with Article 6 of the Safeguards Agreement.

16. Concerning the question posed by the United States regarding the "clear impairment suffered by the domestic industry", the delegate of Indonesia stated that the closest translation of "a significant impairment" in the Indonesian language was "a clear impairment suffered". Indonesia had been anxious as to the consistency of the implementation of Article 1.2 of the Safeguards Law with Article 4.1(a) of the Agreement.

17. Concerning the question raised by the United States regarding the terminology of serious injury, the delegate of Indonesia stated that the closest translation of "clearly imminent" in the Indonesian language was serious injury that was "likely to be suffered". While Indonesia acknowledged that there was a higher degree of certainty in the term "clearly imminent", they wished to reassure Members that Article 1.3 would be implemented consistently with Article 4.1(b) of the Agreement.

18. Concerning questions four and five, regarding the terminology on "the last three representative years", the delegate of Indonesia stated that Indonesia considered that the last three representative years were too general and gave a Member the flexibility to choose periods in which the penetration of imports had been perhaps at its lowest. The reference to the last three years under Safeguards Law could mean either the last three calendar years or the last three years on a *pro rata* basis depending on the availability of statistical information. In this respect, Indonesia considered that Article 22, paragraph 1 went beyond the requirements of the Agreement.

19. Regarding the question put by the European Communities concerning "threat of injury" (see document G/SG/Q1/IDN/3), the representative of Indonesia stated that they would give the same response as they had given to the same question posed by the United States. The representative of Indonesia stated that there were missing translations from the Indonesian text into the English text. In the original text there were some words which had the same meaning as "clearly imminent". Therefore, Indonesia confirmed that the threat of injury determination would only be made if serious injury was clearly imminent.

20. Regarding the second question by the European Communities concerning whether a provisional safeguard measure could be imposed in two distinct situations, the representative of Indonesia stated that Indonesia considered that Article 6 of the Agreement allowed for the imposition of safeguard measures if there was either actual serious injury or a threat thereof. A Member could take a provisional safeguard measure pursuant to a preliminary determination that there was clear evidence that increased imports had caused or were threatening to cause serious injury.

21. Concerning question three by the European Communities regarding the "examination", the delegate of Indonesia stated that Article 23 of Indonesian safeguard laws had to be read in conjunction with Article 7.4 of the WTO Safeguards Agreement. In this context, the examination would be no later than the mid-term of the measure. Therefore, Indonesia confirmed that the mid-term review would take place no later than at the mid-term of the measures.

22. Regarding question four concerning the phrase "may hold consultations upon request", the representative of Indonesia confirmed that consultations would be held on request. It was the intention of Indonesia to offer consultations and they would be granted to countries having a substantial interest.

23. The representatives of the United States and the European Communities stated that they would wait to see the responses in writing.

3. European Communities - Review of New Legislative Notification

24. The Chairman noted that the European Communities' legislative notification was contained in document G/SG/N/1/EEC/1/Suppl.1.

25. The representative of the European Communities stated that Regulation No. 452/2003 related to actions that the Community could take in relation to the effects of anti-dumping or anti-subsidy measures being combined with safeguard measures. The adoption of this Regulation had been required since it had been noted that the importation of certain goods could be subject to both anti-dumping or anti-subsidy measures on the one hand and safeguard measures on the other. The European Communities believed that the combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on one or the same product could have an effect greater than that intended or desirable in terms of the Community's trade defense policy and objectives. More importantly, it could be contrary to WTO Rules. In particular, such a combination of measures could provide excessive/double protection to the industry concerned and place an undesirably onerous burden on certain exporting producers seeking to export to the Community. Therefore, in order to avoid this

double protection, the European Communities adopted a new legislation enabling the Community, if appropriate, to amend, suspend or repeal anti-dumping, and/or anti-subsidy measures, or to provide for exemptions in whole or in part from any anti-dumping or countervailing duties which would otherwise be payable, or to adopt any other special measure to that effect. To the date of the meeting, these regulations had been applied once to anti-dumping measures applicable to certain hot rolled coils and to certain tube pipe fittings of iron and steel. This could be found in Council Regulation EC No. 778/2003 dated 6 May 2003, published in the Official Journal No. L114/1. The European Communities was aware that the United States had also decided to analyze the relations between the different types of duties, in particular in the context of anti-dumping proceedings. The issue being considered was the possible deduction of section 201 safeguard duties from the export price for the calculation of the dumping margin. The European Communities believed that this would result in unduly doubling the level of protections granted to the domestic producers. The representative of the European Communities stated that the European Communities was following this matter with great concern and would therefore urge the United States to ensure that double protection was avoided in case of possible cumulation of safeguard measures with other types of duties.

4. People's Republic of China - Review of New and Previously Reviewed Legislative Notification

26. The Chairman noted that the legislative notification of the People's Republic of China was contained in document G/SG/N/1/CHN/2/Suppl.2. To facilitate the discussions the Chairman noted that written questions concerning this notification and China's previously reviewed legislative notifications contained in documents G/SG/N/1/CHN/2 and/or G/SG/N/1/CHN/2/Suppl.1, had been received from the European Communities and the United States. The questions posed by the European Communities could be found in document G/SG/Q1/CHN/8. On 17 October 2003, China had submitted its responses to the EC questions in document G/SG/Q1/CHN/12. The United States had posed two sets of questions regarding the legislative notifications of the People's Republic of China. These questions could be found in documents G/SG/Q1/CHN/7 and G/SG/Q1/CHN/9. China had responded to the questions posed by the United States, in documents G/SG/Q1/CHN/10 and G/SG/Q1/CHN/13, respectively.

27. The delegate of China thanked these Members for their questions and stated that China would also welcome any follow-up questions.

28. The delegate of the United States stated that the United States was in the process of reviewing these answers and that he expected that they would have follow-up questions in writing at a later date. The delegate of the United States raised one particular follow-up question with respect to China's replies in G/SG/Q1/CHN/10. This issue concerned China's response to question two asked by the United States regarding the provisions of Article 8 of China's notified regulations concerning the injury factors to be considered by the investigating authority in a safeguard investigation. The United States was concerned and wanted to clarify with China the statements that the factors listed in Article 8 of China's notified regulations were the only factors that the Chinese authorities would examine in their injury determinations. The United States referred to the second sentence in China's response to question two in which China stated "we will refer to Article 4.2(a) of the Agreement to evaluate all relevant factors of an objective, quantifiable nature having bearing on the situation of the industry". The United States asked China to clarify whether, if there was such a relevant factor of an objective and quantifiable nature in a given case, that factor would be evaluated, even though it was not a factor listed in Article 8 of its notified regulation.

29. The representative of China stated that China would prefer a written version for a follow-up of any clarifications from the United States and that China was ready to respond in writing in due time.

30. The delegate of the European Communities stated that the European Communities was in a similar position to the United States. The European Communities appreciated the answers that China had provided but they had been made available only late Friday so the European Communities was still in the process of reviewing them. The European Communities reserved the possibility to make follow-up questions and to submit them in writing at a later stage.

31. The delegate of Mexico referred to the questions Mexico had submitted on 7 October 2003 in document G/SG/Q1/CHN/11. At the time of the meeting these questions were available only in Spanish and French. The delegate of Mexico expressed Mexico's interest in seeing these questions translated into English for the benefits of the Chinese delegation and stated that Mexico looked forward to seeing replies.

32. The delegate of China stated that since the questions were originally in Spanish, China needed time to translate them into English. China was still in the process of providing a written response to Mexico's questions.

33. The Chairman stated that the legislative review process was of benefit to the Committee. The Chairman recalled that the deadline for any written questions concerning the legislations reviewed was 10 November 2003. The deadline for written answers to all questions posed in writing was 1 December 2003.

34. Concerning these deadlines, 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.

35. The Chairman informed the Committee that there were still 31 Members that had not yet made a legislative notification: Albania, Angola, Antigua & Barbuda, Barbados, Belize, Burkina Faso, Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Djibouti, Former Yugoslav Republic of Macedonia, Gabon, the Gambia, Grenada, Guinea Bissau, Guyana, Kuwait, Mali, Mauritania, Mozambique, Niger, Papua New Guinea, Rwanda, Saint Kitts & Nevis, Saint Vincent & Grenadines, Sierra Leone, Solomon Islands, Swaziland, Tanzania and Togo.

36. The Chairman urged these Members to make the required notification and reminded that in cases where no legislation existed only a very simple "nil" notification was required.

37. The Committee took note of the statements made.

B. NOTIFICATIONS OF ACTIONS RELATED TO SAFEGUARD MEASURES

38. The Chairman noted that various notifications of actions related to safeguard measures had been received since the previous meeting. In order to ensure that all of these notifications could be reviewed in the limited time available, the Chairman suggested that the Committee address the relevant safeguard investigations as separate agenda items, and review all of the notifications pertaining to each separate investigation at the same time.

1. Brazil – Coconuts

39. The Chairman noted that Brazil had made a number of notifications regarding its investigation on coconuts, as set forth in documents G/SG/N/8/BRA/3/Suppl.2, G/SG/N/10/BRA/3/Suppl.2, and G/SG/N/11/BRA/2/Suppl.2.

40. The representative of Malaysia recalled that in document G/SG/N/8/BRA/3/Suppl.2, dated 26 May 2003, Brazil had notified that it had modified the list of developing countries exempted from the safeguard duties on coconuts. In this new notification, Brazil had informed that they had included Malaysia in the list of countries subject to the safeguard duties. The delegate of Malaysia noted that this notification of the safeguard measure was made 6 months after the original safeguard measure had been in force. As this modification was not clear, Malaysia sought an explanation from Brazil

41. The delegate of Brazil pointed out that Article 9.1 had not established any limit in terms of time-frame but just established that the measure would be applied in case a developing country would reach a share higher than 3 per cent in the total imports of the subject product. Since Malaysia had passed that threshold it was included in the list of countries subject to the measure.

42. The representative of Malaysia stated that was a systemic issue, in respect of which Malaysia had prepared a non-paper for discussion under agenda item C.

2. Bulgaria – Iron and Steel

43. The Chairman noted that Bulgaria had made a notification, in document G/SG/N/6/BGR/6, regarding the initiation of an investigation on iron and steel.

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

3. Bulgaria – Steel

45. The Chairman noted that in document G/SG/N/9/BGR/2 Bulgaria had notified the termination of its measure on steel.

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

4. China – Certain Steel Products

47. The Chairman noted that China had made a number of notifications regarding its investigation on certain steel products, as contained in documents G/SG/N/6/CHN/1, G/SG/N/7/CHN/1, G/SG/N/11/CHN/1, G/SG/N/8/CHN/1, and G/SG/N/10/CHN/1. The Chairman mentioned that although these notifications had already been reviewed by the Committee at an earlier meeting, they had been included in the present agenda because a Member had posed questions relating to this investigation, and had requested in writing that these notifications be included in the agenda for this meeting.

