RESTRICTED

G/C/M/1

27 March 1995

(95-0699)

WORLD TRADE ORGANIZATION

Council for Trade in Goods
20 February 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 February 1995

Chairman: Ambassador M. Endo (Japan)

The Chairman welcomed delegations to the first meeting of the Council for Trade in Goods of the World Trade Organization (WTO). He proposed that this being the first meeting of the Council, it should be devoted mostly to "housekeeping issues". He noted that the governments which had been granted observer status in the General Council and its subsidiary bodies through the decision taken at the meeting of the General Council on 31 January 1995 had been invited as observers to this meeting of the Council for Trade in Goods. He also drew attention to the fact that, in accordance with the "Ad hoc procedures on participation of certain international organizations in the work of the WTO Bodies" (WT/GC/COM/2) which were accepted at an informal meeting of Heads of Delegations to the General Council on 9 February 1995, the United Nations, UNCTAD, IMF and the World Bank had been invited to the first meeting of the Council for Trade in Goods. He welcomed the observer governments and the international organizations mentioned to the meeting.

1. Rules of Procedure

1.1 The Chairman drew attention to Article IV:5 of the WTO Agreement which foresaw the establishment by the Council for Trade in Goods of "rules of procedure subject to the approval of the General Council". He proposed to start very soon informal consultations for establishing such rules of procedures, and that until the next meeting of the Council for Trade in Goods, business be conducted on the basis of established GATT practice.

1.2 The Council so **agreed.**

2. Agreement on Trade-Related Investment Measures (TRIMs)

(A) Notification formats and procedures: notifications under Article 5.1 of the TRIMs Agreement (PC/IPL/8 paragraphs 2,4 and 5)

2.1 The Chairman stated that, the General Council, at its meeting on 31 January 1995, had remitted the question of notification procedures and formats to the respective Committees for implementation and action as appropriate. However, the TRIMS Agreement (Articles 5.1 and 5.5) provided that certain notifications be made to the Council for Trade in Goods. Also, a standard format for notifications under Article 5.1 had been agreed as well as suggestions for further work on notification requirements under the Agreement. He added that it would seem consistent with the decision taken by the General Council for the Council for Trade in Goods to endorse the format and to remit it and the other issues relating to notifications to the TRIMS Committee for further consideration and/or action as appropriate. This meant that the Committee on TRIMs would carry out the task assigned to the Council under the TRIMs Agreement with respect to notifications. As provided for in Article 7.3 of the TRIMs Agreement, the Committee on TRIMs would submit annual reports to the Council.

2.2 The Chairman proposed that the Council endorse the standard format and remit this and other issues relating to notifications to the Committee on TRIMs for further consideration and/or action as appropriate.

2.3 The Council so **agreed.**

(B) Notifications under Article 5.1 by governments which accept the Agreement after 1 January 1995 (PC/IPL/8, paragraph 6)

2.4 The Chairman stated that in the course of discussions held last year under the auspices of the Preparatory Committee, it was noted that the competent WTO body might need to examine at an early stage the question of the arrangements for notifications under Article 5.1 of the TRIMs Agreement by countries which were eligible to become original Members of the WTO but which accepted the WTO Agreement after its entry into force (document PC/IPL/8, paragraph 6). Specifically, the problem was raised that in these cases the period of ninety days provided in Article 5.1 might have expired at the time such countries accepted the Agreement. This matter had not been reflected in the Report of the Preparatory Committee and therefore no action had been taken on it by the General Council.

2.5 The Chairman proposed, therefore, that the Council for Trade in Goods request the Committee on TRIMs to consider this matter and to prepare any appropriate recommendations.

2.6 The Council so **agreed.**

3. Agreement on Preshipment Inspection (PSI)

- Legal status of the Independent Review Entity under Article 4 of the Agreement

3.1 The Chairman recalled that at its first meeting, on 31 January 1995, the General Council had assigned the subject of preshipment inspection to the Council for Trade in Goods. He also recalled that the Sub-Committee on Institutional, Procedural and Legal Matters, at its meeting on 7 October 1994, had requested the Secretariat, in consultation with interested delegations and with the International Federation of Inspection Agencies (IFIA) and the International Chamber of Commerce (ICC), to prepare a draft for formalising, in writing, the status of the ICC, the IFIA and the Independent Entity foreseen under Article 4 of the Agreement on Preshipment Inspection (PC/IPL/M/6, paragraph 60). The Secretariat had, since then, been engaged in consultations with interested delegations and with the ICC and IFIA. He requested the Secretariat to present an oral report on the state of these consultations.

3.2 The representative of the Secretariat stated that this report was being made on the Secretariat's responsibility. Since the request by the Sub-Committee on Institutional, Procedural and Legal Matters, on 7 October 1994, the Secretariat had convened six meetings of interested delegations, as well as consulted with delegations individually and with the ICC and IFIA. Some half dozen proposals had been on the table with a view to finding a solution to the question of legal liabilities of the Independent Entity, its staff and panellists. So far this had not been possible, as either some delegations or the ICC and IFIA had had problems with one or other option. However, from the consultations it was clear that delegations appreciated the problems and were desirous to find a solution to them. All concerned were also aware of the urgency of the matter. Indeed, from the last round of consultations it seemed that there was some hope that an option recently proposed might lead to a positive outcome. He recalled, furthermore, that the PSI Agreement had entered into force for all WTO Members on the date of entry into force of the WTO Agreement, that was 1 January 1995. However, Article 4 of the PSI Agreement (which related to the Independent Review Procedures), foresaw that the Independent Entity shall establish, within two months of entry into force of the PSI Agreement, a list of experts from which panellists shall be chosen. That meant that a delay of up to two months was provided before Article 4 could become operational. Given that the process of consultations had not yet concluded, it did not seem possible to meet this deadline of 1 March 1995. Thus, until a solution had been found to the questions of status and legal liabilities of the Independent Entity and of its staff and panellists, the Independent Entity would not come into existence and, therefore, no recourse could be made to it.

