

QUESTIONS CONCERNING THE NOTIFICATION PROVIDED
BY NEW ZEALAND¹ OF LAWS AND REGULATIONS
UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 27 October 1995, has been received from the Permanent Delegation of the European Commission.

PRELIMINARY OBSERVATIONS

Given the brevity of the text notified by New Zealand, it does not appear to meet the requirements of a rigorous discipline in respect of safeguards, which is the cornerstone of the Agreement on Safeguards.

There are a number of gaps in the text and the wording of many articles differs profoundly from the wording of the corresponding provisions of the Agreement.

In addition, certain provisions (e.g. Article 7, paragraphs 3 and 4), the application of which has a direct effect on economic agents, merely state that the measures to be adopted must be compatible with New Zealand's obligations as a Member of the WTO. Such a generic formula could well impair the transparency of the text and the legal certainty of economic operators.

The following points are particularly noteworthy:

(a) Conditions for the application of safeguard measures (Article 2, paragraph 1, of the Agreement on Safeguards)

Article 2, paragraph 1, of the Agreement on Safeguards stipulates that "*A Member may apply a safeguard measure to a product only if that Member has determined ... that such product is being imported into its territory in such increased quantities ... and under such conditions as to cause or threaten to cause serious injury to the domestic industry ...*".

Articles 5, 6 and 7 (2 and 3) of the New Zealand legislation concerning the conditions for the application of safeguard measures refer only to *importation which has caused or may cause injury*, without mentioning the two conditions provided for in Article 2 of the Agreement, namely importation in such increased quantities and under such conditions, and without pointing out that the injury must be serious.

¹G/SG/N/1/NZL/1.

In the Community's opinion, the provisions of the New Zealand legislation do not appear to be consistent with Article 2, paragraph 1, of the above-mentioned Agreement.

Can New Zealand explain the differences between the New Zealand legislation and the provision of Article 2, paragraph 1, of the Agreement on Safeguards?

(b) Provisional safeguard measures (Article 6 of the Agreement on Safeguards)

Article 6 of the Agreement on Safeguards lays down quite specific conditions for the application of provisional measures.

Can New Zealand indicate which Articles of its legislation reflect those provisions?

(c) Investigation (Article 3 of the Agreement on Safeguards)

The provisions of the New Zealand legislation concerning investigation are not fully consistent with the Agreement on Safeguards, particularly as regards the possibility for the interested parties to make known their views, to secure a hearing and to respond to the questions asked by the other parties. In addition, the New Zealand legislation contains no definition of interested parties.

Can New Zealand provide explanatory information on this subject and, in particular, make clear whether the representatives of a third country may be considered to be interested parties?

(d) Review of safeguard measures - progressive liberalization of such measures - interval between two safeguard measures (Article 7, paragraphs 4 and 5)

Can the New Zealand authorities explain why, with regard to the above-mentioned topics, the New Zealand legislation contains no specific provisions reflecting the obligations placed on WTO Members by the Agreement on Safeguards?