48. The Chairman noted that the United States had posed questions regarding this investigation and that these questions could be found in document G/SG/Q2/CHN/3. He stated that China's responses to these questions could be found in document G/SG/Q2/CHN/4.

49. The representative of the United States mentioned that they were reviewing the responses. The representative of the United States noted that many of the responses referred to notices which the United States had not been able to obtain copies and to review. The United States pointed out that

they would have follow-up questions based on a review of those notices once they had seen them. The United States would return to this item at the next Safeguards Committee meeting.

5. Czech Republic - Ammonium Nitrate

50. The Chairman noted that the Czech Republic had made a number of notifications regarding its investigation on ammonium nitrate. These notifications were contained in documents G/SG/N/8/CZE/6, G/SG/N/10/CZE/6, and G/SG/N/11/CZE/7.

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

6. Czech Republic - Certain Steel Products

52. The Chairman noted that the Czech Republic had made a notification regarding the termination of its investigation on certain steel products. The notification was contained in document G/SG/N/9/CZE/4.

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

7. Ecuador - Smooth Ceramics

54. The Chairman noted that Ecuador had made a number of notifications regarding its investigation on smooth ceramics, as contained in documents G/SG/N/6/ECU/4, G/SG/N/6/ECU/4/Suppl.1, and G/SG/N/7/ECU/2.

55. The delegate of the European Communities mentioned that the European Communities was very interested in this case, and that it was monitoring the developments. The European Communities reserved its rights to request consultations before Ecuador proceeded possibly to definitive measures.

56. The European Communities also raised a systemic issue regarding this agenda item. The representative of the European Communities noted that Ecuador had initiated three investigations in a very short time period. The European Communities expressed its concern about this very frequent use of safeguard measures. The European Communities had always maintained that safeguard measures were an exceptional instrument to be used in very extraordinary situations and this had to also apply to the initiation stage. The European Communities believed that the standards for initiating new cases had to be high according to the high standards required for imposing measures. The European Communities expressed its concern that Ecuador might be resorting to this instrument too easily.

57. The representative of Ecuador stated that they had taken note of the comment made by the European Communities. The representative of Ecuador mentioned that Ecuador was prepared to enter into consultations as the European Communities saw fit. Ecuador's action was taken in strict compliance with all the requirements laid down in the Safeguards Agreement and other additional rules of the WTO. Ecuador considered, therefore, that Ecuador was not placing itself outside the framework of WTO rules and regulations.

58. The delegate of the United States noted the EC's comment that Ecuador had initiated several safeguard investigations. The delegate of the United States pointed out that the standard for initiations advocated by the European Communities was not necessarily contained in the Safeguards Agreement. The United States would also be looking at these investigations closely. However, according to the United States, the mere fact that a country had initiated safeguard investigations could not necessarily mean that that country had somehow violated some provisions regarding the extraordinary nature of safeguard measures.

59. The delegate of the European Communities mentioned that the European Communities referred to this matter as a systemic issue and not as an issue which was referred to in the existing safeguard rules.

8. Ecuador – Matches

60. The Chairman noted that in document G/SG/N/10/ECU/1 Ecuador had made a notification regarding its investigation on matches.

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

9. Ecuador – Ceramics and Porcelains

62. The Chairman noted that Ecuador had notified the initiation of an investigation on ceramics and porcelains, as contained in document G/SG/N/6/ECU/5.

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

10. Ecuador – Medium Density Fibreboard

64. The Chairman noted that in document G/SG/N/10/ECU/2/Suppl.1 Ecuador had made a notification regarding its investigation on medium density fibreboard. The Chairman also noted that the Committee had received questions concerning this investigation from two Members. Chile had posed two sets of questions regarding this investigation, as set forth in documents G/SG/Q2/ECU/4 and G/SG/Q2/ECU/7. In document G/SG/Q2/ECU/5, Ecuador had presented its answers to questions posed by Chile in document G/SG/Q2/ECU/4.

65. The delegate of Chile pointed out that they joined in the systemic concerns raised by the European Communities. Chile believed that the initiation of three investigations in a very short period of time certainly deserved more concern. The representative of Chile mentioned that Chile was particularly concerned by the quota applied by Ecuador on imports of fibreboard. The delegate of Chile stated that Chile had handed to the mission of Ecuador a series of questions the week before the meeting and that Chile would be grateful if Ecuador could provide Chile with replies during the meeting. The delegate of Chile mentioned that in addition to these questions, Chile had a number of additional concerns to express.

66. The representative of Chile observed that the notification had come very late, as the date of the measure had been stated as 16 July, it had been notified on 25 July and circulated on 8 October 2003. In this respect, the delegate of Chile recalled the provisions of paragraph 3 of Article 12 of the Safeguards Agreement. A Member which intended to apply or extend a safeguards measure would provide for prior consultations. According to Chile, when the notification was made 12 days after the measure had been taken and the circulation was made so late, there was simply no way of making good that obligation.

67. In addition, the information in the notification did not provide for the application of a measure under Article 2.1 of the Agreement. The delegate of Chile stated that their understanding was that the measures would be applied for two years. Considering that the provisional measure would be in force for six months, there would be an additional period until total liberalization. Regarding the manner in which the measure would be applied, mainly in cases where producers who are also importers decided not to use the quota or when the appointed importers did not use such quotas, the representative of Chile mentioned that this gave rise to the suspicion that the quotas would not be fully used. The representative of Chile mentioned that Chile would be grateful if Ecuador could pass on these

concerns to their capital and to kindly answer Chile's questions. Finally, Chile reserved its right under the Safeguards Agreement and under other WTO Agreements to revert to this issue.

68. The representative of Ecuador stated that they had taken due note of the concerns expressed by Chile with regard to the notification of the measures and pointed out that the notification had been made 9 days after the measures had been taken. Regarding the reason why circulation came so late, the representative of Ecuador pointed out that they had made their notification on time but it had been circulated late.

69. Ecuador then provided responses to the questions posed in writing by Chile prior to the meeting. Regarding the first group of questions put by Chile which related to the clarification of the questions/answers given at the previous meeting of the Committee, Ecuador stated that the investigating authority had not reached the conclusion that the eight measures fell under 4411 and that they were similar or competing products. The investigating authority had not reached the conclusion either that the eight sub-groups were similar or directly competing products with imported products. The investigating authority had reached the conclusion that the imported products classified in the eight sub-groups under section 4411 were similar or directly competing products with the domestically produced products based on a review of the description of the imported product and the description of the domestically produced product.

70. With regard to Chile's second question, Ecuador pointed out that the unforeseen circumstances referred to the sharp increase of imports of products classified under section 4411. Although it was possible to foresee an increase as a result of the customs concessions granted under the Agreement on Economic Complementarity and the Reciprocal Protection of Investments (AC-32) signed with Chile on 20 December 1999, it was certainly not foreseen in that order of magnitude. Concerning the third question, Ecuador stated that the increase in imports of such products was a consequence of the unforeseen evolution of circumstances due to the trade concessions, customs concessions granted to Chile. Regarding the fourth question, Ecuador mentioned that the critical circumstances which had resulted in an injury to the domestic industry that would not have been surmountable was due to the increasing rate of imports. The application of a provisional measure was therefore justified in view of the high level reached by imports, mainly in 2003. For the period of investigation before the adoption of the final safeguards, this amounted to more than total imports for 2002 in spite of the application of the provisional safeguard measure which was then in force. Regarding the fifth question, Ecuador pointed out that the domestic production sector had presented an adjustment plan and had sustained that its application would make the measure competitive. This adjustment plan included a series of administrative and financial measures as well as a detailed investment plan which had been assessed by the competent investigating authority. Concerning the sixth question, Ecuador stated that Members of the ANDEAN Community were parties to the safeguards measures for the reason that during the investigation process none of the products identified under 4411 originating from these countries had been found. However, the relevant notification was made to the Secretariat General of the ANDEAN Community which exempted such countries from the application of safeguard measures.

71. With regard to the second group of questions, Ecuador felt that the questions asked as part of a resolution of the ANDEAN Community, could be answered only by the Secretariat General of the Community who was responsible for such resolutions. Regarding question ten, Ecuador mentioned that the notification made to the WTO by the investigating authority via the Permanent Representative of Ecuador to the WTO had been made on 11 December 2002 under Resolution No. 052 of the Foreign Trade Council of Ecuador. The investigation had been started on 9 January 2003 and the provisional measure was imposed as of 8 January 2003 and notified to the WTO. Regarding question eleven, Ecuador mentioned that the Decree No. 3497 published in the register on 14 January 2003 unified the legislation of the Ministry for Fisheries and Competition which had incorporated the whole text Resolution No. 042 of the Council on Foreign Trade. This Resolution had been notified to

the WTO and could be found in the relevant document. Regarding question twelve, Ecuador mentioned that the well-based observations following on from the observations which had resulted in the safeguard measures could be found in the same resolution which had been published and notified to all interested parties. However the report presented to the Council for Foreign Trade stated that the relevant parties had had access. Regarding question thirteen, Ecuador mentioned that the quantitative restriction imposed by Ecuador equaled the average of imports for the previous three years. The information on import averages was available in an annex. Regarding question fourteen, Ecuador pointed out that the investigating authority was based on Article 5.1 of the Safeguards Agreement to distribute quotas per importers amongst Ecuadorian enterprises who could import as the product in question had no importers. The Ecuadorian enterprises who could import could include enterprises related to importers, while exporters of the relevant product. Non-fulfilled quotas could be reassigned but they were not cumulable. The investigating authority was based on Article 13 of the GATT 1994 to distribute the established quota. Ecuador also respected what had been established in the Safeguard Agreement and the Services Agreement. When distributing the quota between importing countries and supplying countries, in no case did Ecuador discriminate between imports according to their origin, nor between importers, whether they be foreign or national. Regarding question fifteen, Ecuador pointed out that the threat of injury was determined on the basis of the level of effect on each one of the variables established according to WTO rules. Regarding question sixteen, Ecuador stated that safeguards were decided upon according to Resolution No. 193 published in the Gazette No. 126 of July 2003. The term of the measure was counted from 28 August 2003, a date on which the Official Register 157 had been published which made the measure applicable according to the distribution of the quotas amongst countries and the importing quotas amongst importers. The first year of the measure would be completed on 27 August 2004. During the period of the safeguard application, Ecuador could revise it if such a proposal was made. The validity of this measure was two years and it could be shortened if the Council for Foreign Trade felt that this was the right step. The extension of the measure, while being possible, would only be applied in extreme cases. At the moment it was certainly not believed to be appropriate. In any case, Ecuador would act in conformity with the provisions of the Safeguard Agreement without any prejudice to imports. Regarding question eighteen, Ecuador stated that the authority responsible for administrating the quotas was COMEXI and specifically the Sub-Secretary of the Ministry of Foreign Trade and Industrialization, Fisheries and Competitiveness. The Registered imports of the Central Bank of Export was a means of public information on the use of the quota. Concerning question nineteen, Ecuador stated that safeguards were applied according to wooden fibres under Customs Classification No. 44.1 and that similar or directly competitive products with those of national products were those which were imported under sub-chapters HS 4411.1900, 4411.2100, 4411.2900, 4411.3100, 4411.3900, 4411.9100 and 4411.9900. Regarding question twenty, Ecuador stated that detailed information had been asked for and that this could be found in the report submitted by the record of the Foreign Trade Council and that there were copies of this on this occasion. Regarding question twenty-one, Ecuador stated that Resolution No. 193 of COMEXI described what had been analyzed by the investigating authorities in the investigating process. In describing the visit to the Cotopaxi plants, the scope of the visit was described, namely what had been seen and analyzed on that visit which was not necessarily the grounds for the conclusion of the investigation but only part of those grounds. The scope of the phrase "it would seem" is therefore limited in what had been seen and analyzed at the Cotopaxi plants as part of the investigation. The conclusions of the investigation had been based on objective evidence. Finally, regarding question twenty-two, Ecuador pointed out that the investigating authority and Ecuador considered that this relation was necessary for imports because one of the lines was to generate added value to wood fibres for the Ecuadorian economy. The others generated part of the prime material used in the production of these wood fibre tablets. Other reasons had not been found for the reduction which was objectively established for the capacity of the national branch.

