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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Replies to Questions Posed by the EUROPEAN COMMUNITY¹, TURKEY²,
and the UNITED STATES³ Regarding the Notification of the CZECH REPUBLIC⁴

The following communication, dated 3 September 1999, has been received from the Permanent Mission of the Czech Republic.

Legal status of the WTO A-D Agreement in the Czech Republic

At the outset, the Czech authorities would like to comment on the legal status of the A-D Agreement in the Czech Republic.

The A-D Agreement is an international agreement which has to be incorporated into domestic law by a special act in order to impose duties and confer rights since, according to Article 10 of the Constitution of the Czech Republic, only international treaties dealing with human rights and fundamental liberties to which the Czech Republic is bound have direct effect.

Respective legal instrument incorporating the A-D Agreement into the Czech legal system is the Act No. 152/1997 Coll., on the protection against imports of dumped products and on the change and amendment of some laws (hereinafter referred to as "The Act") dated 17 June 1997 which came into effect on 10 July 1997. The Act was notified to the WTO and is subject of this review.

The Act implements into the Czech law provisions of the A-D Agreement. Since the Act contains a specific incorporation clause contained in Section 37 through which all provisions of the A-D Agreement may be applicable it is not aimed at reproducing the text of the A-D Agreement word-by-word. Instead it introduces into the domestic legal system some new terms, establishes domestic anti-dumping proceedings and determines authority responsible for A-D investigation. Other parts of the A-D Agreement are directly applicable through the incorporation clause. According to this clause provisions of this Act shall apply unless otherwise provided by the international treaty binding the Czech Republic and published in Collection of Laws. Thus, if a conflict arises, the provisions of the A-D Agreement prevail and the Czech authorities are obliged to act in a manner consistent with the A-D Agreement.

¹ G/ADP/Q1/CZE/1-G/SCM/Q1/CZE/1

² G/ADP/Q1/CZE/3-G/SCM/Q1/CZE/3

³ G/ADP/Q1/CZE/2-G/SCM/Q1/CZE/2

⁴ G/ADP/N/1/CZE + Corr.1 & G/SCM/N/1/CZE/1

QUESTIONS FROM THE EUROPEAN COMMUNITY

Q1. Is it foreseen to count the 30 - day time limit for replying to questionnaires from the date of receipt of the questionnaire, as provided for in Article 6(1.1) of the WTO Anti-Dumping Code?

Reply

Yes, the provision of Section 12 is consistent with Article 6.1.1 of the A-D Agreement. The time limit of 30 days is counted from the date of receipt of the questionnaire. The date of receipt is deemed to be one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country. An extension of the 30 - day time limit is foreseen as well.

Q2. An extended definitive duty or undertaking can be valid for longer than five years. Does this mean the extension itself can be longer than five years, or the total period of validity of the duty/undertaking can be longer than five years?

Reply

The Act is consistent with the principle that an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract injury caused by dumping. Any definitive anti-dumping duty and/or undertaking shall be terminated on the date not later than five years from the imposition or from the date of the most recent review initiated according to the Act. Section 32 of the Act makes any extension of the five year period conditional upon the review of the need for the continued imposition of definitive duty and/or undertaking. What is, therefore, meant is the total period of validity of a definitive duty and/or undertaking.

QUESTIONS FROM TURKEY

Q1. Could the Czech authorities explain what is meant by "justification of the application" in Section 8(1)(j)?

Reply

It is a formal brief summary of data and information provided by the applicant including a clearly formulated request for the initiation of anti-dumping investigation.

Q2. Could the Czech authorities clarify, in connection with Section 11 of the law, whether the government of the exporting member is deemed to be a participant of the investigation?

Reply

Although Section 11 of the Act does not explicitly mention the government of the exporting country, the Act provides ample opportunity to present in writing all evidence which it considers relevant in respect to the investigation and defend its interests. It will be informed of all essential facts under consideration and relevant to the investigation and will have the possibility to present comments before final determination is made.

Q3. It is stated in Section 12(1) of the law that participants of the investigation are obliged to provide information required. What consequences may result from failure to abide by such obligation?

Reply

No legal consequences result for participants who refuse access to, or otherwise do not provide requested information. However, when participants of the investigation do not cooperate and thus relevant information is being withheld from the authorities, respective determinations may be made on the basis of information available.

Q4. It is pointed out in Section 14 of the law that laws regulating commercial, economic, service and state secret are exempted from the confidentiality rule. Compared with Article 6.5 of the Agreement, are these exceptions not too broad, and, do they not undermine the rationale of the Agreement as regards the issue of confidentiality?

Reply

Provision of Section 14 is fully consistent with the A-D Agreement. According to the Act, a confidentiality of information means that such information shall not be disclosed without specific permission of supplying person. Section 14 of the Act does not exempt laws regulating commercial, economic, service and state secret. On the contrary, its purpose is to underline that relevant provisions of these acts are not affected and criteria for confidential treatment under the Act do not substitute criteria laid down in the Commercial Code and/or the Act on protection of state secret.

QUESTIONS FROM THE UNITED STATES

Q1. No provision in the Czech law refers to analyses of threat of material injury. Does the Czech Republic engage in threat analysis? If so, what factors are considered? Does any section of Czech law implement Article 3.7 of the A-D Agreement?

