

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

Replies to Questions Posed by the UNITED STATES¹

Regarding the Notification of ESTONIA²

The following communication, dated 11 June 2001, has been received from the Permanent Mission of Estonia.

Q1. *Increased imports requirement.* Section 120.1 of the Rural Development and Agricultural Market Regulation Act (hereinafter Act), which sets out the basis for applying a safeguard measure to imports of an agricultural product, generally tracks the language of Article 2.1 of the WTO Safeguards Agreement (hereinafter SA), but does not include the requirement that imports be in “such increased quantities”. Why has this requirement been omitted? [Note: the increased imports requirement is included in section 123, which is entitled “Obligation to conduct investigation”].

Reply

This requirement has not been omitted. Section 120.1 determines the general principle of applying safeguard measure under conditions to cause or threaten to cause serious injury to the domestic industry. Section 129 defines a serious injury or a threat to serious injury in greater detail reflecting the increased imports requirement principle of Article 2.1 of the Safeguards Agreement.

Q2. *Transparency, and adequacy of time to conduct investigation.*

- (a) Section 126.1 gives the competent authorities up to 15 working days (roughly 3 weeks) from the time of the petition is filed to decide whether to commence an investigation. The authorities would thereafter publish a notice of investigation in the official journal (*Ametlikud Teadaanded*).**
- (b) Section 126.2 states that the commencement of the investigation occurs on the date on which the notice is published in the official journal.**
- (c) Section 127 of the Act requires the competent authorities to complete their investigation in 2 months of receipt of the petition, and allows them an additional month in “exceptional cases”.**

¹ G/SG/Q1/EST/1

² G/SG/N/1/EST/2

- (d) **Section 128 requires that the administering authorities hold public hearings in all investigations, at which importers, exporters and other interested parties may present evidence and their views.**

This means that upwards of 4 weeks of an 8 week investigation period may have elapsed before notice of the investigation is published, and that the competent authorities will have at most 4 or so weeks to gather evidence, hold hearings, and make their decision. It also means that importers and other interested parties would likely be given virtually no time to retain counsel and prepare for a hearing and submit written evidence and views. Please explain how such a short schedule would:

- (a) **provide the “reasonable public notice to all interested parties” of public hearings and other appropriate opportunities at which to present evidence and their views, including opportunity to respond to the presentations of other parties, as required by SA Article 3.1; and**
- (b) **provide the competent authorities with sufficient time to compile a record that would provide a basis for making findings and reasoned conclusions on all pertinent issues of fact and law, and to publish a report to such effect, as required by SA Article 3.1?**

Reply

In case of Estonia the provided timeframes are reasonable and sufficient for two reasons.

Firstly, safeguard measures are designed only for emergency situations in agricultural market of Estonia. The investigation period represents uncertain conditions for importers, local industry and other interested parties. The shorter investigation periods were established in order to lessen the possible damaging effect of uncertainty.

Secondly, agricultural market of Estonia is concentrated and small-scale. The smallness enables greater flexibility and transparency for both the investigation authority and market parties concerned. Taking into account this factor, the timeframes are sufficient.

Q3. *Provisional relief.* Section 132.1 appears to allow Estonia to apply a safeguard measure on a provisional basis pending completion of an investigation if either of two conditions exist: (a) there is clear evidence that increased imports have caused or threatening to cause serious injury, “or” (b) if critical circumstances arise in the agricultural market whereby any delay in the application of safeguard measures would cause injury to a domestic industry which would be difficult to repair. SA Article 6 requires that both conditions must be present to find that critical circumstances exist.

- (a) **Please explain how section 132.1 is consistent with SA Article 6.**

Reply

Section 132.1 is not entirely consistent with SA Article 6. The Rural Development and Agricultural Market Regulation Act is scheduled to be amended during the second half of 2001, bringing section 132.1 into compliance with SA Article 6 requirements.

- (b) **Please explain the circumstances in which a provisional measure might be extended up to two times within the context of the overall limit of 200 days (in section 133 and SA Article 6), as suggested by section 132.3.**

Reply

The meaning of this provision (section 132.3) is that if the rate of the most-favoured customs duty as a provisional safeguard measure is increased up to two times, the Government shall decide on the application of provisional safeguard measure. In other cases (e.g. if the rate of the customs duty is increased more than two times) the Parliament shall adopt a decision. The overall limit of 200 days provided in section 133 applies without exception in both cases.