72. The representative of Chile stated that they would give a preliminary reaction with regard to four points. The first point was the answer on similar products amongst themselves or with regard to competing products. The representative of Chile noted that Ecuador had said that there were similar

products to products of national produce. The delegate of Chile asked what that exactly meant. The representative of Chile asked whether there were eight separate investigations. If there were separate investigations and they were all grouped together, according to the representative of Chile that was because it was assumed that they were similar products amongst themselves or with national products. With regard to the question on "critical circumstances", according to the delegate of Chile that was only because the previous answer from Ecuador was that such circumstances would facilitate the distribution of imported goods in the local market. The delegate of Chile mentioned that they did not believe that this constituted a critical circumstance. The fourth point raised by the delegate of Chile related to the reassignment of quotas. The delegate of Chile sought further explanations from the delegate of Ecuador on how quotas could be reassigned. Chile would be concerned that these import quotas would not be used, not because there were not enough imports but because they were administered in such a way that the quota was actually less. Finally, the representative of Chile noted that the delegate from Ecuador had said that the measure had been initiated on 28 August. Thus it would end on 27 August 2004. The representative of Chile recalled Ecuador's statement in the previous meeting that the period of imposition of the provisional measure would be counted towards the two years of period of application of the definitive measure. The representative of Chile pointed out that they would continue to discuss that with the delegation of Ecuador.

73. The delegate of Ecuador pointed out that Ecuador would continue to ensure that the information that Chile and Mexico had requested would be submitted to them. The representative of Ecuador stated that with regard to Chile the delegation of Ecuador did have the written answers and that perhaps a more analytical reading of the questions would enable the delegate from Chile to find her answers. The representative of Ecuador pointed out that they would not give answers to the four questions that had been put by Chile until they would be able to provide the delegate of Chile with the written answers to their written questions, which would clarify many of the doubts that had been raised.

11. Estonia – Swine Meat

74. The Chairman noted that Estonia had notified the initiation of its investigation on swine meat, as contained in document G/SG/N/6/EST/1.

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

12. European Communities – Mandarins

76. The Chairman noted that the European Communities had notified, in document G/SG/N/6/EEC/2, the initiation of its investigation on certain prepared or preserved mandarins.

77. The delegate of the European Communities stated that the European Communities had initiated this investigation on 11 July 2003; a public notice of the investigation had been provided on the same date and the notification had been provided to the Committee. The delegate of the European Communities pointed out that the public notice and the notification were rather self-explanatory. The investigation was ongoing and the European Communities would respect all provisions of the Safeguards Agreement on notifications and consultations.

78. The delegate of the United States mentioned that they were in the process of preparing written questions that they intended to submit shortly but that they wanted to say that this was an area in which the United States had a commercial interest and that the notification raised some questions. For example, it looked like they were notifying two separate investigations. First, it appeared to be a transitional product-specific mechanism investigation with respect to imports from China. Second, it appeared to be an investigation relating to imports from all sources under the Safeguards Agreement. The delegate of the United States stated that they were interested in the relationship between these

two investigations, including whether there would be any sort of double protection that the European Communities representative was mentioning. The representative of the United States mentioned that they were also interested in the issues that had been raised as a result of the EC's announcement with respect to the expansion of the EU from 15 members to 25 members, issues that had already been discussed in the ADP Committee. The delegate of the United States asked whether the measures, if any, resulting from this investigation would cover imports into the EU-15 or the EU-25. The representative of the United States pointed out that they were considering to submit these questions in writing.

79. The delegate of the European Communities mentioned that they would be waiting for the US written questions and that they would certainly reply to them. The representative of the European Communities also pointed out that they could explain some elements of these questions in this meeting. The delegate of the European Communities pointed out that the European Communities was conducting a parallel investigation under the so-called transitional product safeguard mechanism. The European Communities doubted that prejudice could result from the final outcome of these two investigations. The European Communities considered that the requirements for opening the two investigations were met. If the European Communities finally adopted the measures, there would be either an ASG measure or a TPS measure, there would not be double protection. As regards to the second issue that the United States had raised, the representative of the European Communities stated that this was the part of the point already raised by Korea under "Other Business", thus it could perhaps be discussed in that context.

13. European Communities – Certain Steel Products

80. The Chairman noted that Turkey had made a notification regarding the European Communities' investigation on certain steel products. This notification was contained in document G/L/624 G/SG/N/12/TUR/1/Corr.1.

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

14. Hungary- White Sugar

82. The Chairman noted that Hungary had made a number of notifications regarding its investigation on white sugar. These notifications were contained in documents G/SG/N/6/HUN/3, G/SG/N/7/HUN/3 and G/SG/N/11/HUN/3.

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

15. Hungary – Ammonium Nitrate

84. The Chairman noted that Hungary had made a number of notifications regarding its investigation on ammonium nitrate, as contained in documents G/SG/N/8/HUN/2, G/SG/N/9/HUN/2, G/SG/N/10/HUN/2 and G/SG/N/11/HUN/2/Add.2.

85. The delegate of Romania pointed out that the Romanian producers and exporters of ammonium nitrate had been hugely affected by this measure. This was why Romania had asked for bilateral consultations during the entire process of the investigation. The representative of Romania stated that as of the time of the meeting, the information and answers received from the Hungarian side did not satisfy Romania. Romania urged the Hungarian side to complete the data requested during the meetings of October 2003 in Budapest. The representative of Romania stated that Romania was hopeful that the spirit of these consultations would continue, with a view to identify a commonly acceptable solution.

86. The delegate of Hungary mentioned that in recent bilateral consultations, Romania had provided a long list of questions and according to their information, the Hungarian authorities were still working on the answers to the list of questions. The delegate of Hungary stated that they hoped to be able to soon send the answers to Romania.

16. Jordan – Pasta

87. The Chairman noted that Turkey had made a notification regarding Jordan's investigation on pasta, as contained in document G/L/625 & G/SG/N/12/TUR/2. There were no comments or questions regarding Turkey's notification.

88. The Chairman noted that questions regarding this investigation had been posed by Mexico, as contained in document G/SG/Q2/JOR/4, and that Jordan had responded to these questions in document G/SG/Q2/JOR/5.

89. The delegate of Jordan made a correction to Jordan's reply. In the last line of the last paragraph of the reply to the first question, the phrase "as for the pasta case" would be replaced by "as for the magnetic tapes case".

90. The delegate of Mexico mentioned that Mexico still had doubts with regard to the application of Article 9.1 of the Safeguards Agreement. With regard to the final safeguard measures imposed by Jordan, the representative of Mexico stated that Mexico would like specific information from the delegation of Jordan. The delegate of Mexico asked which Member developing countries would have a share of less than 3 per cent in total imports, and what was the share of Mexico, in each of the following investigations: pasta; all forms of sanitary apparatus; and magnetic tapes.

91. The delegate of Mexico pointed out that on the basis of the information that Mexico had received from Jordan, Mexico still had doubts about the fact that developing countries which represented less than 3 per cent of imports would as a whole account for 61 to 91 per cent of total imports for each one of the investigations. According to the delegate of Mexico at least for each investigation there would be between 20 and 30 developing countries Members of the WTO, which was a very higher number and a very high level of diversification of imports for these countries which were importing relatively low shares of total imports. Mexico believed that Jordan was extending its regulations to all developing countries regardless of the volumes which they had exported.

92. The representative of Jordan stated that he did not have the figures at the time of the meeting. The delegate of Jordan mentioned that they would submit the relevant information to the Secretariat.

17. Jordan's – Sanitary Ware Products

93. The Chairman noted that Turkey had made a notification regarding Jordan's investigation on sanitary ware products, as contained in document G/L/626 G/SG/N/12/TUR/3. There were no comments or questions regarding Turkey's notification.

94. The Chairman noted that questions regarding this investigation had been posed by Mexico, as contained in document G/SG/Q2/JOR/4 and that Jordan had responded to these questions in document G/SG/Q2/JOR/5.

95. The representative of Mexico stated that the questions Mexico had posed regarding Jordan’s previous investigation also applied to this investigation. The delegate of Jordan mentioned that Jordan would be sending the data.

18. Jordan – Aerated Water

96. The Chairman noted that in document G/SG/N/9/JOR/6 Jordan had notified the termination of its investigation on aerated water. There were no comments or questions regarding this notification.

19. Latvia – Live Pigs and Pork

97. The Chairman noted that Latvia had made two notifications concerning its investigation on live pigs and pork, as contained in documents G/SG/N/10/LVA/3 and Add.1.

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

20. Moldova – Sugar

99. The Chairman noted that Moldova had made a number of notifications regarding its investigation on sugar, as contained in documents G/SG/N/6/MDA/1, G/SG/N/8/MDA/1, G/SG/N/10/MDA/1, and G/SG/N/11/MDA/1.

100. The representative of the European Communities pointed out that the European Communities was concerned with this case. The European Communities had a commercial interest in it, and had noted that Moldova had notified injury findings and definitive measures all at once. The representative of the European Communities stated that this was not consistent with the provisions of Article 12 of the Safeguards Agreement. The European Communities had been informed of Moldova's decision after it had been adopted, without having the possibility to participate in the proceedings and to have prior consultations. According to the delegate of the European Communities, it appeared that the measures had been adopted but they would only enter into force later in January 2004. The delegate of the European Communities asked Moldova whether Moldova considered that the time left until this deadline could be used for consultations under Article 12.3, and whether it was still possible to have this measure modified in this time-lap.

