

WORLD TRADE ORGANIZATION

G/L/129

29 October 1996

(96-4500)

Committee on Safeguards

REPORT (1996) OF THE COMMITTEE ON SAFEGUARDS

I. Organization of the work of the Committee

1. The Agreement on Safeguards entered into force on 1 January 1995. Pursuant to Article 13.1 of the Agreement, membership in the Committee on Safeguards is open to the participation of any Member indicating its wish to serve on it. Pursuant to a decision of the Council for Trade in Goods at its 20 February 1995 meeting, all WTO Members would be Members of the Committee on Safeguards, except for those that had explicitly indicated their wish to the contrary by 22 February 1995. No Member indicated such a wish, and accordingly, at its meeting of 24 February, the Committee took note that, by virtue of the Council for Trade in Good's decision, all Members of the WTO are Members of the Committee.

2. Observer governments in the General Council of the WTO have Observer status in the Committee. In addition, at its special meeting of 13-14 July 1995, the Committee invited, on an *ad hoc* basis, representatives of the World Bank, OECD, and IMF to attend meetings of the Committee in an observer capacity. At its regular meeting on 25 October 1996, the Committee took note of the decision of the General Council regarding the status of international organizations as Observers to the WTO and authorized the Chairman to consult informally on which international intergovernmental organizations would be granted observer status in the Committee. Pending the outcome of such consultations, the Committee agreed to continue to invite those organizations which had been following the Committee's meetings on an ad hoc basis.

3. The focus of this report is on the period since the Committee's last annual report (G/L/32), that is, November 1995-October 1996. However, where relevant, information from the previous period is reported. During the period under review the Committee held three meetings. The regular meeting of the Committee was held on 25 October 1996 (G/SG/M/7). Special meetings of the Committee were held 11-12 December 1995 and 6 May 1996 (G/SG/M/5+ Suppls. 1 and 2, and G/SG/M/6, respectively).

4. Mr. Jorge A. Ruiz (Argentina) was appointed Chairman of the Committee for 1995-1996. At its meeting of 24 February 1995, the Committee decided to elect its own officers, Chairman and Vice-Chairman. The Committee at its special meeting of 13-14 July 1995 elected Mr. András Lakatos (Hungary) as Vice-Chairman for 1995-1996. At its special meeting of 6 May 1996, the Committee elected Mr. J. Antonio S. Buencamino (Philippines) as Chairman, and Ms. Laurence Wiedmer (Switzerland) as Vice-Chairman, for 1996-1997. Pursuant to the Committee's rules of procedure, Mr. Buencamino and Ms. Wiedmer took office at the end of that meeting.

5. At its special meeting of 6 May 1996, the Committee agreed to add a second regular (Spring) meeting to its annual meeting schedule. This meeting will be scheduled in conjunction with the Spring meetings of the Committees on Anti-Dumping Practices and Subsidies and Countervailing Measures.

6. At its special meeting of 6 May 1996, the Committee adopted Rules of Procedure for Meetings of the Committee on Safeguards (G/SG/4), based on the Rules of the General Council and of the Council

for Trade in Goods, and incorporating relevant changes to make them applicable to the Committee. The Council for Trade in Goods subsequently approved the Committee's Rules of Procedure at its meeting of 22 May 1996.

II. Notification and examination of safeguards laws and/or regulations of Members

7. In the area of safeguards, WTO rules are implemented through Members' national legislation. Pursuant to Article 12.6 of the Agreement, as amplified by a decision of the Committee, Members with available legislation and/or regulations regarding safeguards investigations or reviews covered by the Agreement should notify the full and integrated text of the relevant legislation and/or regulations to the Committee. If such legislation and/or regulations do not exist or are not available, the Member should inform the Committee of this fact, and in the case of non-availability, explain the reasons therefor. These notifications have been treated as unrestricted documents from the outset. In addition, the Committee decided at its special meeting of 24 February 1995 that Observer governments should provide the Committee with any information the Observer governments consider relevant to matters within the purview of the Agreement, including the text of their laws and regulations regarding safeguard actions, and information regarding any safeguard measures taken by the Observer governments.

8. As of 25 October 1996, 65 Members¹ had notified the Committee of their domestic safeguards legislation or made communications in this respect to the Committee (G/SG/N/1 and addenda). Forty-five Members had not, as of that date, made notifications under Article 12.6 of the Agreement, although the deadline for such notifications was 15 March 1995. The Annex lists the status of notifications under Article 12.6 of the Agreement. The issue of the extent of the non-compliance with this notification obligation, and the implications of this situation, were discussed at meetings of the Committee during the review period (G/SG/M/6, paras. 29-30; and G/SG/M/7).

