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Committee on Safeguards

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

Replies of TURKEY to questions posed by AUSTRALIA¹, CANADA², JAPAN³, KOREA⁴ AND THE UNITED STATES⁵

The following communication dated 16 July 1996, has been received from the Permanent Mission of Turkey.

Replies to questions posed by Australia:

Q1. *While Article 2 of the Decree defines "domestic industry", the operational provisions in respect of injury generally refer to "the domestic producers ..." (e.g. Articles 1 and 6 of the Decree and Articles 1, 3, 9, 12 and 17 of the Regulation). Are these references to "the domestic producers ..." to be interpreted as meaning the same as "domestic industry"?*

A1. Our answer to this question is "yes". The references to "the domestic producers ..." are to be interpreted as meaning the same as "domestic industry".

Q2. *Could Turkey please explain the application of its safeguard legislation in respect of trade with the EC.*

A2. According to the provisions of Article 61 of the Association Council Decision (95/1) between Turkey and the EC, dated 6 March 1995, the Parties of the Customs Union confirm that the mechanism and modalities of safeguard measures provided for in Article 60 of the Additional protocol signed on 23 November 1970 remain valid.

¹G/SG/W/159

²G/SG/W/155

³G/SG/W/171

⁴G/SG/W/168 + Corr.1

⁵G/SG/W/174

Under Article 60 of the Additional Protocol, the Parties may take the necessary protective measures "if serious disturbances occur in a sector of the economy or prejudice their external financial stability, or if difficulties arise which adversely affect the economic situation of any region of the parties."

Therefore, in light of Article 60, Turkey may take safeguard measures for imports from the EC Member States within the framework of the legislation on safeguards.

Q3. *Is "unilaterally according to the provisions of the international agreements" in Articles 1(c) and (d) of the Decree interpreted as meaning in accordance with the provisions of the Safeguards Agreement? Could Turkey similarly clarify what is meant by Article 22(c) of the Regulation.*

A3. The principles regarding the safeguard measures to be taken within the framework of the Agreement on Safeguards are stated in Article 1(b) of the Decree.

Articles 1(c) and 1(d) of the Decree cover the principles concerning the quotas and tariff quotas to be applied to imports within the framework of the bilateral and multilateral preferential trade agreements or unilaterally according to the provisions of the international agreements other than the Agreement on Safeguards.

The implementation Regulation on quotas and tariff quotas was prepared separately and published in the Official Gazette dated 1 June 1995 (No. 22450).

In the case where the Committee for the Evaluation of Safeguard Measures and Surveillance for Imports decides to implement a quota as a safeguard measure, the allocation of this quota shall be made with respect to the provisions of the Implementation Regulation on Quotas and Tariff Quotas.

In general, Article 22(c) of the Regulation indicates that the provisions of the legislation on safeguard measures do not prevent the implementation of the provisions of other international agreements.

Q4. *Could Turkey clarify the meaning of "[t]he use of quotas in case tariff quotas are applied" in Article 1(d) of the Decree.*

A4. In Turkey, the Council of Ministers has the authority to decide the application of tariff quotas by reducing customs tariffs of a product or a group of products originating in a certain country or countries for a specific quantity or value within the framework of bilateral and multilateral preferential trade agreements or unilaterally according to the provisions of the international agreements.

Article 1(d) of the Decree covers the principles for the application of tariff quotas.

The procedures concerning the use of tariff quotas were determined by the Implementation Regulation on Quotas and Tariff Quotas.

Q5. *Could Turkey clarify which quotas are determined under Article 3(b) of the Decree and the reason for the different provisions in respect of quotas and tariff quotas (Article 3(b) and (c) of the Decree).*

A5. Article 3(b) of the Decree gives authority to the Undersecretariat for Foreign Trade for determining quantity or value of quotas as well as the principles concerning allocation of quotas to be applied within the framework of bilateral and multilateral preferential trade agreements or unilaterally according to the provisions of the international agreements, excluding the quotas to be applied in accordance with the Agreement on Safeguards. The quotas to be applied as safeguard measures under

the provisions of the Agreement on Safeguards can only be determined by the Committee on the Evaluation of Safeguard Measures and Surveillance for Imports mentioned in Article 4 of the Decree.