101. The Chairman stated that Moldova was not represented at the meeting, and invited the European Communities to put these questions in writing.

21. Philippines – Glass Mirrors

102. The Chairman noted that the Philippines had made a number of notifications regarding its investigation on glass mirrors, as contained in documents G/SG/N/6/PHL/3, G/SG/N/7/PHL/3, G/SG/N/8/PHL/3 and G/SG/N/11/PHL/3.

103. The delegate of the United States stated that this was a product in which the United States had a commercial interest, and that the United States would be definitely following the investigation. The delegate of the United States pointed out that they had seen the notification with respect to the imposition of provisional measures and that there was no reference in the notification to the basis for findings for critical circumstances, which was a requirement under Article 6 for the imposition of a provisional safeguards measure. The United States asked whether the Philippines had in fact made any sort of finding with respect to critical circumstances. The delegate of the United States also asked how Article 6 could otherwise be complied with.

104. The delegate of the Philippines asked the United States to put these questions in writing and stated that the Philippines would undertake to reply very quickly.

22. Philippines – Figured Glass

105. The Chairman noted that Philippines had made a number of notifications regarding its investigation on figured glass, as contained in documents G/SG/N/6/PHL/4, G/SG/N/7/PHL/4, G/SG/N/8/PHL/4, and G/SG/N/11/PHL/4.

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

23. Philippines – Float Glass

107. The Chairman noted that in documents G/SG/N/6/PHL/5, G/SG/N/7/PHL/5, G/SG/N/8/PHL/5, and G/SG/N/11/PHL/5 the Philippines had made a number of notifications regarding its investigation on float glass.

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

24. Philippines – Cement

109. The Chairman noted that the Philippines had made two notifications regarding its investigation on cement, as contained in documents G/SG/N/10/PHL/2 and G/SG/N/11/PHL/2.

110. The representative of the United States referred to the fact that as the notifications stated that the provisional measure imposed in December 2001 was to be applied for 200 days, and that subsequently there had been a court decision on the basis of which the provisional measure had remained in effect beyond 200 days. The delegate of the United States noted that the provisional measure was allowed to continue for approximately a year and a half. According to the delegate of the United States, if this was correct, it would not be in conformity with Article 6 on limitations for provisional measures to 200 days. The delegate of the United States sought clarification about the length of time that the provisional measure had been in force.

111. Secondly, the delegate of the United States referred to the institutional arrangements for safeguard investigations in the Philippines between the Department of Trade and Industry and the Tariff Commission. The delegate of the United States stated that according to the notification, the Tariff Commission originally had opened the safeguard case but then after a certain court ruling there had been a later decision by the Department of Trade and Industry on whether a safeguards duty would be imposed. The delegate of the United States sought clarification as to whether there had been a determination by the competent authority, whichever authority that might be, that increased imports had caused serious injury or threat thereof to the industry before the decision had been.

112. The delegate of the Philippines mentioned that with respect to the first question by the United States, they would have to consult their capital. With respect to the second question, the representative of the Philippines stated that his understanding was that there had been a determination by the Department of Trade and Industry leading for the imposition of the safeguard measure.

113. The delegate of the Philippines requested the United States to provide these questions in writing so that they could convey them to their authorities.

25. Philippines – Ceramic Tiles

114. The Chairman noted that Philippines had made two notifications regarding its investigation on ceramic tiles, as contained in documents G/SG/N/10/PHL/1/Suppl.1 and G/SG/N/11/PHL/1/Suppl.1.

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

26. Poland – Matches

116. The Chairman noted that in document G/SG/N/6/POL/5 Poland had notified the initiation of an investigation on matches.

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

27. Poland – Certain Steel Products

118. The Chairman noted that Poland had made a number of notifications regarding its investigation on certain steel products, as contained in documents G/SG/N/8/POL/1, G/SG/N/10/POL/1, and G/SG/N/11/POL/2.

119. The Chairman also noted that questions regarding this investigation had been posed by Mexico in document G/SG/Q2/POL/1, and that Poland had submitted its responses to these questions in document G/SG/Q2/POL/2.

120. The delegate Mexico expressed Mexico's concerns with regard to the principle used by Poland to qualify countries that were developing countries for purposes of Article 9.1 of the Safeguards Agreement. In addition, the delegate of Mexico pointed out that Mexico had questions on three of Poland's four cases (certain steel products, calcium carbide and water heaters) listed in the agenda and that for procedural reasons Mexico would discuss all three investigations together.

121. The representative of Mexico stated that Mexico appreciated Poland's explanations as to how Poland had implemented Article 6 of the Safeguards Agreement regarding the imposition of provisional safeguard measures in these three cases, and particularly regarding the evidence that had been used to find the existence of critical circumstances that would justify the imposition of such measures.

122. The representative of Mexico requested the Polish Government to inform Mexico as to the evidence that had been taken into consideration to find a causal relationship between the increase in imports and serious injury to the domestic production, as well as the qualitative objective analysis of other factors, as provided for in Article 4 of the Safeguards Agreement. In addition, the delegate of Mexico asked for information regarding the adjustment process that would take place during the period of the application of safeguard measures under Article 7 of the Safeguards Agreement.

123. The delegate of Mexico repeated Mexico's position that due regard should be given to Mexico's developing country status as recognized by the WTO. The delegate of Mexico pointed out that this status had not changed and therefore had to continue to apply.

124. The delegate of Poland pointed out that Poland had already given the replies to Mexico's questions concerning Article 9.1. The delegate of Poland noted that there was a clear divergence of views and that Poland's position remained unchanged. The representative of Poland stated that this applied not only to certain steel measures, but to all Poland's safeguard measures.

125. As regards to the other questions, the representative of Poland stated that he would respond to them in the context of the steel investigation. With regard to critical circumstances in the steel investigation, the delegate of Poland pointed out that they had been taken into account. The representative of Poland stated that in the notification concerning the provisional safeguard measure, there was some information concerning critical circumstances. As to the causal link, the delegate of Poland submitted that Poland had done research on the causal link. The delegate of Poland underlined

that originally the investigation had been initiated to cover twelve groups of products. Among these twelve groups, ten were subjected to provisional measures and only eight to final measures. No final measure had been imposed regarding the remaining four groups because the competent authorities had not found a causal link for three of them, for the fourth one the Polish authorities had found that the final measure would not be beneficial for the processing industry.

126. Regarding Mexico's question concerning adjustment under Article 7, the representative of Poland stated that the measure would expire on 1 May 2004 together with Poland's accession to the European Communities. Given that the measure would not be applied for more than one year, there would be no progressive liberalization.

127. The representative of Argentina intervened in order to make comments concerning Poland's measures on steel, calcium carbide and water heaters. Like Mexico, the delegate of Argentina also expressed concern that Argentina had not been excluded by Poland from the scope of application of measures under Article 9.1, given that Argentine exports to the Polish market were below 3 per cent. The delegate of Argentina pointed out that when Poland had acted similarly when adopting the provisional safeguard measure Argentina had filed a complaint with the Polish authorities requesting the application of developing country status in all WTO matters and in view of the provisions of Article 9.1 of the Agreement on Safeguards. On that opportunity, the competent authorities had explained that in the absence of a WTO list of developing country Members, Poland had used two principles/criteria to define a developing country. One criterion was to be a non-European country, and the other one was to have a GDP per capita lower than that of Poland, which Argentina had not met. Argentina wished to express a systemic concern regarding Poland's interpretation of the provisions of Article 9.1. According to Argentina, Article 9.1 was very clear; it referred to developing countries. There could be no doubt that Argentina was one of such developing countries. Therefore, the non-exclusion of Argentina from the implementation of this measure did not comply with the provisions of that Article.

128. The delegate of Poland stated that although Poland did not change its position regarding the issue of the definition of a developing country for purposes of Article 9.1, after bilateral consultations with Argentina, Poland had received more accurate data concerning Argentina's GDP per capita after the financial crisis. According to the latest data, Argentina's GDP per capita was lower than that of Poland. The representative of Poland stated that Poland was therefore ready to include Argentina in the list of countries excluded for Article 9.1 purposes.

129. The delegate of Poland repeated that Poland still did not change its position on the systemic issue of this article and that since Mexico's GDP per capita was higher than that of Poland, Poland did not intend to exclude Mexico from the scope of the measure.

130. Regarding Article 7, the delegate of Poland clarified his previous response to the question concerning the liberalization of the measure. The delegate of Poland stated that the response he had given applied to all measures other than steel because the steel measure had originally been imposed in July. Since that measure had been imposed before the referendum in Poland about accession to the European Communities, the Polish authorities had not known for sure at the time of imposition whether Poland would join the European Communities on 1 May 2004. Therefore, this measure would be liberalized after 8 March 2004. The duties would be lower and the quotas free from the duties would be increased for the period 8 March - 30 April 2004. However, for the other measures there would be no liberalization because these measures would not be applied for more than one year.

131. The representative of Argentina stated that developing countries were intrinsically vulnerable to changes in GDP per capita and that this was one reason why it could not be used as a criterion. The representative of Argentine mentioned that this criterion was not included in Article 9.1, which mentioned developing countries as such.

132. The delegate of Mexico supported Argentina's comments. The delegate of Mexico considered that GDP per capita was not a criterion that was laid down in Article 9.1. Therefore, the fact that Mexico's GDP per capita was higher than that of Poland did not justify the non-exclusion of Mexico as a developing country.

133. The delegate of Malaysia stated that Malaysia shared the systemic concerns raised by the delegations of Argentina and Mexico and repeated that the GDP per capita should not be used as a criterion in the application of Article 9.1.

134. The delegate of Poland agreed that Article 9.1 applied to developing countries and that there was nothing in this article about GDP per capita. According to the delegate of Poland, since there was no definition of a developing country in the WTO Agreements, the self-determination principle was not binding for purposes of Article 9.1 of the Agreement on Safeguards. The delegate of Poland recalled that there were some countries that used their GSP lists for purposes of Article 9.1. For example, the delegate of Poland stated that Poland had been excluded from the US steel safeguard measure although Poland had never considered itself a developing country. The delegate of Poland mentioned that the United States probably made this determination on the basis of its list of GSP beneficiaries. The delegate of Poland submitted that Poland had been excluded by the Philippines similarly on the basis of the Philippines' GSP list or some other list. The representative of Poland repeated that Poland had never self-determined itself in the WTO as a developing country, but still in some cases it had been excluded. The delegate of Poland stated that using the GSP list for purposes of Article 9.1 was also in conformity with the WTO rules because there were no rules on this matter in the WTO.