9. Of the 65 Members submitting notifications, 36 notified that they had no specific legislation relating to safeguards, 9 notified new legislation, and 20 notified pre-WTO legislation still in force. Of the 56 Members notifying either no safeguards legislation or pre-WTO legislation still in force, 20 indicated that new legislation is being considered or drafted. In addition, 13 Members indicated that the WTO Agreement has force of law in the territory of the Member.

10. During the period under review, the Committee continued the work of reviewing the notifications of new or amended safeguards legislation and/or regulations begun in 1995. In addition to the legislations and notifications without legislative text reviewed during the previous period, the Committee reviewed the legislative notifications of the following Members: Argentina, Brazil, Cuba, Ecuador, El Salvador, Hungary, Israel, Japan, Macau, Mexico, Norway, St. Lucia, South Africa, and Turkey.

11. The Committee also reviewed the notifications without legislative text of the following Members during the period: Australia, Bolivia, Côte d'Ivoire, Dominican Republic, El Salvador, Guatemala, Guinea (Rep. of), Honduras, Iceland, India, Kenya, Malaysia, Maldives, Malta, Mauritius, Morocco, Myanmar, Nicaragua, Nigeria, Pakistan, Paraguay, Philippines, Poland, Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand, Trinidad & Tobago, Tunisia, Uruguay, Zambia, and Zimbabwe.

12. The substance of the review of legislative notifications is reflected in the written questions put to Members and the written answers to those questions. References to the questions and answers pertaining to each notification can be found in the minutes of the meetings at which the notifications were reviewed (G/SG/M/5+ Suppls. 1 and 2, G/SG/M/6 and G/SG/M/7).

¹Counting the EC as a single Member for purposes of the legislative notification.

13. As of early May 1996, the Committee had conducted an initial review of almost all notifications received to that point, in four special meetings. The Committee therefore decided that for the immediate future, review of legislative notifications should take place in the context of regular Committee meetings, rather than in special meetings called for that purpose.

14. The Committee adopted procedures for future reviews of legislative notifications (G/SG/W/116). The procedures for follow-up review of previously-reviewed legislation would be based on a process of written questions and answers, to facilitate productive discussions during the review sessions. The procedures for review of new and amended legislations would be the same as those used during the special meetings to review legislation.

15. Not all written questions put to Members during the course of the legislative review meetings had been answered at the end of the period under review. Nonetheless, the Chairman expressed satisfaction with the review process. Questions put to Members ranged from those regarding general, policy matters to very specific and highly technical questions of national administration of safeguard measures. Among the concerns raised by Members were perceived inconsistencies between the Agreement and both newly-enacted legislation and legislation enacted prior to the entry into force of the Agreement. In addition, Members expressed concern regarding the potential for actions inconsistent with the Agreement if such actions are based on legislation enacted prior to the entry into force of the Agreement. Another concern was the complexity of the procedural and substantive requirements of the Agreement, and the need for significant training and education, particularly for new users of safeguard measures including developing countries, to ensure that actions were taken consistently with the Agreement.

III. Notifications of pre-existing Article XIX measures

16. During the review period, the Committee continued its review of measures covered by Article 10 of the Agreement, *i.e.* pre-existing Article XIX safeguard measures, which are subject to notification pursuant to Article 12.7 of the Agreement. These notifications can be found in document series G/SG/N/2. In particular, at its 11-12 December 1995 meeting, the Committee reverted to its discussion of the notifications of such measures that it had commenced at its 6 November 1995 regular meeting. The comments of Members with respect to these notifications are reflected in the minutes of Committee meetings (G/SG/M/3, paras. 25-35; and G/SG/M/5, paras. 4-15). In connection with this review, it was noted that very few pre-existing Article XIX safeguard measures had been notified. The question was raised whether this meant that in fact only a small number of such measures existed, or whether it might reflect a failure to notify. The possibility of countrernotification of such measures, pursuant to Article 12.8 of the Agreement, was recalled.

17. At the 6 May special meeting, the representative of Nigeria indicated that Nigeria would notify to the Committee its pre-existing Article XIX measures which had been discussed during its balance-of-payments review earlier in the year (G/SG/M/6, paras. 42-43). As of the 25 October 1996 regular meeting, this notification had not been received.