3.3 The Chairman proposed that the Council take note of the report; request the Secretariat to pursue its consultations with interested delegations and with the ICC and IFIA, with a view to putting forward a solution to the questions of the status of the Independent Entity and the legal liabilities of the Independent Entity, its staff and panellists, for consideration by all WTO Members; and agree to revert to this matter at its next meeting.

3.4 The Council so **agreed**.

4. Agreement on Safeguards

- Membership of the Committee on Safeguards

4.1 The Chairman stated that Article 13.1 of the Agreement on Safeguards provided for the following: "A Committee on Safeguards is hereby established under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it". The Agreement on Safeguards imposed obligations regarding safeguards on all WTO Members, irrespective of whether or not they were members of the Committee on Safeguards. Article 13.1 of the Agreement on Safeguards provided for a possibility of certain Members electing themselves out from the membership of the Committee on Safeguards. Since the Committee on Safeguards would discuss the safeguards notifications by all Members of the WTO, the membership of the Committee on Safeguards could be established on the basis that all WTO Members would be members of the Committee on Safeguards, with the exception of those WTO Members who expressly indicated their wish not to be a member of the Committee. This would preserve the possibility, mentioned in Article 13.1, for certain WTO Members who do not wish to be members of the Committee on Safeguards to opt out of membership of the body.

4.2 In view of this, the Chairman proposed that the Council for Trade in Goods consider all WTO Members to be members of the Committee on Safeguards unless they indicate otherwise by 22 February 1995.

4.3 The Council so **agreed.**

5. Understanding on the Interpretation of Article XVII of the GATT 1994

(A) Establishment of a Working Party on State Trading Enterprises

5.1 The Chairman drew attention to paragraph 5 of the WTO Understanding on the Interpretation of Article XVII of the GATT 1994, which provided that a Working Party shall be set up on behalf of the Council for Trade in Goods to review notifications and counter-notifications on state trading and to review, in the light of the notifications received, the adequacy of the questionnaire on state trading and the coverage of state trading enterprises.

5.2 In line with this, the Chairman proposed that the Council for Trade in Goods decide to establish a Working Party on State Trading Enterprises to carry out the tasks described in paragraph 5 of the Understanding on the Interpretation of Article XVII of GATT 1994, with membership in the Working Party open to all Members indicating their wish to serve on it.

5.3 The Council so **agreed.**

(B) Notification Requirement with respect to State Trading Enterprises under Article XVII of GATT 1994 (G/STR/1)

5.4 The Chairman drew attention to the note by the Secretariat in document G/STR/1, and again to the Understanding on the Interpretation of Article XVII of GATT 1994 which provided in paragraph 1, that in order to ensure the transparency of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods. The Understanding provided a definition of "state trading enterprise" and stated that notifications shall be made in accordance with the questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184), taking account of the provisions of the Understanding. In order to start the notification process under the WTO and in order that the Working Party on State Trading Enterprises be enabled to conduct its work on the basis of complete information and in a timely manner

in 1995, it was proposed that the first notifications on state trading enterprises under the WTO régime be "new and full" notifications.

5.5 With respect to the deadline for submission of notifications, the Chairman pointed out that according to the CONTRACTING PARTIES' Decision of 9 November 1962 (BISD 11S/58), contracting parties were invited to submit every third year beginning from January 1963 new and full notifications. However, this deadline was almost never observed. So, in order to give delegations sufficient time to prepare their notifications, and to ensure that the necessary material was before the Working Party as soon as possible, the deadline of 30 June 1995 had been proposed for the current year's notification obligation. With respect to all future notifications, the Working Party itself would decide what deadlines were appropriate.

5.6 The Chairman, therefore, proposed that the Council for Trade in Goods decide that the first notifications on state trading enterprises would be "new and full" and that the deadline for their submission would be 30 June 1995.

5.7 The Council so agreed.

6. Marrakesh Ministerial Decision on Notification Procedures

- Establishment of a Working Group on Notification Obligations and Procedures

6.1 The Chairman drew attention to the Decision on Notification Procedures, which was an integral part of the WTO Agreement and which was adopted by the General Council at its meeting of 31 January 1995. It provided that the Council for Trade in Goods would "undertake a review of notification obligations and procedures under the Agreements in Annex 1A of the WTO Agreement." The review was to be carried out by a working group which was to be established immediately after the date of entry into force of the WTO Agreement and in which membership was open to all Members.

6.2 In accordance with this, the Chairman proposed that the Council for Trade in Goods decide to establish a Working Group on Notification Obligations and Procedures to carry out the tasks set out in Part III of the Decision on Notification Procedures.

6.3 The Council so agreed.

7. Enlargement of the European Union: Accession of Austria, Finland and Sweden to the European Communities

- Communication from the European Communities (L/7617 and Add.1; WT/L/7; WT/L/22)

7.1 The Chairman stated that informal consultations held under the Chairman of the General Council had resulted in agreement on the establishment of a working party under Article XXIV of GATT 1994 and on its terms of reference as well as on the understanding on the basis of which the terms of reference would be adopted.