135. The delegate of Mexico stated that Mexico did not agree with that interpretation and that Mexico had been reviewing the safeguards policy of Poland and would revert to that issue.

28. Poland – Calcium Carbide

136. The Chairman noted that Poland had made a number of notifications regarding its investigation on calcium carbide as contained in documents G/SG/N/8/POL/2, G/SG/N/10/POL/3, and G/SG/N/11/POL/4.

137. The representative of the Slovak Republic expressed interest in the safeguard measure applied by Poland on calcium carbide. The delegate of the Slovak Republic stressed that the Slovak Republic had some concerns on substantive as well as procedural aspects of this safeguard measure. The delegate of the Slovak Republic stated that the Slovak Republic would like Poland to reconsider this measure and stated that there was room for bilateral consultations.

29. Poland- Water Heaters

138. The Chairman noted that Poland had made a number of notifications regarding its investigation on water heaters, as contained in documents G/SG/N/8/POL/3, G/SG/N/10/POL/2 and Suppl.1, and G/SG/N/11/POL/3.

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

30. United States – Certain Steel Products

140. The Chairman noted that in document G/SG/N/13/USA/4 the United States had made a notification regarding its investigation on certain steel products.

141. The delegate of Japan stated that he would make certain comments regarding the US measure on steel, which would also touch upon the safeguard measures of other Members on steel products, some of which had already been discussed during the meeting.

142. The delegate of Japan mentioned that Japan, in coordination with others, had strongly argued that the United States safeguard measures violated WTO rules and thus those measures had to be repealed. The representative of Japan recalled that the panel established with regard to these measures had concluded that those measures were inconsistent with WTO rules and that they were waiting for the Appellate Body to circulate its report on this matter.

143. Referring to the US notification regarding the mid-term review in document G/SG/N/13/USA/4, the delegate of Japan noted that the United States explained that the US President could take action to reduce, modify or terminate a safeguard measure after receiving a mid-term report by the ITC, but that the President had not decided yet to take such actions with respect to this measure.

144. The delegate of Japan stated that Japan would follow the developments on this matter in the near future very carefully. The delegate of Japan added that in case the Appellate Body Report found that these safeguard measures were inconsistent with WTO rules and if the United States did not repeal these measures despite such an Appellate Body decision, Japan would have to consider necessary steps including rebalancing measures.

145. The delegate of Japan recalled that, as Japan had mentioned in the previous meetings of this Committee, a number of Member countries, such as the European Communities and China, had resorted to provisional or definitive safeguard measures on steel products as a consequence of the imposition of the US measures. Japan had been strongly concerned with such series of chain reactions. Therefore, the delegate of Japan urged the United States to repeal the safeguard measures on steel products as soon as possible. The delegate of Japan also urged other Members refrain from taking such measures.

146. The representative of the United States stated that this was a matter that was before the Appellate Body and that all Members were waiting for the Appellate Body report. The representative of the United States stated that the United States would consider that report when it was circulated. The delegate of the United States pointed out that the United States did not have anything to add to its notification.

147. The representative of the European Communities expressed support for the Japanese statement. The representative of the European Communities also repeated their commitment to reassure Japan that the European Communities intended to repeal its own safeguard measure as soon as the United States removed theirs.

31. Venezuela – Certain Steel Products

148. The Chairman noted that Venezuela had made two notifications regarding its investigation on certain steel products, as contained in documents G/SG/N/7/VEN/1/Suppl.1 and G/SG/N/11/VEN/1/Suppl.1.

149. The representative of the European Communities noted that these notifications related to provisional safeguard measures that had been imposed in December 2002 for a duration of 200 days and asked what the status of this case was.

150. The delegate of Venezuela stated that they did not have specific, accurate information to provide and that they would inform the European Communities as soon as possible.

32. Venezuela – Paper for Writing or Printing, Sacks and Bags

151. The Chairman noted that Venezuela had made a notification regarding its investigation on paper for writing or printing, sacks and bags in document G/SG/N/8/VEN/3.

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

153. The Chairman recalled that any questions concerning the notifications of actions taken for which written responses were requested, had to be submitted to the Member concerned and to the Secretariat no later than 10 November 2003. Written answers had to be submitted to the Secretariat no later than 1 December 2003.

C. APPLICATION OF ARTICLE 9.1

154. The Chairman noted that this item had been included in the agenda at the request of Malaysia, and that Malaysia had submitted a non-paper on this matter on Friday, 17 October 2003.

155. The delegate of Malaysia apologized for the late submission of this non-paper and stated that they would welcome any comments that could be made at this meeting.

156. The delegate of Malaysia noted that at the meeting of the Committee on Safeguards on 28 April 2003, there had been a discussion on the application of Article 9.1 under Agenda Item C of that meeting. She also recalled that in addition to the discussions in that meeting, similar discussions had also been held in previous meetings on the time period used for calculation of the negligible volume level (*de minimis* thresholds); the methodology to be employed for that calculation; treatment of Article 9.1 in the context of provisional measures; and the method by which investigating authorities identified developing countries. The representative of Malaysia recalled that at the April meeting, Members had been encouraged to circulate papers or written contributions on Article 9.1 issues in order to allow for more fruitful discussions in the Committee.

157. The representative of Malaysia stated that Malaysia's submission was meant to enable more focused discussion of the issue with a view towards greater transparency of Members' application of this provision. It was also meant to facilitate a better understanding of Members' application of the provision. This could contribute to the implementation of the Safeguard Agreement in a manner that would enable all Members to fulfill their obligations and avail themselves fully of the rights granted under the Agreement.

158. The representative of Malaysia noted that Article 9.1 of the Safeguards Agreement stated that safeguard measures should not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member did not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively accounted for not more than 9 per cent of total imports of the product concerned.

159. According to the delegate of Malaysia Article 9.1 was a special and differential treatment provision accorded to all developing countries. It was recognized and accepted that this special and differential treatment provision provided developing countries with low-volume exports to be exempted from the application of a safeguard measure.

160. The delegate of Malaysia focused on two aspects of the application of Article 9.1: "the time period for the calculation of the negligible volume resulting in a post-safeguards redetermination under Article 9.1" and "the application of Article 9.1". However, this did not mean that the application of Article 9.1 was confined to these elements. Rather, this submission mentioned these two issues just to facilitate the discussions on the application of Article 9.1. The representative of

Malaysia also stated that this submission was without prejudice to the position of Malaysia regarding the application of Article 9.1.

161. The representative of Malaysia noted that Article 3.1 of the Safeguards Agreement stated that a Member could apply a safeguard measure following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public. Article 3.1 further stated that this investigation had to include reasonable public notice to all interested parties and to provide means where these parties could present their evidence and views and to respond to the presentations of other parties. A published report had to provide information on the findings and conclusions.

162. The representative of Malaysia thus noted that before a safeguard measure was applied, several requirements had to be fulfilled: an investigation had to be conducted; there had to be reasonable public notice of the investigation; and opportunity had to be given to interested parties to present their views. According to the delegate of Malaysia, given these requirements, it would be expected that the time period to be taken into account in the determination of serious injury, including the calculation of the negligible volume level for developing countries, i.e. the 3 per cent share, would be a period before the application of the measure. Article 5.1 of the Agreement did not provide an indication that this representative period was a period prior to the imposition of the safeguard measure.

163. However, the representative of Malaysia stated that it was the experience of some Members that the special and differential treatment granted to developing countries based on the calculation of negligible volume levels in terms of an exemption from the application of the safeguard measure based on the provisions of Article 9.1 would not be maintained after the safeguard measure was applied. The representative of Malaysia noted that some Members imposing the safeguard measure had undertaken a recalculation of the negligible volume level after the measure had been applied. On the basis of this recalculation, based on a different period, developing countries initially exempted from the measure under Article 9.1 had this exemption withdrawn when their individual share increased to more than 3 per cent during the period after the imposition of the measure.

164. It was the view of the Malaysian delegation that it would be useful for Members to share their views regarding the following questions:

(a) Is there justification for redetermination of the exemption granted under Article 9.1, based on a calculation using the post-imposition time period, i.e. a period after the application of the safeguards measure is in place?

(b) When redetermination is undertaken of the measure based on trade volumes in the post-imposition period, what would prevent a Member from refraining from further redetermination, what would be the cut-off point and would this not create endless rounds of redetermination?

(c) In any re-examination of the application of Article 9.1, would it not require a new investigation that needs to fulfill the requirements of Articles 3 and 4? Could a mere redetermination of Article 9.1 post safeguards imposition measure, also not require the fulfillment of full re-evaluation of Article 4? (especially the causal link).

(d) In just undertaking a mere redetermination under Article 9.1 post-safeguards imposition, would it not deny the affected developing country Member the opportunity to present its views? If there is a redetermination under Article 9.1 and no opportunity is provided to defend one's interest, would it not undermine the principles of fairness and justice?

(e) Is it not more appropriate for the competent authority to demonstrate that the developing countries exempted in the original investigation have caused a surge in their imports post imposition causing serious injury that warrants a redetermination under Article 9.1?

(f) Would such an action violate the spirit and letter of this special and differential treatment provision and circumvent the intent of Article 9.1?

165. The representative of Malaysia recalled that at previous meetings the Committee had discussed the discriminatory application of Article 9.1. Some developing countries fulfilling the negligible volume level requirements under this article had been exempted from the measure. Yet others had not been exempted. According to the representative of Malaysia, such arbitrary and discriminatory application of Article 9.1 frustrated the intent of this Article and denied the rights of developing countries under this provision.

166. The representative of Malaysia noted that the parameter for exclusion or inclusion of a developing country from the application of this article was based on the low volume of trade. Hence, it was inconsistent with the Agreement to use other parameters and would be a violation of the Agreement to deny developing countries their rights under this provision.

167. The delegate of Malaysia welcomed views on these issues and invited Members that would like to share their national experiences regarding the application of Article 9.1. This would assist Member countries in the proper implementation of the rights and obligations under this Agreement on Safeguards.

168. The delegate of Thailand pointed out that the content of Malaysia's non-paper was thought-provoking and could provide a good basis for further discussions. The delegate of Thailand noted that the gist of this non-paper was confined to two elements, i.e. the time-period selection and method by which the investigating authorities identified developing countries. The delegate of Thailand noted that certain aspects had been highlighted such as the special and differential treatment of the provision designed to contribute to the proper implementation of the Agreement. The delegate of Thailand also noted that during the discussions in the Committee a number of delegations had already indicated the same interest and careful consideration of this issue. The delegate of Thailand stated that their delegation associated itself with Malaysia and welcomed the views from Members on the issues raised as well as any other issues that were related to the application of Article 9.1. The representative of Thailand encouraged Malaysia to submit their contribution as a formal document at a later date and pointed out that Thailand would continue to work closely with Malaysia and other Members as discussions would continue.