IV. Notifications under Article 12.7 of measures subject to the prohibition and elimination of certain measures under Article 11.1

18. During the review period, the Committee continued its review of so-called "grey area" measures. These notifications can be found in document series G/SG/N/3. In particular, at its 11-12 December 1995 meeting, the Committee reverted to its discussion of the notifications of such measures that it had commenced at its 6 November 1995 regular meeting. The comments of Members with respect to these notifications are reflected in the minutes of Committee meetings (G/SG/M/3, paras. 38-56; and

G/SG/M/5, paras. 4-15). In connection with this review, it was noted that very few grey area measures had been notified. The question was raised whether this meant that in fact only a small number of such measures existed, or whether it might reflect a failure to notify. The possibility of counternotification of such measures, pursuant to Article 12.8 of the Agreement, was recalled.

V. Notifications under Article 11.2 of timetables for phasing out measures referred to in Article 11.1(b) or for bringing them into conformity with the Agreement.

19. During the review period, the Committee continued its review of timetables for the phasing out of "grey area" measures. These notifications can be found in document series G/SG/N/5. These timetables should provide for all such measures to be phased out or brought into conformity with the Agreement within four years after the date of entry into force of the WTO Agreement, subject to not more than one exception per importing Member, which may extend until 31 December 1999.² At its 11-12 December 1995 special meeting, the Committee reverted to its discussion of the notifications of timetables that it had commenced at its 6 November 1995 regular meeting. Subsequently, Slovenia and South Africa, which had notified that they had relevant measures, submitted notifications of their timetables for phasing out the measures or bringing them into conformity with the Agreement, and the EC submitted a supplement to its previously-notified timetables. The first of these notifications was reviewed at the Committee's 6 May 1996 special meeting, and the latter two at the 25 October 1996 regular meeting. The comments of Members with respect to these notifications are reflected in the minutes of Committee meetings (G/SG/M/3, paras. 57-59; G/SG/M/5, paras. 4-15; G/SG/M/6, paras. 3-6; and G/SG/M/7).

VI. Notifications under Article 12.1 of initiation of an investigation, making a finding, or applying or extending a safeguard measure

20. Under Article 12.1 of the Agreement, Members are required to immediately notify the Committee upon initiating an investigatory process relating to serious injury or threat thereof and the reasons for it, upon making a finding of serious injury or threat thereof caused by increased imports, and upon taking a decision to apply or extend a safeguard measure.

21. At its 11-12 December 1995 special meeting, the Committee reverted to its review of notifications under Article 12.1(a) of initiations of investigations from Korea and the United States that it had commenced at its regular meeting of 6 November 1995. (G/SG/N/6/KOR+ Suppl.1 and G/SG/N/6/USA.) Subsequently, additional notifications of initiations of investigations were received, from Brazil, Korea and the United States. (G/SG/N/6/BRA/1, G/SG/N/6/KOR/2 and KOR/3, and G/SG/N/6/USA/2 and USA/3.) These notifications were reviewed at the Committee's 6 May 1996 special meeting and 25 October 1996 regular meeting. The comments of Members with respect to these notifications are reflected in the minutes of Committee meetings (G/SG/M/3, paras. 5-24; G/SG/M/5, paras. 4-15; G/SG/M/6, paras. 7-11; and G/SG/M/7).

22. During the review period, a notification under Article 12.1(b) of a finding of serious injury or threat thereof caused by increased imports was received from the United States (G/SG/N/8/USA/1). This notification was reviewed at the Committee's 25 October 1996 regular meeting. The comments of Members with respect to this notification are reflected in the minutes of this meeting (G/SG/M/7).

²Only one such exception exists, *i.e.*, the EC's measure indicated in the Annex to the Agreement. All other Members had the opportunity to notify, within 90 days of the entry into force of the WTO Agreement, (*i.e.*, not later than 31 March 1995), a single such exception. No such notifications were received.

23. During the review period, a notification under Article 12.1(c) was received from Brazil concerning application of a provisional safeguard measure (G/SG/N/7/BRA/1). This notification was reviewed at the Committee's 25 October 1996 regular meeting. The comments of Members with respect to the notification are reflected in the minutes of this meeting (G/SG/M/7).