7.2 In this connection, the Chairman proposed that the Council for Trade in Goods establish a "Working Party on the Enlargement of the EC" with the following terms of reference and composition:

Terms of reference:

7.3 "to examine, in light of the relevant provisions of the GATT 1994, the accession of Austria, Finland and Sweden to the European Communities and to submit a report to the Council for Trade in Goods".

7.4 The terms of reference were to be adopted with the following understanding:

Understanding

7.5 "According to the Understanding on the Interpretation of Article XXIV of the GATT 1994 "all notifications under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of the GATT 1994 and of paragraph 1 of this Understanding". Paragraph 1 of the Understanding confirms that agreements leading to a customs union must satisfy, inter alia, the provisions of paragraphs 5, 6, 7 and 8 of Article XXIV. Similarly, the entire Schedules of concessions and commitments attached to the Marrakesh Protocol will be examined by the Working Party.

7.6 According to paragraph 5(a) of Article XXIV, the duties and other regulations of commerce affecting trade with WTO Members not participating in the customs union "shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce" applicable prior to the formation of the union. This implies that a working party established to examine a notification under paragraph 7(a) of Article XXIV has the mandate to examine the incidence and restrictiveness of all duties and regulations of commerce, in particular those governed by the provisions of the Agreements contained in Annex 1A of the WTO Agreement.

7.7 However, it should be kept in mind that the purpose of an examination in the light of paragraph 5(a) of Article XXIV would not be to determine whether each individual duty or regulation existing or introduced on the occasion of the formation of a customs union is consistent with all provisions of the WTO Agreement; it would be to ascertain whether on the whole the general incidence of the duties and other regulations of commerce has increased or become more restrictive. Accordingly, although the Working Party would conduct its examination in light of the relevant provisions of the Agreements contained in Annex 1A of the WTO Agreement, the conclusions of the Report of the Working Party would be confined to reporting on consistency with the provisions of Article XXIV.

7.8 On the occasion of the formation of a customs union a measure might be taken whose legal status under the WTO Agreement is not directly related to or does not depend on the consistency of the formation of the customs union with Article XXIV as such. The examination of incidence and restrictiveness of such a measure by a working party established under Article XXIV would not prevent any WTO Member from raising the question of the consistency of that measure in another WTO body competent to examine that issue, nor does the present arrangement prejudice the rights and obligations of any WTO Member under the WTO agreements.

7.9 I understand that it is expected that the Working Party should coordinate its working schedule with that of any other working party that may be established to examine the enlargement according to the relevant procedures of the WTO Agreement."

Membership:

7.10 The Working Party would be open to all Members of the WTO and other signatories of the Final Act that were contracting parties to the GATT 1947 and were eligible to become original Members of the WTO indicating their wish to serve on it.

7.11 The Chairman proposed that he be authorized to designate the Chairperson of the Working Party in consultation with the delegations principally concerned.

7.12 The Council so agreed

8. Interim Agreement between the Republic of Bulgaria and the European Communities

- Communication from the European Communities (L/7617 and Add.1; WT/REG1/1)

8.1 The Chairman drew attention to the communication from the European Communities contained in document WT/REG1/1 in which it indicated that the notification of the Interim Agreement between the European Communities and the Republic of Bulgaria which was originally notified to the GATT 1947 contracting parties in document L/7617 dated 23 December 1994 should be considered to be a notification also under the GATT 1994.

8.2 The Chairman proposed that the Council for Trade in Goods agree to establish a working party with the following terms of reference and composition:

Terms of reference:

8.3 "to examine, in light of the relevant provisions of the GATT 1994, the Interim Agreement between the Republic of Bulgaria and the European Communities and to submit a report to the Council for Trade in Goods."

8.4 He added that his statement concerning the understanding on the terms of reference of the Working Party for the Enlargement of the European Communities applied *mutatis mutandis* to this Working Party. It should be noted, however, that the two Agreements were different in nature: while the EC Agreement related to the enlargement of a customs union, the EC-Bulgaria Agreement was an interim agreement for the formation of a free-trade area.

Membership:

8.5 The Working Party would be open to all Members of the WTO and other signatories of the Final Act that were contracting parties to the GATT 1947 and were eligible to become original Members of the WTO indicating their wish to serve on it.

8.6 The Chairman proposed that he be authorized to designate the Chairperson of the Working Party in consultation with the delegations principally concerned.

8.7 The Council so agreed.

9. Interim Agreement between Romania and the European Communities

- Communication from the European Communities (L/7618 and Add.1; WT/REG2/1)

9.1 The Chairman drew attention to the communication from the European Communities contained in document WT/REG2/1 in which it indicated that the notification of the Interim Agreement between the European Communities and Romania which was originally notified to the GATT 1947 Council in document L/7618 dated 23 December 1994 should be considered to be a notification also under the GATT 1994.

9.2 The Chairman proposed that the Council for Trade in Goods agree to establish a working party with the following terms of reference and composition:

Terms of reference:

9.3 "to examine, in light of the relevant provisions of the GATT 1994, the Interim Agreement between Romania and the European Communities and to submit a report to the Council for Trade in Goods."

9.4 The Chairman stated that his statement concerning the understanding on the terms of reference of the Working Party for the Enlargement of the European Communities applied *mutatis mutandis* to this Working Party. It should be noted, however, that the two Agreements were different in nature: while the EC Agreement related to the enlargement of a customs union, the EC-Romania Agreement was an interim agreement for the formation of a free-trade area.

Membership:

9.5 The Working Party would be open to all Members of the WTO and other signatories of the Final Act that were contracting parties to the GATT 1947 and were eligible to become original Members of the WTO indicating their wish to serve on it.