169. The delegate of China made preliminary comments on the submission by Malaysia. As a developing country Member, China associated itself with other developing country Members' opinions to make more fruitful discussions in this Committee on Article 9.1 of the Agreement on Safeguards in the April meeting. According to the delegate of China, the arguments for the relative issues contained in Malaysia's submission were legitimate in light of the recent increase in the use of safeguard measures by Members. The representative of China mentioned that Article 9.1 was a special and differential treatment provision for all developing Members. This provision stated that a safeguard measure should not be applied against a product originating in a developing country Member as long as its share of imports of the products concerned in the importing Member did not exceed 3 per cent and collectively did not exceed 9 per cent of imports. The delegate of China asserted that a number of WTO Members had been applying their national criteria as opposed to the WTO criteria in identifying developing country Members mentioned for purposes of Article 9.1. The delegate of China stated that some developing country Members, when they decided to take safeguard measures, would exclude some developing country Members under special and differential treatment

provisions of Article 9.1 on a unilateral and discriminatory basis. The representative of China also mentioned that some investigating authorities had attempted to rationalize their decision either on the basis of their own GSP scheme or on the basis of membership of regional agreements. According to the delegate of China, the parameter of the volume of the trade had to be obeyed strictly or this would be a violation of WTO Members' obligations under the WTO Agreements and would deny the developing Members' rights under Article 9.1. The representative of China asserted that China had faced some unfair determinations by some WTO Members on this issue. Therefore, the delegate of China pointed out that it was very important and necessary for the Members of the Committee to clarify the provisions of Article 9.1 and to discuss some technical issues related to Article 9.1 in this Committee.

170. The representative of Colombia expressed gratitude to Malaysia for their submission on the implementation of Article 9.1 of the Safeguards Agreement and made some preliminary comments. Colombia considered that the period for the application of Article 9.1 of the Safeguards Agreement had to match the period used for the investigation. However, the delegate of Colombia noted that some countries applied a representative period, whatever that period might be. Other countries applied the last three representative years for which they had statistics. Some Members applied different periods depending on the product under investigation. The delegate of Colombia argued that it would be ideal to have a means to enable the Members to establish the period to be considered in this context. According to the representative of Colombia, this had to be prior to the application of the safeguard measure. However, if it were not possible to create an exclusive period for all Members, it would be important to have some kind of indication from each individual country about their own practice in order to avoid changes in the time period in individual investigations. The delegate of Colombia finished by stating that during the period that the measure was in force, it was not possible to calculate the participation of developing countries. The measure had to remain as it had been applied originally without new developing countries being excluded regardless of the changes which occurred in the share of these countries' total imports.

171. The representative of Australia considered Malaysia's comments to be a very useful contribution to the discussion on the application of Article 9.1. The delegate of Australia also considered that these comments were a constructive way to facilitate discussions and to encourage exchanges on the implementation of this provision. Regarding the time-period for calculation of negligible volume, the delegate of Australia stated that the comments made by Malaysia had caused Australia to examine the text of Article 9.1 closely and carefully. Firstly, the delegate of Australia noted that Malaysia had not reflected some key points in the language of Article 9.1, which, according to Australia, also required examination. For example, Article 9.1 provided that safeguard measures should not be applied against a product originating in a developing country as long as its share in the imports of the subject product did not exceed 3 per cent. However, according to the representative of Australia, the use of "as long as" suggested that there could be an inherent requirement or justification to redetermine the application of the safeguard measure. Secondly, regarding the actual point of when to look at or apply or factor-in the negligible volume threshold, the delegate of Australia noted that Article 9.1 related to the application of safeguard measures. Australian practice was to factor-in this negligible volume threshold at the application of the measure. In this regard, the representative of Australia stated that they had a couple of questions for Malaysia. First, the delegate of Australia asked whether Malaysia was suggesting that in accordance with Article 5.1 of the Safeguards Agreement there had to be a representative period used for the Article 9.1 calculation which was based on the period prior to the imposition of the safeguard measure. The second question was whether Malaysia was suggesting that if in order to impose safeguard measures an investigation needed to be conducted and causation established, then the calculation of the negligible volumes was required at that stage of the safeguard proceeding, that is at the injury stage. Another point that the delegate of Australia referred to was the WTO case dealing with the relationship between the injury investigation and the remedy through the application of safeguard measures, that is the implied symmetry or parallelism arguments which had been confirmed and upheld by the Appellate Body.

The delegate of Australia noted that the United States in its appeal in the *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities* case had challenged the argument that there was an implied symmetry between the safeguard investigation and the scope of the application of the safeguard measures. According to the delegate of Australia, in that case the United States had argued that this was inconsistent with Article 9.1 which, in the United States view, excluded developing countries from safeguard measures but did not provide for their exclusion from the investigation. The delegate of Australia mentioned that under Australia's safeguard procedures, a product originating in a developing country was included in the injury investigation assessment. Safeguard measures were applied to a product imported irrespective of source with the application of the negligible volume thresholds factored in the application of the measure. The delegate of Australia asked whether Malaysia considered that the Article 9.1 special and differential treatment provision was an exception to the concurrence or parallelism argument between the investigation and the application of the measures. Finally, the delegate of Australia asserted that the issue of the application of Article 9.1 raised by Malaysia appeared to be closely related to the issue of how developing country status was determined by an investigating authority. The representative of Australia noted that some WTO Members applied their own national criteria to identify developing country status for purposes of a safeguard investigation. The delegate of Australia asserted that this could lead to outcomes that were neither transparent or predictable for WTO Members, nor intended by the Safeguards Agreement. The representative of Australia welcomed further discussions on WTO Members' current practice in this regard.

172. The representative of Cuba stated that they had already expressed their interest in an amendment to Article 9.1. This would provide for a significant improvement in terms of market access for developing countries. The representative of Cuba pointed out that during the negotiation of the Safeguards Agreement participation of developing countries was not as significant as today. The delegate of Cuba therefore stated that they favored an amendment of Article 9.1 and urged WTO Members not to make their own free interpretation of the definition of developing countries but rather to adhere to the provisions of Article 9.1 in this regard.

173. The delegate of Argentina expressed their interest in the review of the issue presented by Malaysia. According to the delegate of Argentina, focusing on this issue would improve the transparency and efficiency of provisions foreseen in Article 9.1.

174. The delegate of Mexico pointed out that it would be useful to have a discussion on the implementation of Article 9.1. This would be in the interest of all. The delegate of Mexico referred to the issue of the time period to be taken into account for the *de minimis* provisions that applied to safeguards. The delegate of Mexico also referred to the issue of arbitrary and discriminatory treatment. The delegate of Mexico argued that this was an issue of extreme concern to developing countries, certainly to Mexico. According to the representative of Mexico, this issue of the definition of a developing country could not be left up to the arbitrary decisions of investigating authorities.

175. The representative of Egypt stated that they had received Malaysia's submission only a few days before the meeting, and sought clarification regarding the legal basis of the proposal.

176. The representative of Venezuela pointed out that further discussion of Malaysia’s submission in this Committee would be appropriate once it would have been circulated and digested by delegations. According to the delegate of Venezuela, issues of rights and obligations of Members as set down in Article 9.1 were directly related to the discussions in the Committee meeting. Like other delegations, Venezuela believed that the definition of a developing country and the rights stemming from it, had to be defined more specifically by the Committee. The representative of Venezuela also echoed the proposal made by the Colombian delegation. The Colombian delegation had suggested that the Committee explore the issue of the periods of time to be taken into account for purposes of implementing Article 9.1. The delegate of Venezuela noted that the Colombian delegation had been

very active in discussing Article 9.1, including the suggestions resulting from the Doha Ministerial Declaration. The delegate of Venezuela pointed out that this draft proposal would be useful for further discussions in this Committee.

177. The delegate of the Philippines noted that Malaysia was not proposing an amendment to Article 9.1. According to the delegate of the Philippines, the points raised in the Malaysian contribution were nevertheless helpful. The delegate of the Philippines mentioned that the Philippines would be eager to participate in future discussions on this issue.

178. The representative of Malaysia noted that Malaysia had raised two points regarding the application of Article 9.1. The delegate of Malaysia noted the encouragement given by many of the Members who had taken the floor and who mentioned that they would like to have a greater examination and discussion of these two issues in the Committee. Regarding Thailand's point, the delegate of Malaysia mentioned that perhaps discussions about Article 9.1 did not need to be limited to these two issues but any issues Members would raise. Regarding Egypt's question concerning the legal basis of this proposal, the representative of Malaysia stated that Malaysia was not proposing an amendment of Article 9.1, but was suggesting that the Members of the Committee have a discussion that would help the Members in the implementation of this Article.

179. The delegate of Malaysia stated that Australia's questions regarding the issue of parallelism and the issue of the representative period were very useful. According to the delegate of Malaysia, these questions would become very useful once Members of the Committee got into the discussions at the following meeting. The representative of Malaysia pointed out that, putting aside a few exceptions, in their view most WTO Members had implemented Article 9.1 in a very uniform and acceptable manner. The delegate of Malaysia stated that Malaysia was raising some of the issues for discussion in order to prevent this from turning into a systemic problem. The delegate of Malaysia pointed out that Malaysia would come back to this issue at the next meeting of the Committee with more substantive replies to what had been asked by delegations and would perhaps also revise its submission.

180. The delegate of the European Communities expressed the EC's full interest in this issue.

181. The Chairman stated that given the nature of Members' discussion at the meeting, Members could need more time to reflect further on this agenda item. He therefore encouraged those Members who wanted to submit any document to do so in advance of the next regular meeting, so that other Members could have time to consider it appropriately. The Chairman stated that the Committee would revert to this agenda item at the following meeting.

D. OTHER BUSINESS

182. The Chairman noted that in the morning session three issues had been included under this agenda item.

1. Andriessen Commitment

183. The delegate of Argentina mentioned that at the last meeting of this Committee Argentina had made a statement under other business on the so-called "Andriessen Commitment". The concern of Argentina related to what could amount to a voluntary export restraint agreement or similar measures under Article 11. The representative of Argentina recalled that although the European Communities had said that they would come forward with a response to this question, no such response had been received from the European Communities as of the date of this meeting. For that reason, the delegate of Argentina asked whether the European Communities intended to come up with such a response as

they had pledged in reaction to the concerns voiced by Argentina in the previous meeting of the Committee.