VII. Notifications under Article 12.5 Concerning Consultations Pursuant to Articles 12.3 and 12.4

24. Article 12.5 of the Agreement requires that Members notify the Council for Trade in Goods (through the Committee on Safeguards, per Article 12.10) of the results of consultations undertaken pursuant to Articles 12.3 and 12.4 of the Agreement, *i.e.*, pertaining to the imposition of safeguard measures or provisional safeguard measures, respectively. During the review period, one such notification was received, from Brazil, regarding the results of its consultations with the EC on Brazil's provisional safeguard measure (G/SG/5-G/L/110). This notification was reviewed at the Committee's 25 October 1996 regular meeting. The comments of Members with respect to the notification are reflected in the minutes of this meeting (G/SG/M/7).

VIII. Formats for notifications

25. At its 24 February 1995 special meeting, the Committee approved a series of suggested formats for the various notification obligations under the Agreement. These formats were originally circulated in document G/SG/W/1. Subsequently, certain of the formats were recirculated individually in documents G/SG/N/1-N/6. During the review period, the remaining formats were recirculated in document G/SG/1.

26. At its 6 May 1996 special meeting, the Committee adopted a format for notification of termination of a safeguards investigation where no safeguard measure is imposed. Although the Agreement does not require such notifications, the Committee decided that it would be desirable for transparency purposes to establish a mechanism for Members to communicate to the Committee that they had terminated or concluded an investigation which had been initiated and notified to the Committee under the Agreement, but which had not resulted in imposition of safeguard measures. The adopted format was circulated in document G/SG/2.

27. During the period under review, a notification of termination of a safeguard investigation where no safeguard measure is imposed was received from the United States (G/SG/N/9/USA/1). This notification was reviewed at the 25 October 1996 meeting of the Committee (G/SG/M/7).

IX. Other matters discussed by the Committee

28. Procedures for preparation and adoption of Annual Report: At its 6 May 1996 special meeting, the Committee considered the procedures for the preparation and adoption of its annual report adopted at its first meeting in February 1995, in light of suggestions from the Chairman of the General Council. The Committee decided that the Secretariat should prepare a draft report in the same format as had been used in the previous year's report, incorporating from that report those aspects of implementation that would help explain the progress that the Committee had made. The draft report would be circulated to Members in late September or early October, at which time the Committee would have to decide whether it should meet informally in advance of the regular October meeting to discuss any additional matters for inclusion in the report.

29. Progress in phasing out pre-existing measures: In accordance with a decision at its special meeting of 24 February 1995, Members reported to the Committee, at the 25 October regular meeting, as to their progress in phasing out pre-existing Article XIX measures and measures subject to prohibition and elimination under Article 11.1 of the Agreement. The comments of Members on this subject are reflected in the minutes of the meeting (G/SG/M/7).

30. Assistance under Article 13.1(b), (c) and (d): Pursuant to a decision of the Committee at its 6 November 1995 meeting, requests for assistance on matters referred to in Article 13.1(b), (c) and (d) are to be handled on an *ad hoc* basis. During the review period, no such requests were received by the Committee.

X. Concluding observations

31. The Committee considered that, in general, good progress had been made in the first two years in implementing the Agreement. However, the Committee considered that much remained to be done, and that additional efforts from Members were required in order to achieve full implementation of the Agreement.

32. The Committee observed that one of its major tasks during the first two years of the Agreement had been to review the domestic safeguards legislations notified by Members. The review exercise indicated that implementation in this regard was less than complete. Not all Members that are current or potential users of safeguard measures had completed the domestic legislative processes to incorporate the relevant requirements of the Agreement. Thus, further efforts were required in order to ensure substantive implementation of the Agreement. In addition, during the meetings to review notifications of legislation, a variety of issues regarding the WTO-consistency of notified legislation was raised. The meetings provided Members with an opportunity to seek clarification of issues arising out of other Members' legislation. Generally, Members were able to clarify the issues raised. Both Members notifying legislation and those submitting questions generally found the process helpful and wished to continue this work in the Committee. The Committee viewed it as extremely important that Members carefully consider all questions posed, comments made and replies provided in the context of these review sessions.

33. The Committee noted that the procedural and substantive requirements of the new Agreement were detailed, and that its implementation required substantial expertise and the commitment of substantial resources by Members. The Committee considered that maximum efforts should be made to assist Members, and in particular developing country Members, to achieve full implementation of the Agreement.