Reply

Yes, by introducing into the domestic legal system the term “threat of material injury” Section 6 of the Act provides the possibility to make determinations regarding threat of material injury. Article 3.7 of the A-D Agreement, including the factors contained therein, shall be implemented on the basis of the incorporation clause contained in Section 37.

Q2. Section 7(a) of the Czech law does not state what factors the investigating authority is to examine in analysing the volume of dumped imports. How does the Czech Republic implement the requirement of Art. 3.2 of the A-D Agreement that the investigating authorities shall consider whether there has a significant increase of dumped imports, either in absolute terms or relative to production or consumption in the importing Member?”

Q3. Section 7(a) of the Czech law also does not state what factors the investigating authority is to examine in analysing the price effects of dumped imports. How does the Czech Republic implement the requirement of Art. 3.2 of the A-D Agreement that “the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product of importing Member, or whether the effect of such imports is otherwise to depress price to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree?”

Reply (to both questions)

In injury determination, the Czech investigating authority shall examine both the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for a like product and the impact of these imports on the domestic producers of such a product. The implementation of the requirements of Article 3.2 of the A-D Agreement in respective anti-dumping investigations is secured through the incorporation clause contained in Section 37.

Q4. Section 8(1) of the Czech law requires only that one filing an antidumping petition be "natural or legal person with the place of business on the territory of the Czech Republic." Is there any further limitation on who may file petitions? How is Section 8(1) of the Czech law consistent with Art. 5.1 of the A-D Agreement, which requires that an application for antidumping measures be filed "on behalf of the domestic industry?"

Reply

No, there are no further limitations on who may file petitions. Although the Section 8.1 does not contain direct reference to an application filled on behalf of the domestic industry it is fully consistent with Article 5.1 of the A/D Agreement. In accordance with Section 8.2, an application shall be considered to be filed on behalf of the domestic industry if evidence of explicit support expressed by producers of the like product in the Czech Republic who represents more than 25 per cent of the total production of the like product is presented. Such evidence should be a part of any application for anti dumping investigation.

Q5. Section 10(1) of the Czech law apparently allows initiation of an investigation if the Ministry has evidence of dumped products.

- (a) **If this is referring only to the investigations initiated by the Ministry's own initiative, how does this provision satisfy Art.5.6 of the A-D Agreement, which requires evidence of injury and causation as well?**
- (b) **If this section is referring to the initiation of any investigation, how is section 10(1) consistent with the requirement of Art. 5.2 of the AD Agreement than an application must include evidence of injury and causation? How is Section 10.1 consistent with the requirement of Art. 5.3 of the A-D Agreement that the authorities must examine the adequacy of the injury allegations?**

Reply

Under Section 8(2)(g) of the Act the information on injury caused by imports of allegedly dumped products including monetary expression of its magnitude and information on available factors mentioned in Section 7.1(b) is required. Before initiating any anti-dumping investigation, the Czech investigating authority shall, in accordance with Section 37, examine adequacy and accuracy of evidence of both dumping and injury as well as other information contained in the application. No A-D investigation shall be initiated unless authorities determine that there is sufficient evidence of injury caused by dumped product.

Q6. Section 19(1) of the Czech law appears to permit imposition of provisional anti-dumping duties without prior comment of the parties. How is this consistent with Art. 7.1 of the A-D Agreement?

Reply

Section 19(1) is consistent with Article 7.1 of the A-D Agreement. No provisional measure may be applied unless antidumping investigation has been initiated, public notice has been made and parties have been given adequate opportunities to submit information and make comments. These requirements are reflected in Sections 10 and 12-16 of the Act.

Q7. Does Section 20(1) of the Czech law, like Art. 8.2 of the A-D Agreement, require that a preliminary affirmative decision regarding dumping and injury be made before a price undertaking may be sought or accepted?

Reply

Yes. Undertaking shall not be accepted or sought unless preliminary affirmative determination of dumping and injury is made.

Q8. Section 32(2) of the Czech law appears to make extending a duty or an undertaking mandatory if the exporters do not offer evidence to the contrary. How is this consistent with Art. 11.3 of the A-D Agreement, which states that an antidumping duty will be terminated after five years unless there is a determination that expiry of the duty will lead to continuation or recurrence of dumping and injury?

Reply

Section 32(2) is consistent with Article 11.3 of the A-D Agreement. Any extension of a definitive duty or an undertaking is not mandatory. According to Section 32(1) of the Act such an extension is possible only when the Czech investigating authority determines, in review initiated before expiration of the original date for application of duty or undertaking, that the expiry of the duty or undertaking would be likely to lead to continuation or recurrence of dumping and injury.

Q9. Does Section 32(3) of the Czech law allows an undertaking or duty to be extended for more than five years without subsequent review? If so, how is this consistent with Art. 11.3 of the A-D Agreement?

Reply

No. Section 32(3) provides that any extension of duty or undertaking is possible only when the Czech investigating authority determines in a review that the expiry of the duty or undertaking would be likely to lead to continuation or recurrence of dumping and injury.

Q10. Does the Czech law authorise a regional industry analysis, as described in Art.4.1(ii) of the A-D Agreement?

Reply

The possibility for a regional industry analysis is provided by Section 37 of the Act.

Q11. Does the Czech Republic engage in cumulative analysis when imports from more than one country are simultaneously subject to investigation, as authorised by Art. 3.3 of the A-D Agreement? If so, what criteria are applied?

Reply

Yes. Cumulative assessment of the effect of imports is possible provided that criteria set out in Article 3.3 of the A-D Agreement are met.