184. The representative of the European Communities asserted that the European Communities had in fact replied to the intervention made by Argentina at the previous meeting of the Committee. The delegate of the European Communities recalled that at that time, the delegate of Argentina had implied that there would be a measure, the so-called "Andriessen Commitment", by which the European Communities would refrain from selling subsidized meat to certain countries of south-east Asia and according to Argentina, as it had been repeated in this meeting, this would possibly amount to a voluntary export restraint and be inconsistent with Article 11(b) of the WTO Agreement on Safeguards. The delegate of the European Communities pointed out that Article 11(b) had no relevance to this case and that, contrary to Argentina's assertion, there was no measure applied by the European Communities to restrict exports of beef. The delegate of the European Communities asserted that European exports of beef meat were not subject to any limitation whatever their destination, including the south-eastern Asian countries. According to the delegate of the European Communities, therefore, the question of consistency with Article 11(b) of the Safeguards Agreement did not arise.

185. The representative of Argentina stated that there were still a number of points on which they would need clarification.

2. India – Industrial Sewing Machine Needles

186. The delegate of the United States posed a question to the delegation of India. The representative of the United States referred to an investigation initiated by India in August 2002 with respect to industrial sewing machine needles, as notified to the Committee in document G/SG/N/6/IND/14. The understanding of the United States was that this was a transitional product-specific safeguard mechanism investigation with respect to imports from China. The representative of the United States mentioned some press accounts in the spring of 2003 that had suggested that an import relief measure had been imposed after that investigation. The representative of the United States asked whether in fact there had been a remedy imposed in this case. If so, what was it, had it been notified to this Committee, and when had it been imposed?

187. The Chairman noted that the Indian delegation was not present at the meeting and asked the United States delegation to submit its questions in writing so that the Indian delegation could respond to them.

3. Extension of the EC Safeguard Measure on Certain Steel Products

188. The delegate of Korea raised some questions on the proposed extension of the EC safeguard measure on certain steel products contained in document G/SG/N/10/EEC/1. The delegate of Korea mentioned that they had found some information on the EC's website under the title of "What is the impact of enlargement on trade defense?" The delegate of Korea stated that there was very brief information on uniform EU-wide application of trade policy instruments including safeguard measures by the 10 new acceding Member states as of 1 May 2004.

189. The delegate of Korea pointed out that the main elements of this information were summarized into two points: one, from 1 May 2004 none of the 25 Member States could use trade defense instruments against each other; all trade defense measures that the current EU Member States had against imports from any of the new Member States would be dropped automatically and vice versa. The second key point was that the single set of laws and measures currently applicable in the current 15 Member States would be automatically applicable in the new Member States. The

representative of Korea mentioned that they were concerned about these developments *vis-à-vis* the application of safeguard measures.

190. First, with regard to the automatic termination of the safeguard measures against imports from the new acceding Member States, the delegate of Korea asked whether the safeguard measures on certain steel products in force in the European Communities would no longer be applied to the 10 new member countries after enlargement entered into force. Second, if this was the case, the representative of Korea asked whether the European Communities would conduct a new investigation or review given the substantive change in circumstances concerning imports and causation. If the European Communities decided to conduct a review rather than an investigation, the delegate of Korea asked what would be the legal basis in the WTO Agreement on Safeguards for doing so given that the Agreement did not have provisions for such a review. The representative of Korea also asked when the investigation or review would begin.

191. Thirdly, the delegate of Korea noted that the European Communities' notification of its safeguard measure on certain steel products showed that the injury determination for various products was explicitly based on imports from the acceding new member countries. In a number of instances, these countries had been allocated shares of the tariff quota established under this safeguard measure. If the safeguard was no longer applied to imports from the 10 new member countries, the delegate of Korea asked how the European Communities considered the continued application of this safeguard measure to third countries to be consistent with the parallelism doctrine which the WTO panels and Appellate Body had developed. The delegate of Korea asked whether the European Communities presumed without investigation or review that imports from other sources alone would be a sufficient cause for serious injury to the entire domestic industry in the enlarged EC-25.

192. Regarding the second point with regard to the automatic extension of a safeguard measure to a third country, the delegate of Korea asked whether the safeguard measure on imports of certain steel products into the European Communities would automatically be applied by the new acceding member countries. If this was the case, the delegate of Korea recalled that footnote 1 of the Safeguards Agreement provided that when a customs union applied a safeguard measures as a single unit to the EC-25, all the requirements for the determination of a serious injury or threat thereof under the Safeguards Agreement had to be based on the conditions existing in the EC-25 instead of EC-15. The delegate of Korea therefore asked when the European Communities had conducted this investigation for automatic extension in order to fulfill this legal requirement, and how the European Communities had calculated the increase of total volume of the current level of the quota given the enlarged market in the EC-25 and what data or material had been used as the basis for this calculation. The delegate of Korea also asked how the European Communities had adjusted the existing allocation of quotas among countries having a substantive interest in supplying the product concerned.

193. Assuming that the extension would not be automatically applied to new member countries, the delegate of Korea sought clarification as to how the European Communities would deal with imports from third countries to the new acceding member countries.

194. As a third point, regarding notification, the delegate of Korea noted that Article 12 of the Safeguards Agreement, especially paragraph 1(c) and paragraph 3, required immediate notification upon taking a decision to apply or extend a safeguard measure and adequate opportunity for prior consultations with those members having a substantial interest. The delegate of Korea asked when the European Communities would notify the proposed extension of safeguard measures on certain steel products to the new acceding member countries and when it would have a prior consultations with other Members having substantive interest.

195. Finally, the representative of Korea stated that Korea would submit these questions to the Secretariat as an official document.

196. The delegate of the European Communities stated that the European Communities would provide an appropriate reply in writing to the questions posed by Korea. The delegate of the European Communities pointed out that it would hopefully not be necessary to consider this issue upon the accession of the new member states of the EU because, as the European Communities had already stated earlier in the meeting, the European Communities would remove its measures before 1 May 2004 if the United States removed its own Section 201 measures. However, the delegate of the European Communities mentioned that the European Communities was also preparing for the scenario which was envisaged by the Korean delegation. The representative of the European Communities mentioned that this was a scenario in which the steel safeguards measure could become applicable also at the level of the new members, i.e. the EU-25, and the new members of the union would not any more be subject to the safeguard measures which were at the time of the meeting applied at the level of the EU-15.

197. The delegate of the European Communities pointed out that the modalities upon which this would be realized in terms of procedure and in terms of substantive criteria to be applied were still under consideration. In this context, the representative of the European Communities pointed out that the European Communities would ensure that WTO rules were fully respected and whatever decision was made it would be fully compatible with the safeguard rules of the WTO, in particular Article 19 in the Agreement on Safeguards.

198. The representative of Korea stated that aside from the US measures, Korea still had a substantive concern regarding the extension of the European Communities safeguard measures on steel products to trade of third member countries.

199. The Committee took note of the statements made.

E. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE' S REPUBLIC OF CHINA TO THE WTO

200. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provided that all subsidiary bodies, including this Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol." China was to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China could also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol, in subsidiary bodies which had a relevant mandate.

201. The Chairman stated that the Committee had to report the results of the review promptly to the Council for Trade in Goods. Review was to take place after accession in each year for eight years, with a final review in year 10 or at an earlier date decided by the General Council. The Chairman noted that there were no procedures set out for the conduct of the transition review in the Protocol, except that China was to provide relevant information in advance of the review. In accordance with section IV.6 of Annex 1A to the Protocol, China was required to notify the Committee of its Regulation on Safeguards. In this context, the Chairman recalled that China had sent a fax on 17 October 2003 concerning the implementation of its legislation on safeguards. This fax had then been sent to the Members of the Committee on the same day.

202. The representative of China made an introduction on China’s implementation of the WTO Safeguard Agreement and its relevant Committees since the transitional review by this Committee in the preceding year and responded to some questions of common concern posed by some Members prior to the meeting.

203. The delegate of China pointed out that no new case of safeguard investigation had been initiated by China since the previous transitional review. So far China had initiated one safeguard investigation only. Upon petition by domestic steel industries, MOFTEC had decided on 20 May 2002 to initiate a safeguards investigation on certain imported steel products. The delegate of China mentioned that China had already notified the progress of the investigation in the transitional review of 2002. The delegate of China mentioned that subsequently the investigating authority of China had continued the investigation according to law and had issued a notice on 19 November 2002 announcing the decision to apply safeguard measures for a duration of three years (including the implementation period of the provisional safeguard measure) on five imported steel products such as non-alloy hot-rolled sheets and coils etc. China had notified the findings of the investigation and the details of the safeguard measure to the Committee on Safeguards.

204. The delegate of China then responded to questions. First, concerning the legality of the safeguard measures on certain steel products, the representative of China mentioned that China's safeguard investigation on certain imported steel products had been carried out in full compliance with the WTO Agreement on Safeguards and in strict conformity with the regulations of the People's Republic of China on safeguards. Regarding the provisional and definitive safeguard measures on certain imported steel products, the delegate of China stated that the Chinese Government had notified the Committee on Safeguards of the findings of this investigation with regard to serious injury and threat thereof caused by increased imports as well as the authority's decisions to apply such measures. Thus, China had fully fulfilled its notification obligations under the Agreement on Safeguards. The delegate of China stated that China's investigating authorities had also made adequate information disclosures regarding findings of the investigation and notified disclosed information to Members having a substantial interest, including Japan. Moreover, pursuant to the rules set out in Article 12.4 and Article 12.3 of the Agreement on Safeguards, China had held consultations with those Members having a substantial interest, including Japan; furnished the relevant information; and exchanged views on the measures. The delegate of China pointed out that China's safeguard measures on certain imported steel products had been, and would continue to be, applied according to the timetables stipulated in the official bulletin on definitive measures.

205. Second, with regard to the results of the injury investigation, the delegate of China stated that Article 16 of the Chinese regulations on safeguards provided that in a case where a preliminary determination established the existence of an increase in the quantity of an imported product and injury and a causal link between the two, MOFTEC and the SETC would continue with their investigations and, on the basis of the findings of such investigations, make a final determination which would be published by MOFTEC. Regarding the final determination, the delegate of China referred to the notice published by MOFTEC on 19 November 2002.

206. The delegate of China reiterated China's position with regard to transitional product-specific safeguard mechanism contained in paragraph 16 of China's Accession Protocol. The delegate of China pointed out that the mechanism was discriminatory in nature and ran against the basic principles of the WTO. Experience over the years had revealed the fact that impacts endured by domestic industries were attributable in most cases to imports from several Members invoking the product-specific safeguard measures which targeted solely imports originating in China. The delegate of China pointed out that this was not only discriminatory in means but also incapable of achieving ends of counteracting the impacts upon domestic industries. In that spirit, it was China's belief that trade remedies within a framework of the WTO had always to be the resort of priority in the case of domestic injuries. The delegate of China expressed their hope that all WTO Members would abide by the fundamental principles of the WTO and exercise maximum caution in considering the application of the transitional product-specific safeguard mechanism.