We would like to point out that, Article 3(c) of the Decree gives authority to the Undersecretariat for Foreign Trade the allocation of tariff quotas to be decided by the Council of Ministers.

For this reason, paragraphs (b) and (c) of Article 3 of the Decree include different provisions in respect of quotas and tariff quotas.

Q6. At which stage is the decision taken to impose provisional measures? If it is taken early on in the investigation, will the 200 day limit for provisional measures reduce the time periods allowed in Article 5 of the Regulation?

A.6 According to our Regulation on the Safeguard Measures and Surveillance for Imports, the provisional measures can be taken at any stage of the investigation after preliminary determination. If the provisional measure is taken early on in the investigation, the maximum 200 day limit for provisional measures will reduce the time period allowed in Article 5 of the Regulation.

Q7. The third paragraph of Article 12 of the Regulation sets out three factors without any hierarchy to be taken into account in determining the size of a quota. The factor in the second tiret is similar, though not identical, to the criterion in Article 5.1 of the Safeguards Agreement (in particular "[t]he average level of imports" would appear to be able to be assessed in terms of value rather than quantity). Is this paragraph interpreted to give priority to the criterion set out in Article 5.1 of the Safeguards Agreement?

A7. Our answer to this question is "yes". The third paragraph of Article 12 of the Regulation is interpreted to give priority to the criterion set out in Article 5.1 of the Safeguards Agreement.

Replies to questions posed by Canada:

Q1. What provision of the notified legislation establishes the causality test between the increase of imports and injury, as required by Article 4.2(b) of WTO Agreement on Safeguards?

A1. The main purpose of this legislation which was prepared in conformity with the Agreement on Safeguards is to determine whether the increase of imports cause serious injury or threat of serious injury for the domestic producers which produce like or directly competitive products. Therefore, the existence of a causality link shall be evidenced to take a safeguard measure.

An investigation is carried out to determine the existence of a causality link to take a safeguard measure. Otherwise, it is not possible to take a measure within the framework of this legislation.

Article 9 of the Regulation indicates the procedure to verify the existence of a causality link between an increase in imports and injury to the domestic producers.

On the other hand, Paragraph 3.4 of the Application Form (Annex II) which is an integral part of our Regulation clearly states that the aim of the collection of information requested in the Application Form is to establish the causality link between imports in question and injury.

Q2. *Where in the notified legislation is it indicated that the extension of an existing safeguard measure is possible only if there is evidence that the measure continues to be necessary and that the domestic industry is adjusting?*

A2. The conditions related to the extension of an existing safeguard measure are indicated in the second paragraph of Article 13 of the Regulation. The said paragraph which is in conformity with the provision of Article 7.2 of the Agreement on Safeguards, is as follows:

"In cases where it is necessary to continue the safeguard measures to prevent or remedy serious injury and determined evidence shows that the industries concerned are adjusting themselves, the period of the safeguard measures can be extended according to the results of a new investigation to be initiated in accordance with the terms of Part III and on the basis of the producers who cause the adoption of safeguard measures ...".

Q3. *Does the Turkish legislation and/or regulations allow for the possibility of having to provide compensation in the event that a safeguard measure is imposed?*

A3. Our answer to this question is "yes". As a matter of fact, Turkey's legislation allows for the possibility of having to provide compensation although there is no specific provision in the legislation.

According to Article 1(b) of the Decree, the international obligations shall be taken into account in the application of a safeguard measure.

On the other hand, Article 14 of the Regulation covers a provision regarding consultations that shall be held with exporter country/countries concerned in order to reach an agreement before applying a safeguard measure. This Article was arranged in light of Article 8 of the Agreement on Safeguards.

Q4. *Could the Turkish delegation indicate in what circumstances could retrospective surveillance be imposed as indicated in Article 10, Regulation On The Safeguard Measures For Imports?*

In the event that imports are subject to a surveillance measure and then subject to a safeguard measure, would an importer of the subject good have to provide both an import licence and surveillance documents for the goods to clear customs?

A4. As is stated in Article 10 of the Regulation, the purpose of surveillance is to monitor the developments in imports where the trend in imports of a product threatens to cause injury to the domestic producers.