9.6 The Chairman proposed that he be authorized to designate the Chairperson of the Working Party in consultation with the delegations principally concerned.

9.7 The Council so agreed.

10. Notification by Malaysia in pursuance of Article XVIII:C of GATT 1994 and the 1979 Decision on Safeguard Action for Development Purposes (WT/L/32)

- Communication from Singapore (G/L/2)

- Communication from Malaysia (G/L/3)

10.1 The Chairman drew attention to a communication from Singapore circulated in document G/L/2 which was in response to Malaysia's notification made in pursuance of Article XVIII:C and the 1979 Decision on Safeguard Action for Development Purposes. Malaysia had, since then, sent a communication which had been circulated in document G/L/3.

10.2 The representative of Singapore referred to document WT/L/32 of 6 February 1995, and stated that Malaysia had notified the WTO of its invocation of Article XVIII:C and of its application, since 7 April 1994, of quotas and import licensing measures for imports of certain petrochemicals. In document G/L/2 dated 15 February 1995, Singapore had objected to this notification and requested that this Council not accept Malaysia's communication as a notification under Article XVIII:C. Singapore supported the proper use of Article XVIII as an important tool in promoting economic development. However, in order to protect the interests of all WTO contracting parties, it was essential that the provisions of Article XVIII be complied with. Since this was the first case of an invocation of Article XVIII:C under the WTO Agreement, and since the import restrictions affected Malaysia's tariff bindings under the WTO Agreement, it was important for this Council to ensure that Article XVIII:C was not applied in a manner which would open a big loophole in the WTO legal system and which could undermine, in this case as in future cases, the rights of all contracting parties.

10.3 Article XVIII:C allowed a less-developed country to take measures inconsistent with other Articles of the GATT only under a number of conditions:

10.4 The first condition was prior notification of the proposed measures and of the special difficulties which prevented the country from achieving its objective through GATT-consistent measures. Contrary to this requirement, Malaysia's notification had come ten months after its unilateral imposition of import restrictions. Malaysia had explained neither the conditions under which import licenses would be issued by the Ministry of International Trade and Industry, nor the special difficulties which had prevented Malaysia from assisting its petrochemical industry through GATT-consistent measures. While the import restrictions were described as a "Customs (Prohibition of Imports) Order" in Malaysia's Official Gazette, Malaysia now claimed that this description was erroneous. Because there was no proper notification, it was impossible for CONTRACTING PARTIES to examine the requirement in Article XVIII:13 that no GATT-consistent measures were practicable to achieve Malaysia's policy objective. As Malaysia, since 1 January 1995, had accepted a thirty per cent tariff binding on two of the petrochemicals subject to import restrictions, Singapore could not see any reason why - only five weeks after the entry into force of these tariff bindings - GATT-consistent tariffs or production subsidies should no longer suffice to protect the petrochemical industry in Malaysia. All these problems illustrated that the procedural requirement of a proper notification was not a mere formality which could be ignored without impairing the rights of other contracting parties.

10.5 The second condition was that the contracting party invoking Article XVIII "shall not introduce that measure before the expiration of the time limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with the provisions of paragraph 18". Malaysia had clearly violated this obligation by introducing its import restrictions unilaterally ten months ago and without the concurrence of the CONTRACTING PARTIES. Again, this prohibition of unilateral import restrictions prior to their proper notification and consultations was not a mere formality but was essential for enabling adversely affected countries, like Singapore, to engage in consultations and protect their rights under the GATT. The Malaysian notification had invoked the 1979 Decision on "Safeguard Action for Development Purposes", but this Decision allowed Malaysia to deviate from these requirements only if it had been demonstrated by Malaysia that there were "unusual circumstances where delay in the application of (the) measures… may give rise to difficulties in the application of its programmes… of economic development", and only "to the extent necessary". But Malaysia had neither notified nor explained any such "unusual circumstances". The unilateral introduction of import restrictions was therefore clearly illegal also in this respect, and deprived contracting parties of their right to consult and therefore avoid disputes prior to the introduction of import restrictions.

10.6 Singapore was not contending that a party should lose its rights under Article XVIII or any other provisions of the Agreement for a minor, technical violation which harmed no one. GATT had operated in the past with a high degree of procedural flexibility, and it was Singapore's view that this need not change under the WTO. But it was also Singapore's considered view that a proper notification and consultations, as required by Article XVIII:C, were a necessary precondition for enabling the CONTRACTING PARTIES to examine the applicability of Article XVIII:C and to protect their rights before import restrictions were introduced unilaterally. His delegation regretted that Malaysia had chosen to ignore its procedural obligations under Article XVIII. The legal consequences of this should be borne by Malaysia and not by the other GATT contracting parties adversely affected by this. If the CONTRACTING PARTIES tolerated unilateral invocations of Article XVIII:C without proper notifications and without consultations in clear violation of the procedural requirements of Article XVIII:C, a huge loophole in the new WTO legal system would be created and a dangerous precedent would be set not only for Article XVIII but also for other notification and consultation requirements under the WTO Agreement. It would be very sad indeed if one of the first decisions of this Council was to endorse or tolerate such an undermining of the WTO legal system.