207. The delegate of Japan made some preliminary remarks on the statement of China. Regarding the legality of the Chinese measures, the delegate of Japan stated that Japan had had several occasions

in the past, including the previous year's transitional review mechanism in the Committee and also the bilateral consultations held under Article 12 of the Safeguards Agreement, to discuss with China. The delegate of Japan pointed out that Japan still did not think that the measures by China were in conformity with the Safeguards Agreement and requested that China provide the Committee with more detailed explanations about the legality of these measures. In connection with China's response to Japan's second question, the delegate of Japan posed a question for clarification. The delegate of Japan noted that on 19 November the Chinese Government had announced its definitive safeguard measure but at the same time some of the products which were subject to the preliminary determination had been found not to have contributed to injury. The delegate of Japan asked what the status of these safeguard measures was regarding the products that had been found not to have contributed to injury. If these measures had not been repealed, the delegate of Japan asked what was the schedule for repealing them, because Japan believed that there was no ground to maintain these safeguard measures on these products.

208. Regarding the legality of the measures that China had taken, the delegate of China stated that China would be pleased to continue its cooperation in order to provide more information to the Japanese side. On the second question, the delegate of China stated that this question had already been covered by the statement just made by the head of the Chinese delegation. The delegate of China stated that according to the Chinese regulations on safeguards the definitive safeguard measure could be found in the Official Notice published by the Ministry of Foreign Trade and Economic Cooperation, now the Ministry of Commerce, and suggested that the Japanese delegates refer to those notices for the answers.

209. The delegate of Japan stated that Japan was looking forward to a very constructive and positive exchange of information on these matters. Regarding China's response to Japan's second question, the delegate of Japan stated that the Japanese delegation would continue to examine this issue on the basis of the notice that the Chinese delegation had just referred to.

210. The delegate of the United States stated that as China's second year of WTO membership came to a close the United States appreciated the transitional review mechanism which provided a venue to conduct a thorough and meaningful review both to highlight China's successes and to identify areas where more work needed to be done. As China was already applying its safeguards law, it was important that its practices conform to the WTO commitments. The delegate of the United States noted that as could be seen by the questions that the United States and other Members had raised, both in the TRM and under the other agenda items of the Committee meeting, there were some serious concerns about China's safeguard practices and its progress and meeting some of its commitments. The representative of the United States pointed out that the United States appreciated China's prompt written responses to the US questions and viewed this as an important indication of China's efforts to play a constructive role in this Committee. After reviewing those responses in detail, the United States would follow up with additional questions in the Committee in order to better understand China's rules and practices. The United States recognized and appreciated China's effort to promulgate implementing rules. The representative of the United States noted that additional rules had been notified to the WTO both in February and April 2003, and thanked China for the responses to the questions that the United States had submitted with respect to those notifications. Nonetheless, the representative of the United States mentioned that they were concerned about the delay in China's notifying these and other rules to the WTO in light of China's having undertaken a safeguard investigation before all the necessary rules had been issued and notified. Such a delay could cause confusion and uncertainty for the parties affected by the safeguard proceedings.

211. The representative of the United States pointed out that in the previous year the United States had raised some concerns about a lack of transparency in China's decision-making process for the safeguard measures, and that such lack of transparency appeared to have carried forward into some aspects of China's implementation of the measure. By way of example, the representative of the

United States mentioned that some US exporters had complained that China's process for allocating quotas under the measures was unclear, making it very difficult for them to gain a fair share, if any share at all, of the available quotas. The United States also had concerns about such issues as the criteria China had used in determining which WTO Members would be accorded the status of a developing country or region for purposes of Article 9.1 of the Agreement, and in particular whether those criteria were clear and transparent. Secondly, the United States had concerns regarding China's treatment of non-WTO Members under Article 9.1. The delegate of the United States noted that this provision provided for non-application of safeguard measures to developing country WTO Members where the import share criteria were met but it did not provide for exclusion of countries who were not WTO Members. Thirdly, the representative of the United States raised a concern as to how confidential data submitted during the course of a safeguard investigation would be protected especially when outside experts were employed. Fourthly, the representative of the United States raised a concern as to access to non-confidential information about safeguard investigations by interested parties and by the general public, in terms of the procedural requirements for, and limitations on, such access. Fifth, the representative of the United States raised a concern as to the refunding of safeguard duties collected pursuant to provisional measures when definitive measures were not imposed on those products. Finally, the representative of the United States touched upon the terms and conditions covering the extension of the safeguard measure.

212. The representative of the United States pointed out that they were not taking issue with China's use of safeguard remedies but mentioned that the United States had concerns as it had noted certain aspects where there had been a lack of transparency that had accompanied China's implementation. The representative of the United States stated that they would follow up with additional questions in the Committee to better understand China's rules and practices on these and other issues.

213. The representative of the European Communities stated that they shared most of the views expressed by Japan and the United States. The European Communities had several concerns with the Chinese steel safeguard measures. The representative of the European Communities pointed out that they had expressed these concerns on several occasions in the past, including in the context of Article 12.3 consultations and that they we still believed that there were a number of inconsistencies in these measures. The European Communities therefore ideally would like these measures to be repealed as soon as possible.

214. The representative of the European Communities focused on the possibility that China could review its measures before their three-year expiry. The representative of the European Communities noted that the mid-term review provision of the Safeguard Agreement only provided that the mid-term review was mandatory if the measure lasted for more than three years, which was not the case for the Chinese measure. Since the expected duration of this measure was three years the obligation to carry out a mid-term review would not exist. However, the representative of the European Communities noted that under Article 7.1 of the Safeguards Agreement a Member could apply a safeguard measure only for such a period of time as may be necessary to prevent or remedy serious injury. According to the delegate of the European Communities this provision seemed to indicate that there was at least a possibility that a Member would carry out a review before the expiry of this measure and that this was a suitable development. The European Communities believed that the circumstances in the Chinese market had changed very substantially and very rapidly over the preceding one and a half years since the Chinese measure had been first introduced. Therefore, this alone could provide a good opportunity for China to carry out a review to determine whether the measure was still necessary. The representative of the European Communities asked China whether they were ready to consider this option at this stage. Alternatively, the representative of the European Communities invited China to explain whether China was ready to consider these options if the US and the EC steel safeguard measures were removed over the next month. The representative of the European Communities recalled that China had explicitly stated the Chinese measures were in response to the US and the EC

safeguard measures. Therefore, the representative of the European Communities asked whether China would be ready to consider reviewing its own measure with a view to removing it in case the United States and the European Communities removed their own measures.

215. The representative of China pointed out that China had always been very faithfully and sincerely implementing the commitments and obligations that it had undertaken for its accession to the WTO and that this had been reflected not only in the legislations that China had put in place but also in the practices that China had heretofore been engaged in. The representative of China mentioned that regarding some of the questions, including some of the questions raised by the United States, answers had already been given in the Chinese responses that had already been provided to the Committee and suggested that the US delegates review those replies.

216. With regard to the more specific questions and the delay of the notifications, the delegate of China pointed out that the for the most part this delay was attributable to the government restructuring China had been engaged in starting from March or April 2003. The delegate of China stated that China would make the necessary modifications and changes to its legislations because of the restructuring of the Chinese government departments and then would notify these legislations to the Committee as soon as possible.

217. With regard to other questions, for example, the standards or criteria that China had used for defining developing countries, the representative of China pointed out that at least for the purpose of China's safeguard investigations, and other issues such as the treatment of non-WTO Members, these were actually questions that had already been covered by China's replies to the relevant questions. Regarding the question raised by the EC delegate concerning the early termination of the safeguard measure that China had imposed on certain imported steel products, the delegate of China stated that this question needed further consideration on their part. The delegate of China repeated that whatever decision China was going to take, it would be in conformity with the WTO rules, the obligations that China had undertaken, as well as China's domestic law.

218. Regarding the Committee's report on the review, the Chairman noted that there were no guidelines for the report contained in the Protocol. In the previous year in the Committee, the Committee had agreed that the Chairman, acting on his own responsibility, could prepare a brief, factual report, with references to the documents concerned, and attaching the portion of the minutes of the meeting which related to the transition review. The Chairman asked the Members of the Committee whether the Committee should follow the same procedure this year. It was so decided.

F. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS

219. The Chairman noted that pursuant to Article 13.1(a) of the Agreement, the Committee was to monitor the general implementation of the Agreement, and report on this annually and make any recommendations toward its improvement to the Council for Trade in Goods.

220. Concerning the preparation and adoption of the Committee's annual report, the Chairman also noted that at its special meeting of 24 February 1995, the Committee had decided to follow the same procedure as in the Tokyo Round Committees on Anti-Dumping Practices and Subsidies and Countervailing Measures. In accordance with this procedure, a draft of the report, in the form of a factual summary of the Committee's activities during 2003, had been prepared by the Secretariat. A preliminary draft of this report, with two tables contained in Annexes 1 and 2, had been made available to Members by fax on 10 October.

221. The Chairman stated that following some initial reactions from one Member in particular, the Secretariat had attempted to make the table contained in Annex 2 of the preliminary draft report more useful by producing two additional tables, which had been sent to Members by fax on 15 October.

The Chairman proposed to use these additional tables instead of the table initially sent out on 10 October. The first table, Attachment I, identified safeguard actions since the previous annual report. The second table, Attachment II, set out the investigations then underway, and the measures then in force.

222. The Chairman suggested that the Committee consider the draft report paragraph by paragraph, with an opportunity for comments on each one. Members would also have an opportunity to comment on the format of the tables to be included in Annex II to the report. The Chairman suggested that the Committee proceed with this work in informal mode, although the Chairman would ask Members to subsequently confirm any changes to the factual data contained in the Annex 2 tables, formally.

223. The Chairman confirmed that the following information had been provided by the Members concerned regarding the status of investigations and/or safeguard measures in force:

- With regard to Bulgaria, the provisional safeguard measure imposed in the context of the investigation on ammonium nitrate had been terminated and that this also meant a *de facto* termination of the investigation,

- With regard to Chile, the only safeguard measure in force was that relating to steel and that the measures on man-made socks and fluid milk had expired automatically at the end of the second year or their application,

- With regard to Argentina, the safeguard measure on footwear had expired on 21 July 2003 and that the investigation on toys had been terminated without any measure on 21 February 2001,

- With regard to Korea, the safeguard measure on garlic had expired on 31 December 2002.

224. The Committee adopted the annual report as amended.

G. DATE OF THE NEXT REGULAR MEETING

225. The Chairman recalled that 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 Subsidies and Countervailing Measures. The Committee on Anti-Dumping Practices and subsidiary bodies would meet between 20-23 April 2004, and the Committee on Subsidies and Countervailing Measures would meet in the following week along with the Negotiating Group on Rules. Accordingly, the Chairman suggested that the Safeguards Committee meet on Monday, 19 April 2004.

226. The Committee so agreed.