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Council for Trade in Goods

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STATEMENT OF THE SLOVAK REPUBLIC REGARDING SUSPENSION OF CONCESSIONS BY POLAND ON IMPORTS OF MARGARINE AND BUTTER FROM THE SLOVAK REPUBLIC

COUNCIL FOR TRADE IN GOODS MEETING – 5 OCTOBER 2001

The following communication, dated 5 October 2001, has been received from the Permanent Mission of the Slovak Republic.

The Slovak Republic is acting in accordance with its statement given on last meeting of the Council for Trade in Goods in July at which we expressed our disagreement with the proposed suspension of concessions on imports of margarine and butter from the Slovak Republic as presented in notification by Poland circulated in document G/L/453, G/SG/35 on July 2, 2001 and requested this notification to be put on the agenda of the next meeting of the CTG with the aim to seek a decision.

In notification making reference to provisions of Article 8.2 of the SG Agreement Poland claimed that safeguard measures imposed by the Slovak Republic on imports of sugar did not conform with provisions of the SG Agreement. The Polish side presented its view that the Slovak Republic acted inconsistently with various provisions of the SG Agreement and therefore the safeguard measure imposed by the Slovak Republic have nullified or impaired the benefits accruing to Poland directly or indirectly under the covered Agreement. In the light of these one sided determinations, Poland decided to take suspension of concessions on Slovak imports.

The Slovak Republic would like to reiterate its disagreement with the Polish position with regard to Slovak safeguard measure and is convinced that its safeguard measure was introduced in accordance with the provisions of the Agreement on Safeguards as a result of an absolute increases in imports during the last few years.

With the aim to solve these different views on the quantitative restrictions, imposed by Slovakia on imports of sugar, Poland requested on July 11th, 2001 consultations with the Slovak Republic, pursuant to Article 4 of the DSU, Article XXIII GATT 94 and Article 14 of the SG Agreement (request circulated in document WT/DS235/1, G/L/456, G/SG/D18/1). Until today two rounds of consultations have been held and consultations are still ongoing.

However, despite the fact that dispute on safeguard measures adopted by the Slovak Republic is ongoing under regular procedure accordance to the DSU and despite the fact, that the Slovak Republic on the last CTG meeting explicitly expressed its disagreement, the Polish side based on its unilateral determination proceeded to start the application of suspension of concessions on 1 August 2001 and is applying quantitative restrictions - quotas on imports of margarine and butter from the Slovak Republic.

The Slovak Republic did not dispute the right of a WTO member to take actions. But general principle must be observed by the WTO Members under WTO multilateral rules, that complaining party shall first seek authorization for any retaliation actions, because unilateral approach in decision making process seriously undermines rule based system within the WTO. We would like to recall in particular on Article 23 of the DSU which establishes a set of principles which prohibit unilateral actions by WTO Members to redress alleged violations of obligations, or nullification or impairment of benefits, under any of the WTO agreements. It explicitly states that "members shall not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB".

My delegation would like to emphasize that the Slovak Republic believes that this principle is very important element of the multilateral trading system and it is a pillar to keep our multilateral trading system in fair and balanced way. In this connection we would like to stress that the issue of unilateral actions goes beyond the bilateral dispute and it is a matter of principle. Unilateral actions contradict our efforts to strengthen multilateral trading system within the process of preparation of the IV. Ministerial conference.

In the view of the Slovak Republic, nor the unilateral determination of Poland that the safeguard measure imposed by the Slovak Republic have nullified or impaired the benefits accruing to Poland directly or indirectly under the covered Agreement nor consequent unilateral action taken without prior authorization does not have any legal grounds and are not consistent with provisions of the SG Agreement (Article 8.2 and 8.3) and provisions of the DSU (Article 23). The Slovak Republic wishes to present its strong objections to action taken by Poland which in our view is setting dangerous precedent and departure from existing rules within the WTO. We call on other WTO members to express their support for strengthening of the multilateral trading system by disapproving unilateral action taken by Poland.

In the light of the above, my delegation would like to request the CTG for decision:

- a) disapproving the measure notified by Poland in document G/L/453, G/SG/35 dated 2 July 2001;
- b) requesting Poland to withdraw immediately these quantitative restrictions applied on imports of margarine and butter from the Slovak Republic.

At the conclusion, I would like to inform the CTG that a written proposal is attached for circulation according to the rules of procedure.

DRAFT

Decision of the Council for Trade in Goods to the notification by
Poland under Article 12.5 of the Agreement on Safeguards (G/SG/35)

The Council for Trade in Goods, in accordance with Article 8.2 of the Agreement on Safeguards, disapproves the measure notified by Poland in document G/L/453 - G/SG/35 dated 2 July 2001 on suspension of concessions in the form of the quantitative restriction on imports of margarine and butter from the Slovak Republic, based only on unilateral determination without authorization. The Council for Trade in Goods requests Poland to withdraw immediately these quantitative restrictions applied as from 1 August 2001.
