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MALAYSIA - NOTIFICATION IN PURSUANCE OF ARTICLE XVIII:C AND THE 1979 DECISION ON "SAFEGUARD ACTION FOR DEVELOPMENT PURPOSES"

Communication by Singapore

The following communication, dated 9 February 1995, has been received from the Permanent Mission of Singapore with a request that it be circulated to all WTO members.

The Government of Singapore wishes to express strong objection to the WTO document WT/L/32 dated 6 February 1995, containing the submission by the Government of Malaysia to the WTO Director-General, purporting to notify the WTO, under Article XVIII:C, of the prohibitions imposed on 7 April 1994 by the Government of Malaysia on imports of polyethylene (PE) (HS 3901.10.000 and 3901.20.000) and polypropylene (PP) (HS 3902.10.300 and 3902.30.000).

Singapore requests that the document not be accepted as a notification under Article XVIII in view of the undeniable fact that the document, on its face, demonstrates that Malaysia has not complied with the requirements of that Article. Specifically, in that document, Malaysia admits that the import prohibition was introduced from 7 April 1994. Paragraph 14 of Article XVIII requires, without exception, that notification be made prior to the introduction of measures. The 1979 Decision on Safeguard Action for Development Purposes, paragraph 2, cited by Malaysia, does not change paragraph 14's mandatory requirement that notification precede introduction of the measures. It permits less-developed countries to introduce such measures only "on a provisional basis immediately after notification." Measures taken more than nine months before notification cannot be the subject of an Article XVIII approval, and any document purporting to notify such measures must be rejected.

Singapore believes that since Malaysia submitted this notification more than 9 months after implementation of its import prohibitions on PE and PP, Malaysia is not entitled to make a notification or to be granted a release under Article XVIII:C. Furthermore, Singapore is of the view that WTO members should view the document as an attempt to delay Singapore's request for consultations on the same import prohibitions which was made to the Government of Malaysia on 10 January 1995, pursuant to Article XXIII:1 regarding the inconsistency of these measures with Malaysia's obligations under, *inter alia*, Articles XI and X and the WTO Agreement on Import Licensing Procedures.

Singapore requests that this matter be inscribed on the agenda of the first meeting of the Council for Trade in Goods on 20 February 1995.

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Additionally, in order fully to protect its rights, pursuant to Article XVIII:C.15 and Ad Article XVIII paragraphs 15 and 16, Singapore hereby requests that, within 30 days of receipt of Malaysia's communication, the Council for Trade in Goods request Malaysia to consult with the Council concerning its action. In making this request, Singapore in no way concedes that Malaysia's action is within the scope of Article XVIII:C.

Singapore supports the proper use of Article XVIII as an important tool in promoting economic development. Here, however, the requirements of Article XVIII itself have been ignored and not complied with by Malaysia.