

**NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 12.6  
OF THE AGREEMENT**

Replies from Costa Rica<sup>1</sup> to Questions Posed  
by the United States<sup>2</sup>

The following communication, dated 16 April 1999, has been received from the Permanent Mission of Costa Rica.

**Question 1**

**Article 14 of the Regulations lists certain information to be included in the resolution for the opening of an investigation.**

- (a) **Article 2, paragraph 2 of the Agreement on Safeguards states that "[s]afeguard measures shall be applied to a product being imported irrespective of its source" - that is, on an MFN basis. Does the reference in Article 14(e) with respect to country or countries of origin of imports indicate that the focus of the investigation will be on imports from certain countries, with imports from other countries to be excluded? Or is the intent to identify the chief supplying countries? If the intent is the latter, the text should be clarified.**
- (b) **Does the reference in Article 14(g) to a description of like or directly competitive product mean that the investigating authority will have decided certain issues relating to domestic industry prior to the opening of the investigation? Or is the intent to set out what *applicant has alleged* is the like or directly competitive domestic product? If the intent is the latter, the text should be clarified.**

**Reply**

- (a) Under clause (e) of Article 14 of the Central American Regulations on Safeguard Measures (hereafter "the Regulations"), the resolution for the opening of an investigation shall mention the "country or countries of origin or provenance of the imports under investigation". This should be understood as referring to all the countries from which imports come and not merely the chief supplying countries. Costa Rica considers that this text is not confusing.
- (b) The purpose of clause (g) of Article 14 of the Regulations is to determine, on the basis of an analysis of the evidence submitted in accordance with Article 10 of the Regulations, which product is the like or directly competitive product.

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<sup>1</sup> G/SG/N/1/CRI/2.

<sup>2</sup> G/SG/Q1/CRI/1.

## **Question 2**

**Why does Article 15 give interested parties only 45 days in a six-month proceeding to submit rebuttals and evidence? Is this sufficient time for importers, exporters, and others with an interest in the proceeding to be made aware of the proceeding, to retain legal or other counsel to represent them, and to prepare a response that addresses the principal issues?**

### **Reply**

It should not be considered, in the light of Article 15 of the Regulations, that in the proceeding there is only a forty-five day period for interested parties to submit rebuttals and evidence. The Article also provides for the possibility that, at the request of the interested party, this period may be extended for up to thirty days. This time-limit is sufficient and allows ample opportunity for interested parties to submit rebuttals and evidence. It should be stressed that the WTO Safeguards Agreement does not establish a specific time-period.

## **Question 3**

**How does Article 15 relate to Article 17, which states that "[a]ny interested party may submit its statements during the period of the investigation, together with evidence in support of those statements"?**

- (a) **Is the submission described in Article 15 an initial submission?**
- (b) **Can a person become an interested party at any time?**
- (c) **Can a person with an interest in the proceeding, regardless of whether it is an interested party, submit evidence at any time even if it did not submit a rebuttal within the 45-day period referred to in Article 15?**

### **Reply**

- (a) The period laid down in Article 15 of the Regulations allows interested parties ample opportunity to exercise their right of defence through the submission of statements and evidence in support of their statements. Any rebuttals submitted outside this period is considered extemporaneous (i.e. falling outside the time-limit laid down by law). Nevertheless, the Regulations provide subsequent stages in the proceeding during which interested parties have an opportunity to furnish additional evidence or clarifications (Public Hearing, Article 22 of the Regulations).
- (b) A person may become an interested party at any time in the investigation proceeding, provided their standing is accredited by the investigating authority concerned.
- (c) A person having an interest in the proceeding, even if not an interested party within the meaning of Article 1 of the Regulations, may submit evidence at any time even if it did not submit a rebuttal within the forty-five day period referred to Article 15 provided its interest is accredited by the investigating authority and it accepts joining the proceeding at the procedural stage the proceeding has reached.