ANNEX
SAFEGUARDS LEGISLATIVE NOTIFICATIONS

MEMBER	NOTIFICATION PROVIDED
Antigua and Barbuda	
Argentina	G/SG/N/1/ARG/3
Australia	G/SG/N/1/AUS/1
Bahrain	
Bangladesh	
Barbados	
Belize	
Benin	
Bolivia	G/SG/N/1/BOL/1
Botswana	
Brazil	G/SG/N/1/BRA/3
Brunei Darussalam	
Burkina Faso	
Burundi	
Cameroon	
Canada	G/SG/N/1/CAN/2
Central African Republic	
Chad	
Chile	G/SG/N/1/CHL/1
Colombia	G/SG/N/1/COL/1
Costa Rica	G/SG/N/1/CRI/1 + Corr.1
Côte d'Ivoire	G/SG/N/1/CIV/1
Cuba	G/SG/N/1/CUB/1
Cyprus	
Czech Republic	G/SG/N/1/CZE/1
Djibouti	
Dominica	
Dominican Republic	G/SG/N/1/DOM/1
European Community	G/SG/N/1/EEC/1

MEMBER	NOTIFICATION PROVIDED
Ecuador	G/SG/N/1/ECU/1
Egypt	G/SG/N/1/EGY/1
El Salvador	G/SG/N/1/SLV/2
Fiji	
Gabon	
Gambia, The	
Ghana	G/SG/N/1/GHA/1
Grenada	
Guatemala	G/SG/N/1/GTM/1
Guinea Bissau	
Guinea, Rep. of	G/SG/N/1/GIN/1
Guyana	
Haiti	
Honduras	G/SG/N/1/HND/1
Hong Kong	G/SG/N/1/HKG/1
Hungary	G/SG/N/1/HUN/2 + Add.1 + Suppl. 1 & 2
Iceland	G/SG/N/1/ISL/1
India	G/SG/N/1/IND/1
Indonesia	G/SG/N/1>IDN/1
Israel	G/SG/N/1/ISR/2
Jamaica	
Japan	G/SG/N/1/JPN/2 + Corr. 1
Kenya	G/SG/N/1/KEN/1
Korea	G/SG/N/1/KOR/2
Kuwait	
Lesotho	
Liechtenstein	
Macau	G/SG/N/1/MAC/2
Madagascar	
Malawi	
Malaysia	G/SG/N/1/MYS/1

MEMBER	NOTIFICATION PROVIDED
Maldives	G/SG/N/1/MDV/1
Mali	
Malta	G/SG/N/1/MLT/1
Mauritania	
Mauritius	G/SG/N/1/MUS/1
Mexico	G/SG/N/1/MEX/1
Morocco	G/SG/N/1/MAR/1
Mozambique	
Myanmar	G/SG/N/1/MYM/1
Namibia	
New Zealand	G/SG/N/1/NZL/1
Nicaragua	G/SG/N/1/NIC/1
Nigeria	G/SG/N/1/NGA/1
Norway	G/SG/N/1/NOR/3
Pakistan	G/SG/N/1/PAK/1
Papua New Guinea	
Paraguay	G/SG/N/1/PRY/1
Peru	G/SG/N/1/PER/1
Philippines	G/SG/N/1/PHL/1
Poland	G/SG/N/1/POL/1
Qatar	
Romania	G/SG/N/1/ROM/1
Rwanda	
Saint Kitts & Nevis	
Saint Lucia	G/SG/N/1/LCA/1
Saint Vincent & Grenadines	
Senegal	G/SG/N/1/SEN/1
Sierra Leone	
Singapore	G/SG/N/1/SGP/1
Slovak Republic	G/SG/N/1/SVK/1
Slovenia	G/SG/N/1/SVN/1

MEMBER	NOTIFICATION PROVIDED
Solomon Islands	
South Africa	G/SG/N/1/ZAF/1
Sri Lanka	G/SG/N/1/LKA/1
Suriname	
Swaziland	
Switzerland	G/SG/N/1/CHE/1
Tanzania	
Thailand	G/SG/N/1/THA/1 + Rev.1
Togo	
Trinidad and Tobago	G/SG/N/1/TTO/1
Tunisia	G/SG/N/1/TUN/1
Turkey	G/SG/N/1/TUR/2
Uganda	G/SG/N/1/UGA/1
United Arab Emirates	
United States	G/SG/N/1/USA/1
Uruguay	G/SG/N/1/URY/1
Venezuela	G/SG/N/1/VEN/1 + Corr.1
Zambia	G/SG/N/1/ZMB/1
Zimbabwe	G/SG/N/1/ZWE/2