If the Committee on the Evaluation of Safeguard Measures and Surveillance for Imports needs statistics on imports, earlier than usual, it can request the relevant authorities to submit statistics as soon as possible within the framework of the retrospective surveillance. In such a case, there is no need for a surveillance document in import of the subject product.

Both a safeguard measure and a surveillance are not applied to imports of the product at the same time. When a safeguard measure is imposed, surveillance in force is terminated. Therefore, the importers shall provide either an import licence or a surveillance document for the customs clearance of the product.

Q5. *Could the Turkish delegation explain in what circumstance would security be required from an importer seeking an allocation of quotas as noted in Article 9 of the Decree?*

A5. The purpose of establishing a security is to provide effective use of quotas and to realize the imports in question. The Council of Ministers has the authority to decide this implementation upon the proposal of the Committee on the Evaluation of Safeguard Measures and Surveillance for Imports.

Actually, the procedure concerning the allocation of quotas has been determined in the Regulation on Quotas and Tariff Quotas published in the Official Gazette dated 1 June 1995 (No. 22450).

The collected security shall be refunded to the importers after the realization of imports within the framework of the related provisions of the Regulation.

Q6. *In Part IV of the regulation entitled "Regulation On The Safeguard Measures For Imports" various administrative procedures are described relating to imports subject to surveillance. Article 11 provides details on surveillance documents and the role played by the Under-Secretariat. If the Under-Secretariat fails to provide the necessary document within five days, can the product in question still be imported and what are the appeal procedures available to the importer to obtain the document?*

A6. The Undersecretariat has the responsibility of providing the necessary document, free of charge, within five working days from the date of receipt of the properly prepared application. It should be pointed out that the Undersecretariat has restricted itself by five working days for the maximum period concerning the issuing of a licence in spite of a period of ten working days foreseen in the Agreement on Import Licensing Procedures. According to the Constitution of Turkey, public servants are under the obligation to carry out their duties with loyalty to the Constitution and Laws. Therefore, if the Undersecretariat fails to provide the necessary documents within the envisaged period, the importers have the right to apply to the administrative court which is independent from the Administration.

Q7. *Article 13, Part V of the regulation entitled "Regulation On The Safeguard Measures For Imports" states that the total application period of a safeguard measure cannot exceed 10 (ten) years. Please explain the consistency of this provision with that of Article 7 of the WTO Agreement on Safeguards which states that the total application period of a safeguard measure cannot exceed 8 (eight) years.*

A7. The implementation of this provision will be fully in conformity with the relevant provisions of the Agreement on Safeguards.

Q8. *In Article 22, Part VII of the regulation entitled "Regulation On the Safeguard Measures For Imports" reference is made to the fact that this Regulation does not prevent the application of other restrictions on import trade. Please explain what administrative procedures Turkish officials would follow in applying these potential trade restriction measures.*

A8. This Regulation covers the procedures and principles related to the implementation of safeguard measures except those that can be taken within the framework of the provision of Article 11.1(c) of the Agreement on Safeguards.

The provision of Article 22 of the Regulation simply indicates that the measures to be taken under the other international agreements and arrangements will be subject to their own provisions.

Replies to questions posed by Japan:

Q1. *Is the surveillance of imports provided for in the notified legislation a safeguard measure?*

(1) *If so, is the investigation conducted before the invocation of the measure?*

(2) *If not, how do you explain that this is not a measure which is prohibited by Article 11 of the Agreement on Safeguards?*

A1. Surveillance is not a safeguard measure. The purpose of surveillance is not to remedy serious injury or threat of serious injury, but to monitor the changes in the trend of imports of the product in question. Surveillance is instituted when it seems, on the basis of an analysis of the available data concerning the economic factors listed in Article 9 of the Regulation, that the trend of imports appears to threaten to cause injury to the domestic producers.

This is a very different situation from that described in Article 1(b) of the Decree and 1(b) of the Regulation, "Threat of serious injury", which, in accordance with the definition in Article 4.1(b) of the Agreement on Safeguards, means a clear threat of a significant overall impairment in the position of domestic producers which justifies the application of safeguard measures. Therefore, there is no reason, before applying a surveillance, to conduct an investigation.