10.7 In its communication circulated as document G/L/2, Singapore had therefore requested the Council not to accept Malaysia's communication as a proper notification and invocation of Article XVIII:C because the procedural requirements of Article XVIII:C had obviously not been met. However, as a precautionary measure in case the Council did not share Singapore's view, and in order to protect its rights under Article XVIII:15, Singapore had also asked the Council to make the request to Malaysia, within 30 days of receipt of Malaysia's communication, to consult with the CONTRACTING PARTIES pursuant to Article XVIII:15 so as to clarify the purpose and contents of Malaysia's measures, and the means by which the rights and interests of adversely affected contracting parties like Singapore could be protected. He added that it was only proper that the Council, after having made such a request, should not proceed to consult with Malaysia under paragraph 16 of Article XVIII until the Council had reached a decision on the propriety of the Malaysian notification.

10.8 He emphasized that the note to Article XVIII:15 in the Annex to GATT 1994 gave Singapore the right to make such a request, because Malaysia's import restrictions had severely limited Singapore's traditional exports of the petrochemical products concerned and Singapore was clearly "appreciably affected" by Malaysia's import restrictions. After Malaysia had curtailed Singapore's rights by violating the procedural requirements of Article XVIII:C, Singapore hoped that this Council would meet its obligations and would not add to the injustice done by either accepting the invocation of Article XVIII:C or not requesting Malaysia to consult under paragraph 15 of Article XVIII:C, thereby condoning Malaysia's clearly illegal measures. Malaysia's unilateral introduction of clearly illegal import restrictions had compelled Singapore to request consultations under Article XXIII:1 in document WT/DS1/1 circulated on 13 January 1995. It was only afterwards that Malaysia had invoked Article XVIII:C. Singapore would be glad to settle this dispute in conformity with GATT rules without having to proceed to a dispute settlement proceeding, but this would require that Malaysia remove the offending import prohibitions.

10.9 The representative of Malaysia stated that this issue of polypropylene and polyethylene had been considered by the Dispute Settlement Body on 10 February 1995, and bilateral consultations had been held. A second round of consultations was due to take place in early March 1995. This matter was now inscribed as an agenda item for the meeting of the Council for Trade in Goods. However, Malaysia was of the view that as this matter had a developmental perspective it should fall within the competence of the Committee on Trade and Development.

10.10 The claim by Singapore in document G/L/2 that Malaysia was attempting to delay Singapore's request for consultations was totally incorrect as both countries were already actively engaged in bilateral consultations. In addition, the WTO Agreement had only entered into force on 1 January 1995, and in this regard, Malaysia was in the process of taking steps to assume its obligations to notify as required by the various agreements. Moreover, the notion that the measure in question was announced too late should be dispelled. For all practical purposes traders and interested parties knew about this measure three weeks prior to the effective date of its implementation, i.e. 7 April 1994. It was published in Malaysia's official gazette on 16 March 1994. Moreover, it was an established practice under GATT that procedural deficiencies should not be used to invalidate an action that would meet the substantive criteria established in the agreement. Additionally, Singapore's description of the measure in question as an import prohibition was erroneous. Licences had been issued during the period from 7 April 1994 to 31 December 1994 for imports of 209,457 metric tons of polyethylene and 45,995 metric tons of polypropylene. This represented a majority share of domestic consumption. In conclusion, he stressed Malaysia's willingness to look at all possible arrangements with a view to finding an amicable solution.

10.11 The representative of Indonesia, speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand stated that he viewed the matter under consideration with mixed feelings. On the one hand, he firmly believed in the new WTO dispute settlement mechanism as a core component of the strengthened multilateral trading system; on the other hand he was concerned that the first dispute case brought to the WTO Dispute Settlement Mechanism (DSM) involved two ASEAN partners. He

hoped that both parties would continue their consultations with a view to achieving a mutually satisfactory solution. In view of the possible ramifications of this issue, he proposed that the Chairman of the Council for Trade in Goods conduct consultations with both parties concerned; consultations which would be open to other interested delegations and whose results could then be reported to the next meeting of the Council.

10.12 The representative of Hong Kong stated that any "exception rule" to the provisions of the GATT had to be interpreted very narrowly; this point has been proven by GATT jurisprudence. By the same token, procedural requirements on the invocation of these "exception rules" had to be respected. Article XVIII provided a framework which would clarify the matter presently under consideration. However, he experienced feelings similar to those indicated by the representative of Indonesia, speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand, and supported their proposal that the Chairman should conduct informal consultations which might lead to an amicable resolution of this issue.

10.13 The representative of the United States shared Singapore's concerns regarding the notification by Malaysia under Article XVIII. If the Council decided to invite interested Members to consult on this matter, his delegation would understand that the scope of consultations would be sufficiently broad to encompass a discussion of all elements of Article XVIII, including the eligibility of Malaysia to invoke the provisions of Section C of Article XVIII. Apart from the issue of whether Malaysia had met the notification requirements under Article XVIII, the United States believed that the restrictions would be more appropriately addressed under other GATT articles. If Article XVIII was viewed to be the appropriate GATT article, then section D and not section C, would provide the relevant legal framework, within which such measures might be introduced, assuming that all other applicable conditions could be met. Furthermore, his delegation understood that these consultations were without prejudice to whether, as a threshold matter, Malaysia had properly invoked Article XVIII with respect to these measures or whether the notification was otherwise valid. His delegation expected to participate actively in consultations initiated under the auspices of the Council on Malaysia's notification.

10.14 The representative of the European Communities emphasized the importance of the point under discussion and in this regard regretted that Malaysia's notification had been submitted at a late stage. The proposal to hold consultations on this matter was important as well as useful and his delegation wanted to participate in such consultations. More generally, his delegation had some doubts regarding Malaysia's recourse to Article XVIII and in any case recourse to its section C. A certain degree of analysis was required as soon as possible in this connection.

