

**STATEMENT BY THE POLISH DELEGATION CONCERNING  
SUSPENSIONS OF CONCESSIONS AGAINST SLOVAKIA  
UNDER ARTICLE 8.2 OF THE SAFEGUARDS AGREEMENT**

The following statement made on 5 October 2001, has been received from the Permanent Mission of Poland.

First of all the Polish delegation would like to confirm that the suspensions of concessions in the form of quantitative restrictions on imports of butter and margarine originating in Slovakia have entered into force as from 1 August 2001. The measure was imposed following the safeguard measure imposed by Slovakia on imports of sugar originating among other in Poland. The measure is in the form and of the level for the year 2001 as stated in the Polish notification to the Council for Trade in Goods from 27 June (G/L/453). It is our intention to keep the measure in force as long as the safeguard measure implemented by Slovakia on imports of sugar remains in force and the level of the quota shall be calculated (and liberalised) for each year so that its level remained equivalent to the level of restrictions imposed by Slovakia which are also liberalised every year.

It is Poland's view that the suspension of concessions was applied in conformity with the article 8.2 of the SG Agreement as all the necessary preconditions for such action were met i.e.:

- there was no agreement between the both parties on trade compensations for Poland for the adverse affect on trade resulting form the safeguard measure imposed by Slovakia,
- the suspension took place not later than 90 days after the safeguard measure was applied,
- the suspension took place upon the expiration of 30 days from the written notice received by the CTG,
- the CTG did not disapprove the measure after the notification of intention to apply it, and before the actual entry into force.

With relation to the article 8.3 of the SG Agreement Poland maintains its position expressed on the CTG meeting of 31 July that this article is not applicable here as one of the two conditions of its applications was not met by Slovakia while imposing a safeguard measure on imports of sugar. Namely, the measure imposed did not conform to the provisions of the Safeguard Agreement.

Poland noted doubts expressed by Slovakia as to the unilateral kind of decision taken in this regard and Poland agrees that a final decision as to the conformity or non-conformity of the safeguard measure applied by Slovakia with the WTO rules should be taken by the relevant WTO bodies. That is why following the imposition of the suspension in question Poland initiated also WTO dispute settlement procedure with a view to receive a panel's decision on the matter. However, we would like

to draw the CTG attention to the fact that article 8.2 of the Safeguard Agreement is very clear as to timeframe within which the suspension of concessions must be applied, i.e. not later than 90 days after entry into force of the original safeguard measure. In our view, it is impossible within the current DSU procedures to receive the decision of the WTO panel as to the conformity with the SG Agreement of the safeguard measure within 3 months after its imposition. Under these circumstances, Poland had two options:

- to initiate a dispute based on the DSU and, in case of winning the dispute, try to suspend the concessions in question in clear violation of the time limits provided for in the Article 8.2, or
- to proceed with the case the way it did.

None of the options was free of some inherent difficulties.

Articles 8.2 and 8.3 of the Safeguard Agreement seem to be internally inconsistent. On the one hand in order to apply the Article 8.2 under circumstances provided for in Article 8.3 one has to evaluate the conformity with the SG Agreement of the action taken by the Member imposing safeguard measure. On the other hand, such unilateral evaluation by the Member affected by the measure seems to be inconsistent with requirement of the DSU to refer the matter to the DSB for the settlement of the dispute.

The Articles 8.2 and 8.3 must be construed with a view to respect the assumption of rationality of the parties to the agreement, which means that, on the one hand, an interpretation which removes any alleged inconsistency should be sought for and, on the other hand, the interpretation leading to such inconsistency should be rejected. Taking into account the above the Article 8.3 should be construed in such way as to ensure its conformity with the Article 8.2, which means that the Member affected by the safeguard measure should decide whether a violation of the SG Agreement has occurred. If the Member imposing the contested measure does not agree with the evaluation, it may request the establishment of a panel in order to settle the dispute. If the panel decides that the violation of the Agreement has not occurred, the suspension of concessions introduced under Article 8.2 should be withdrawn. Under this interpretation, both Articles 8.2 and 8.3 can be applied and the assumption of rationality is fully respected.

Having explained our approach, we would like to emphasise that Poland was ready to withdraw the measure in question (or rather delay its application for 3 years, as stated in art 8.3 of the SG Agreement) had the Slovak side convinced us during the consultations under article 4 of the DSU that its safeguard measure has been imposed in full conformity with the SG Agreement. However, although as a result of this consultations Poland is inclined to withdraw some of its complaints, some other, not less important, still remain and we are still of the view that Slovakia violated the SG Agreement while imposing the safeguard measure on imports of sugar. Of course, if a WTO panel decides that the Slovak safeguard measure has not violated the SG Agreement, Poland will withdraw the measure in question. Independently of the steps, if any, taken by Slovakia, Poland is ready to seek a resolution of the dispute within the DSU framework.

We would like to stress however that the main aim of a very likely continuation by Poland of the DSU procedure in the sugar case is not just to obtain the ground for applying our suspension of concessions but it is to eliminate the safeguard measure imposed by Slovakia on the imports of sugar. It is our view that solving the dispute through the elimination of trade barriers conforms to the WTO spirit more than multiplying those barriers by application of further restrictions. With this aim in view, Poland sought, even during the DSU consultations, to negotiate an agreement on trade compensations provided for in the Article 8.1 of the SG Agreement, which would certainly solve the matter of suspension of concessions under current dispute. Unfortunately this possibility was excluded by the Slovak side.

That would conclude the explanations of the Polish side. We would add only that in the light of our position expressed above, Poland does not see the possibility to join any consensus in the CTG as to the disapproval of the suspension of concessions in question.

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