Replies to questions posed by Korea:

Q1. *Article 6 of the Decree on the Safeguard measures and Surveillance, and Part IV of the Regulation on the Safeguard Measures and Surveillance for imports, prescribes the import surveillance measures to be taken "in case of importing a product in such increased quantities and/or conditions that can cause threat of injury, ...".*

Article 2 of the Agreement states that a safeguard measure is applied under such conditions as to cause or threaten to cause serious injury.

The Agreement also does not allow for any other measures prior to the safeguards investigation procedures stipulated in the Agreement.

We are of the opinion that import surveillance contravenes the provisions of the Agreement, and is also prohibited under Article 11 of the Agreement.

What explanations does Turkey offer concerning this matter?

A1. The purpose of surveillance is to monitor the developments in imports of the product in question. It does not restrain imports. It is an instrument to determine the trend of current and foreseeable imports of the product in question, when the trend threatens to cause injury to the domestic producers.

There are two kind of surveillance mentioned in our legislation.

"Retrospective surveillance" means that relevant authorities communicate, earlier than usual, statistics on imports affected.

"Prior surveillance" involves a system of automatic licences under the Agreement on Import Licensing Procedures. Import documents are issued, free of charge, within five working days, for any quantity requested.

Articles 1(a) and 5(a) of the Decree specify that surveillance may be adopted where "the trend in imports of a product threatens to cause injury to domestic producers".

This is a very different situation from that described in Article 1(b) of the Decree and 1(b) of the Regulation, "threat of serious injury", which, in accordance with the definition of Article 4.1(b) of the Agreement on Safeguards, means a clear threat of a significant overall impairment in the position of domestic producers which justifies the application of safeguard measures.

It is obvious that surveillance is not a safeguard measure. The purpose of the implementation of a surveillance is not to remedy serious injury or threat of serious injury. It is instituted solely to monitor the trend of imports of the product in question. Surveillance is instituted, when it seems, on the basis of the analysis of available data concerning the economic factors listed in Article 9 of the Regulation, that the trend in imports appears to threaten to cause injury to the domestic producers.

Q2. *Article 6 of the Decree on the Safeguard measures and Surveillance, and Part VI of the Regulation on the Safeguard measures and Surveillance for Imports, stipulates that, "If the provisional measure applied shall ensure the remedy of serious injury, it shall be applied in the form of making an increase in the customs duties of the product ...".*

This is in contrast with Article 6 of the Agreement on Safeguards which states that such measures should take the form of tariff increases. The Agreement, thus, does not place any conditionality on the provisional safeguard measures.

What is Turkey's explanation for this apparent inconsistency?

A2. In our view, the Agreement on Safeguards, by using the word "should", not the word "must", indicates a priority to be given to tariff increases, but does not entail a firm obligation to adopt such measures. In practice, taking its refundable nature into consideration, the tariff increases may be preferred.

Replies to questions posed by the United States:

Q1. *Article 3 of the Regulations describes the injury standard as whether "a product is imported in such increased quantities **and/or** on such conditions are to cause a serious injury of threat of serious injury. . . ." (emphasis added). Is "increased quantities" a necessary element for an affirmative injury determination?*

A1. The second paragraph of Article 12 of the Regulation sets out the conditions for the implementation of safeguard measures in imports from the WTO Member countries. The words "and/or" should be interpreted in light of the provision of Article 2 of the WTO Agreement on Safeguards.

In the case of a WTO Member, Turkey will apply safeguard measures only when a product is imported into Turkey in such increased quantities and on such conditions as to cause or threaten to cause serious injury to the domestic producers. In other words, a safeguard measure will be applied when both of the conditions required by Article 2.1 of the Agreement on Safeguards are met.

Therefore, increased quantity is a necessary element, but it is not sufficient for an affirmative injury determination. Other factors mentioned in Article 4 of the Agreement on Safeguards and in Article 9 of the Regulation shall be evaluated as well.

Q2. *Under Article 10 of the Regulations, is a formal determination of threat of serious injury necessary before surveillance may be undertaken?*

A2. Surveillance is applied on the basis of an examination of the economic factors set out in Article 9 of the Regulation, in cases where the trend in imports seems to threaten to cause injury to the domestic producers.