10.15 The representative of Brazil stated that his delegation had always had a special interest in Article XVIII-related issues. As had been stated by the representative of Indonesia (speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand) and the representative of Hong Kong, the issue under consideration was difficult and viewed with mixed feelings. He supported the proposal made by the representative of Indonesia (speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand) that the Chairman of the Council for Trade in Goods undertake consultations on this matter. With respect to the statement made by the United States, he noted that in terms of the scope of consultations, since the issue of the applicability and eligibility of Malaysia was not put into question by Singapore it should not be part of the consultations that the Chairman of the Council for Trade in Goods would undertake.

10.16 The representative of Argentina supported the proposal that consultations be undertaken by the Chairman on this matter. He added that an evaluation of such an issue had to be carried out with wisdom and in a balanced manner, not only because it concerned a dispute between two developing countries but also because it would serve as a precedent for future situations when the multilateral trading system was strengthened by new Members whose economies were quite distinct from those of the current Members making up the system. The provisions on notification were a fundamental component in

ensuring transparency and predictability in the exercise of the rights, obligations and trade opportunities within the framework of the World Trade Organization; this was thus one of the cornerstones of the WTO for his delegation.

10.17 The representative of Canada stated that the issue under consideration was an important and systemic matter on which one had to proceed very carefully. He shared some of the views expressed by the representatives of Argentina and Hong Kong about the importance of following to the letter procedural rules. His authorities were still investigating whether or not Canada had a trade with Malaysia that was affected by this matter, but in any event Canada had an interest in the systemic issue, and reserved its right to participate in any consultations that the Chairman deemed advisable to set up.

10.18 The representative of Australia stated that her country had both a commercial and an important systemic interest in this matter and wanted to register its desire to be part of any consultative mechanism which was established by the Council. Her delegation wanted, in particular, to see the problem raised resolved to the satisfaction of all Members of the WTO, including third countries. She supported the points made by other delegations that it was extremely important to work together to see the established rules and procedures of the system upheld by all Members. In this regard, her delegation did have some questions or reservations on whether some procedural requirements on notification and consultations had been met.

10.19 The representative of Norway stated that his country supported the use of Article XVIII as an instrument in the promotion of economic development. It was, however, a prerequisite, that the introduction of such measures should follow scrupulously the time-frame laid down in that Article. He pointed out that the time-frame laid down in Article XVIII:C was there to enhance transparency and consequently the predictability of international trade and not for any academic or legal reasons. He hoped that the parties directly involved in this matter would, under the guidance of the Chairman, come to an amicable understanding.

10.20 The representative of Japan stated that the issue under consideration was important, not only from a commercial but also from a systemic point of view. It was for this reason that his delegation wanted to participate in future consultations that the Chairman would be undertaking.

10.21 The representative of Mexico hoped that the dispute, which was the object of consultations between Singapore and Malaysia, would be settled without the need to use the dispute settlement mechanism, which was one of the objectives clearly recognised in the Understanding on Dispute Settlement. He added that, if consultations were held, Mexico wanted to participate in them as an interested party, and to see which effects they might have on the system, in particular, as concerned notifications.

10.22 The representative of Egypt stated that his delegation had followed with interest this issue under consideration. He would have preferred to see this question settled earlier and bilaterally through consultations. However this was not the case, and he encouraged those delegations to continue bilateral consultations in an efficient and rapid manner in order to find a satisfactory solution to this problem. He supported the proposal made by the representative of Indonesia (speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand) that the Chairman conduct consultations on this matter and indicated his delegation's desire to be associated with these consultations.

10.23 The representative of Pakistan stated that his delegation viewed the statements contained in the issued documents relating to this matter with mixed feelings. The issue no doubt raised important points of substance and procedure, including those relating to or affecting various GATT instruments, that could have a bearing on practices followed under provisions of special and differential treatment for developing countries. He expressed his delegation's support of the proposal made by the Indonesian

spokesman and its wish to participate in any consultations that the Chairman might desire to undertake.

10.24 The representative of Korea reserved his delegation's right to participate in consultations as an interested third party. The measure taken by Malaysia, in his delegation's view, did not conform with the requirement of prior notification and the requirement specified by the Agreement on import licensing procedures.

10.25 The representative of India stated that the matter was under examination in his capital. He pointed out that any article which dealt with governmental assistance to economic development was very important to his country and that his delegation had a systemic interest in this case. He supported the proposal made by the representative of Indonesia (speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand) that the Chairman undertake consultations on the matter. He expressed his delegation's interest in those consultations, and the hope that an amicable settlement between the two parties to the dispute could be reached through these consultations .

10.26 The representative of Morocco pointed out that the issue was a specific problem which should be treated in the light of the arguments presented rather than in the light of all problems which might result from Article XVIII. In this regard, it was worth noting that the idea should not be to renegotiate Article XVIII; this Article had already been the object of the most ambitious and vast negotiations. He supported the proposal made by the representative of Indonesia (speaking also on behalf of Brunei-Darussalam, the Philippines and Thailand) that consultations should be held by the Chairman in order to solve the issue under consideration.

10.27 The representative of Colombia stressed the importance of the subject for her delegation and the fact that her delegation would like to participate in the future in these discussions.

10.28 The representative of Switzerland stated that Article XVIII:C had provisions which might nullify or impair an advantage resulting from the General Agreement. Hence, it was a matter of avoiding an easy or abusive recourse to a provision concerning an infant industry. A country invoking section C had to make certain that any discipline contained therein was strictly observed. His delegation had a systemic interest in this matter and wanted to participate in consultations which might take place.

10.29 The representative of New Zealand stated that in view of the systemic interests involved, his delegation wanted to register its interest in being associated with any consultations which might be convened.