## **Question 4**

**What is the process under Article 19 for determining when the investigating authority will consider whether to recommend a provisional measure? For example, must a request for a provisional measure have been included in the application for a safeguard measure?**

Reply

Following the spirit of Article 6 of the Safeguards Agreement, the investigating authority may recommend the adoption of a provisional safeguard measure "in critical circumstances where delay would cause damage which it would be difficult to repair". Accordingly, Article 19 of the Regulations provides that if the elements exist to justify the application of a provisional measure, the investigating authority shall recommend such measure to the Minister concerned.

Taking the above into account, and considering that one of the prerequisites that must exist for these purposes is that a resolution for the initiation of an investigation should have been issued and published, it will be necessary to request the imposition of a provisional measure, in the application for the initiation of the investigation process, in cases where the process is initiated at the request of a party.

**Question 5**

**Is the public hearing referenced in Article 22 optional or required? Is 15 days' notice of the date of the hearing likely to be adequate notice?**

Reply

The public hearing is held under Article 3 of the WTO Safeguards Agreement and is mandatory. The period of 15 working days provided for in Article 22 of the Regulations for notifying interested parties that the hearing will be held is considered sufficient given that, as mentioned, these are working days and not calendar days, which means that the period of notice under the national legislation is in fact longer (roughly twenty calendar days). It should also be emphasized that interested parties have been given the opportunity to intervene earlier in the investigation proceeding.

**Question 6**

**Article 7, para. 1 of the Agreement on Safeguards provides that a Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury "and to facilitate adjustment". How does Costa Rica plan to consider the "facilitate adjustment" requirement in determining whether to apply a measure? Will the "final resolution" described in Article 26 address how the measure will "facilitate adjustment" within the meaning of that term in Article 5:1 of the Safeguard Agreement?**

Reply

Under Article 5 of the Safeguards Agreement, in order to be able to apply a safeguard measure to prevent or remedy serious injury and to facilitate adjustment, the domestic industry concerned has to submit an adjustment plan to the corresponding investigating authority, which will then analyse the viability of the plan.

Likewise, Article 29 of the Regulations (Duration of Safeguard Measures) provides that such measures shall be "of an exceptional and temporary nature, and shall be in force only as long as necessary to prevent or redress the serious injury which caused them to be applied, and to facilitate adjustment". Accordingly, the final resolution mentioned in Article 26 must take into account the elements that will facilitate adjustment, both in setting out the positive determination of injury or threat of injury and in justifying the expected duration of the measure.

**Question 7**

**Does the reference in Article 27 to taking into account "the commitments entered into in the framework of Central American integration" mean that a country applying a measure may exclude imports from, or structure relief to diminish the impact on, another Central American country? If so, under what condition?**

**Reply**

As established in Article 3 (Scope) of the Regulations, safeguard measures "shall apply to imports from third countries", in other words countries that are not parties to the General Treaty of Central American Integration. According to this Treaty, only the Central American countries shall be considered parties: hence, imports from any Central American country are not subject to the application of these measures.

**Question 8**

**Reference is made in Article 35 to publication of resolutions "at the cost of the interested party". Is the "interested party" the applicant, or all interested parties under the definition of interested party in Article 1, including foreign governments, assessed a publication cost?**

**Reply**

In the case of Costa Rica, the costs of publishing resolutions issued by the investigating authority referred to in Article 35 of the Regulations are covered by the government.

**Question 9**

**Article 3 of the Agreement on Safeguards addresses the issue of confidential treatment of certain information obtained during the investigation. Has Costa Rica established procedures consistent with its obligations under Article 3 for use in safeguard investigations? If so, have these procedures been notified to the Committee on Safeguards? If Costa Rica has not established such procedures, when does it intend to do so?**

**Reply**

The treatment of confidential information in Costa Rica is established in the legal system pursuant to Article 24 of the Political Constitution. Accordingly, the provisions of Article 3 of the Safeguards Agreement are a reaffirmation of a constitutional obligation that is part of our legal order. With regard to the case of information that is not confidential by nature but supplied as being confidential, the procedure followed is that laid down in Article 3, paragraph 2, of the WTO Safeguards Agreement.

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