Surveillance is not a safeguard measure. Therefore, an investigation is not necessary. It can also be applied at any stage of the investigation after the preliminary determination, in cases where it is determined that the trend of imports threatens to cause injury to the domestic producers.

Q3. *Is surveillance a safeguard measure under Article 5 of the Agreement on Safeguards?*

A3. Our answer to this question is "no". Because, the purpose of surveillance is not to remedy serious injury or threat of serious injury. The purpose is to monitor closely the developments in imports of the product in question, not to restrain imports.

Q4. *How do "prior" and "retrospective" surveillance differ?*

A4. As is stated before, the purpose of surveillance is to monitor the developments in imports of the product in question, not to restrain imports. It is a mechanism (instrument) to determine the trend of current and foreseeable imports when the trend threatens to cause injury to the domestic producers.

Surveillance may be of two kinds: retrospective surveillance or prior surveillance.

"Retrospective surveillance" means that the Committee can request early submission of import statistics from the relevant authorities. In such a case, there is no need for a surveillance document for the import of goods.

"Prior surveillance" involves a system of automatic licences under the Agreement on Import Licensing Procedures. Import documents are issued, free of charge, within five working days, for any quantity requested.

Q5. *Article 12 of the Regulations lists limiting the period of validity of a Surveillance Document as a possible safeguard measure. By implication, does this mean that Surveillance Documents normally have an unlimited period of validity?*

A5. Our answer to this question is "no". This does not mean that surveillance documents have an unlimited period of validity. Generally, decisions introducing surveillance set the time-limits for their implementation. Otherwise, the general rule is that surveillance comes to an end at the end of the second 6 month period after it is introduced.

Q6. *The only mention of tariff-related safeguards actions in the provisions notified by Turkey are tariff quotas, mentioned in Article 3 of the Decree, and tariff increases as provisional relief mentioned in Article 7 of the Decree.*

(a) *Is a simple tariff increase permissible as a definitive safeguard action?*

(b) *Article 2 of the Decree defines a tariff quota as "to make a reduction or provide an exemption on the customs duties rates for a specific quantity or value of a product or group of products." (emphasis added). Does this mean that the use of a tariff quota under the Decree is limited to cases in which duties are being reduced?*

- A6. (a) According to the provisions of the legislation, tariff increases will be implemented only as a provisional safeguard measure.
- (b) The tariff quotas are outside the scope of the safeguard measures. The Implementation Regulation on Tariff Quotas was prepared separately and published in the Official Gazette dated 1 June 1995. According to this Regulation, the Council of Ministers has the authority to apply tariff quotas within the framework of international agreements or arrangements.

Q7. *Article 13 of the Regulations provides, among other things, that (a) relief may be provided for a total of ten years; and (b) the period between repeat safeguards measures on the same product is the greater of two years or half the period of the previous measure. How are these elements consistent with the provisions of paragraphs 3 and 5 of Article 7 of the Agreement on Safeguards?*

A7. The provision of Article 13 of the Regulation is in conformity with the provisions of Article 7.2, 7.3 and 9.2 of the Agreement on Safeguards.

It is clearly indicated in Article 1(b) of the Decree that, the safeguard measures shall be applied only for such period of time as may be necessary to prevent or remedy serious injury or threat of serious injury and to facilitate adjustments in the domestic industry.

The maximum total period mentioned in Article 13 of the Regulation is the same period as foreseen in the Agreement on Safeguards. In the implementation, in cases where it is necessary to extend the application period of a safeguard measure, the provisions of Articles 7.2, 7.3 and 9.2 of the Agreement on Safeguards will be observed.

The provision regarding the implementation of a new safeguard measure is covered in the fourth paragraph of Article 13 of the Regulation.

We believe that the misunderstanding appeared due to a translation error. The corrected translation of the fourth paragraph is as follows:

"Within the scope of the Regulation, no safeguard measure shall be applied to imports of a product which has already been subject to such measure, for a period of time equal to half that during which such measure has been previously applied, provided that the period of non-application is at least 2 (two) years."