10.30 In light of this, the Chairman indicated his intention to pursue consultations on the notification by Malaysia, (WT/L/32), as requested in the communication from Singapore, (G/L/2). In authorizing him to undertake these consultations, the Council for Trade in Goods would have requested Malaysia to consult on its notification under Article XVIII, paragraph 15, without prejudice to the outcome of the informal consultations. The results of these consultations would be reported to this Council. The Chairman therefore proposed that the Council take note of the statements and comments made, and authorize him to undertake consultations on this matter.

10.31 The Council so **agreed**.

11. Use of Spanish as a working language in the Technical Committee on Rules of Origin

11.1 The Chairman recalled that the issue of the use of Spanish as a working language in the Technical Committee of Rules of Origin set up under the auspices of the World Customs Organization in Brussels had been flagged initially at the General Council meeting of 31 January 1995 by Chile and Argentina. The point had been made again, more forcefully, at the first meeting of the Technical Committee on

Rules of Origin in the week of 6 February 1995 in Brussels by Spanish-speaking delegations. This item had been included in the agenda of the present meeting upon request by Chile.

11.2 The representative of Chile recalled that, at the first meeting of the General Council of the WTO, his delegation had stated its concern at the absence of Spanish as a working language in the meetings of the Technical Committee of Rules of Origin in the World Customs Organization (WCO). The first meeting of the Technical Committee had been held in the week of 6 February 1995, but it had been impossible to find a solution to this problem.

11.3 The matter was important and concerned the WTO because the Technical Committee on Rules of Origin was established under the provisions of the WTO Agreement on Rules of Origin. In fact, in order to participate in the Technical Committee on Rules of Origin it was necessary for countries concerned to be Members of the WTO, whereas members of the WCO which were not Members of the WTO were only allowed to participate in this Committee as observers. Another element to be considered was that the WCO had been servicing the Technical Committee on Customs Valuation which had emerged from the Tokyo Round Agreement on Customs Valuation and where it was explicitly stated that Spanish, English and French would be the working languages. Finally, when the Agreement on Rules of Origin was negotiated, the WCO had agreed to serve as a forum for the Technical Committee in the full knowledge that Spanish was one of the working languages of the WTO.

11.4 Chile considered that the documentation and work of all bodies whose origin was attributable to the WTO should be done in the three working languages of the WTO. For this reason, he requested that the Council make a recommendation to the Committee on Rules of Origin requesting the WCO to ensure that the technical work on rules of origin be carried out in English, French and Spanish. Chile believed that, before the Technical Committee on Rules of Origin started its work, it was important to ensure that the necessary arrangements had been made by the WCO for the Committee's work to be carried out in Spanish.

11.5 The representatives of Argentina, Colombia, Venezuela, European Communities, Morocco, Peru, Mexico, Uruguay, Nicaragua, Brazil, El Salvador (also on behalf of Honduras), Paraguay, Dominican Republic, Bolivia, Indonesia (on behalf of ASEAN countries) supported Chile's request that the Council make a recommendation to the Committee on Rules of Origin requesting the WCO to ensure that the technical work on rules of origin be carried out in English, French and Spanish.

11.6 The Chairman proposed that the Council take note of the statements made and that it recommend to the Committee on Rules of Origin to request the World Customs Organization to ensure that work in the Technical Committee on Rules of Origin be carried out in English, French and Spanish.

11.7 The Council so **agreed.**

12. Appointment of Officers for the Committee on Market Access, Committee on Agriculture, Committee on Sanitary and Phytosanitary Measures, Committee on Safeguards, Working Group on Notification Obligations and Procedures, and Working Party on State Trading Enterprises

12.1 The Chairman stated that this item on appointment of officers to certain of the subsidiary bodies of the Council for Trade in Goods was on the agenda of this first meeting as provisions concerning election of Chairpersons did not exist in the texts of Understandings, Agreements, or in the terms of reference for these Committees or working party or group.

12.2 In order to enable these Committees, working party and group to be operational as soon as possible, and in accordance with the "Guidelines for Appointment of Officers to WTO Bodies", he

had undertaken consultations regarding possible chairpersons to these bodies. He reported on the results of these consultations as follows:

12.3 Committee on Safeguards: Mr. J. Ruiz (Argentina); Committee on Agriculture: Ambassador D. Tulalamba (Thailand); Committee on Market Access: Mr. J. St-Jacques (Canada); Committee on Sanitary and Phytosanitary Measures (SPS): Ambassador K. Bergholm (Finland); Working Group on Notification Obligations and Procedures: Mr. A. Shoyer; (U.S.); Working Party on State Trading Enterprises: Mr. P. May (Australia)

12.4 The Chairman proposed that the Council for Trade in Goods appoint these chairmen as set out.

12.5 The Council so **agreed**.

12.6 The Chairman also informed the Council that while he was aware that, according to the relevant Agreements, the chairpersons of other subsidiary bodies were to be elected by these respective bodies, his consultations had also covered these bodies. The results of these consultations were as follows, and should be taken into account when these respective bodies elected their chairpersons:

12.7 Committee on Subsidies and Countervailing Measures: Mr. O. Lundby (Norway); Committee on Anti-Dumping: Mr. M. Kumar (India); Committee on Trade-Related Investment Measures: Mr. V. Notis (Greece); Committee on Rules of Origin: Mr. C. Osakwe (Nigeria); Committee on Technical Barriers to Trade (TBT): Miss C. Guarda (Chile); Committee on Customs Valuation: Mr. P. Palecka (Czech Republic); Committee on Import Licensing: Mr. C. Mbegabolawe (Zimbabwe).

12.8 The representative of the European Communities thanked the Chairman for the efforts made in this difficult process. There were a number of delegations which were not entirely satisfied with the results including the Community. However, in a spirit of compromise and to ensure the good functioning of the system which was just beginning his delegation had decided to agree to the Chairman's proposal. He regretted that the representation of women at this level was poor, and pointed out that his delegation had made some proposals which would have corrected this deficiency. He hoped that the future selection process would pay more attention to this factor. Additionally, it had to be noted that the current distribution of officers was without prejudice to the future, and should not be considered a precedent regarding his delegation's future expectations.

12.9 The representative of Hong Kong stated that this process had been difficult and thanked the Chairman for the efforts made to reach agreement. His delegation was not happy with the results but would accept them in light of the difficulty in arriving at a deal. One important point was that of regional balance. Hong Kong had no problem with the idea of regional balance, but it should not be the main consideration and certainly should not be the starting point of the process. The objective was to find the right person for the job, and this was the underlying factor in the guidelines that Members had agreed to in their "Guidelines for Appointment of Officers to WTO Bodies": i.e. "the choice of a chairperson should primarily reflect the capacity of that person to undertake the special responsibilities required of such posts in the WTO system". There were other requirements such as rotation, or the nominee being Geneva-based, however within this framework a certain amount of flexibility could be given in order to accommodate the best person for the job. The remarks were not directed in any way against the officers chosen for they were all good, which is why Hong Kong had agreed to the list. However, the above mentioned factors had to be borne in mind when similar consultations were conducted in the future.

12.10 The representative of Morocco thanked the Chairman for the efforts undertaken to achieve agreement on this difficult question. He agreed with the representative of Hong Kong that focus should be on whether the person was the most appropriate choice. This chairperson would be serving the

Committee, the institution and the organization, and no region had a monopoly of competence. If it was possible to achieve balance among regions then that would be an additional advantage. From the point of view of general balance, his delegation and the delegations he represented were not fully satisfied with the results. The basis on which the current list of officers had been drawn up should not be considered a precedent for a future selection process.

13. Other Business

- Chairmanship of the Working Parties on the Free Trade Agreements between the Czech Republic and Slovenia, and between the Slovak Republic and Slovenia

13.1 The Chairman speaking under "Other Business" recalled that the Working Parties on the Free-Trade Agreements between the Czech Republic and Slovenia, and between the Slovak Republic and Slovenia had been established by the GATT 1947 Council at its meeting in June 1994. Simultaneously, the Chairman of the Council had been authorized to designate the Chairman of the Working Party in consultation with the delegations primarily concerned. He informed the Council that Ambassador Christer Manhusen (Sweden) had agreed to serve as Chairman of the Working Party on the Free-Trade Agreements between the Czech Republic and Slovenia, and between the Slovak Republic and Slovenia.

13.2 The Council **took note** of this information.

- Ad hoc procedures on participation of international organizations in the work of the WTO bodies - first meeting of the subsidiary bodies of the Council for Trade in Goods

13.3 The Chairman speaking under "Other Business" recalled that at the informal meeting of Heads of Delegation to the General Council on 9 February 1995, it had been agreed inter alia that, pending final agreement on guidelines for observer status for intergovernmental organizations in the WTO, the Chairman of the sectoral councils would consult on whether to invite certain organizations to the first meetings of their respective subsidiary bodies. On the basis of these consultations, the Chairman proposed that, without prejudice to what may be the final results of discussions on observer status for intergovernmental organizations, at the first meetings of the Committees which were subsidiary bodies of the Council for Trade in Goods, those international/intergovernmental organizations might be invited who, in the period before the conclusion of the Uruguay Round, ordinarily attended the meetings of:

1. Committees under GATT or Tokyo Round Codes where these existed; and/or

2. Relevant negotiating groups during the Uruguay Round.

13.4 On the above basis, the Chairman stated that the following international/intergovernmental organizations would seem to qualify for invitation to the first meeting:

Committee on Anti-Dumping: IMF, UNCTAD
Committee on Subsidies and Countervailing Measures: IMF, UNCTAD
Committee on Safeguards: None
Committee on Market Access: UNCTAD, IMF, WCO, IBRD, FAO
Committee on Import Licensing: IMF, UNCTAD
Committee on Rules of Origin: WCO, UNCTAD
Committee on Customs Valuation: IMF, UNCTAD, WCO
Committee on TRIMs: IMF, IBRD

Committee on TBT: IMF, UNCTAD, ITC (UNCTAD/GATT), International Organization for Standardization, International Electrotechnical Commission, FAO/WHO Codex Alimentarius Commission, International Office of Epizootics
Committee on SPS: Codex Alimentarius Commission, International Office of Epizootics and the Secretariat of the International Plant Protection Convention.

13.5 He had not proposed any international/intergovernmental organization to be invited to the Committee on Agriculture, in view of the fact that, at its first meeting, the Committee was likely to discuss the Rules of Procedure in which *inter alia* it would be discussing to what extent observers could participate in meetings of the Committee which might need to have restricted sessions while dealing with certain matters.

13.6 The representative of Hong Kong stated that the International Textiles and Clothing Bureau used to be an observer in the Textiles Committee, but now with the disappearance of that Committee it had no link with the WTO, although the Bureau had applied for observership in the General Council. More thought would need to go into how to deal with this situation.

13.7 The Council **agreed** with the list of international/intergovernmental organizations which would qualify for invitation to the first meeting of its subsidiary bodies.