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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY THE GOVERNMENT OF SLOVENIA¹ OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 10 April 1996, has been received from the Permanent Mission of Hong Kong.

General

1. Slovenia's notification contains Part V of the Law on the Protection of Competition, adopted on 25 March 1993 and the Decree on Dumped and Subsidized Imports, adopted on 23 June 1994.

- (a) *What is the legal status of the WTO AD Agreement (the Agreement) in Slovenia? Does it have the force of law?*
- (b) *Are Slovenia's AD officials required, legally or otherwise, to abide by the Agreement in the conduct of AD proceedings, or to consult the Agreement, for example on the interpretation of domestic legislation? If the domestic legislation is in conflict with the Agreement, which will take precedence?*

The Decree on Dumped and Subsidized Imports (the Decree)

Assessment of normal value

2. Article 5(1) of the Decree provides that if the sale price in the country of origin cannot cover all the costs, this price is considered out of bounds of ordinary trade and is not taken into account in the determination of normal value unless it can be established that such sales were carried out for a longer period of time and in greater volume.

Article 2.2.1 of the Agreement provides that sales in the domestic market at prices below total per unit costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal values only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

¹G/ADP/N/1/SVN/1-G/SCM/N/1/SVN/1.

Would Slovenia explain the apparent discrepancy between Article 5(1) of the Decree and Article 2.2.1 of the Agreement?

3. Article 2.5 of the Agreement provides that in the case where products are exported to the importing country from an intermediate country, the price at which the products are sold from the country of export to the importing country should normally be compared with the comparable price in the country of export.

Article 6 of the Decree however states that in such a case, the normal value is the price comparable to the one paid for such a product within the actual trade in the country of origin.

Would Slovenia explain the apparent discrepancy between Article 6 of the Decree and Article 2.5 of the Agreement?

The comparison of normal value with the export price

4. Article 9(5) of the Decree provides that the differences in general and fixed costs, including the costs of development, research and marketing, are not taken into account in the process of the adaptation of differences in the conditions of sale for comparison of normal value and export price.

Article 2.4 of the Agreement requires a fair comparison and due allowance be made for all differences which affect price comparability.

If it is established that certain differences in costs such as marketing would affect price comparability, would the Slovenian authorities take this into account in making comparison of normal value and export price?

The margin of dumping

5. Article 2.4.2 of the Agreement sets out the requirements on the establishment of margins of dumping including the comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or the comparison of normal value and export prices on a transaction to transaction basis. The Article also states that a normal value established on a weighted average basis may be compared to prices of individual export transactions only under certain specified conditions.

Articles 10(2) and 10(3) of the Decree however only provides very broad-brush statements on how to establish the margin of dumping. According to Article 10(2) of the Decree, in cases where the prices are constantly changing, the margin of dumping is determined for each separate transaction, or on the basis of the price which is most frequent, the representative price or the established weighted average of prices. Such a provision is not provided for in the Agreement.

Would Slovenia explain in more detail how the determination of margin of dumping as prescribed in Articles 10(2) and 10(3) of the Decree would comply with Article 2.4 of the Agreement?

Commencement of procedure

6. Article 12.1.1 of the Agreement requires that a public notice of the initiation of an investigation should contain, or otherwise make available through a separate report, adequate information including the basis on which dumping is alleged in the application and a summary of the factors on which the allegation of injury is based.

Article 23(2) of the Decree specifies the information to be contained in the decision on commencement of a procedure and Article 23(3) requires the decision to be published in the Official Gazette of the Republic of Slovenia (Official Gazette). Some of the information specified under Article 12.1.1 of the Agreement is not included in the Decree.

Would Slovenia clarify whether all the information specified under Article 12.1.1 of the Agreement will be published in the Official Gazette or made available through a separate report as required under the Agreement?

Investigation

7. The term "the parties concerned" is frequently used in Article 24 of the Decree (eg. in Articles 24(2), 24(5), 24(6), etc).

Would Slovenia provide further clarifications on the meaning of the term?

8. Article 24(2) of the Decree provides the time-limit within which the data required by the Bureau for the Protection of Competition (the Bureau) should be submitted after the parties concerned had received the information.

(a) *Is there any general rule for the date of receipt of the information by the parties concerned? Does the date of receipt of the information deem to be one week from the day on which it was sent as provided for in Footnote 15 of the Agreement?*

(b) *Is extension of the time-limit for submitting the data related to the investigation allowed by the Bureau as provided for in Article 6.1.1 of the Agreement?*

Anti-dumping duties

9. Article 31(1)(a) of the Decree allows anti-dumping duties be imposed retroactively if, *inter alia*, the injury is caused by massive dumped imports of a product in a short time.

Are the importers concerned given opportunity to comment on the retroactive imposition of duty as provided for in Article 10.6(ii) of the Agreement?

10. Article 32(2) of the Decree sets out the information needed to be included in the act published in the Official Gazette should provisional or permanent duties be enforced. Details such as the margins of dumping, the explanation of the reasons for the methodology used in the establishment, comparison of the export price and the normal value, and the consideration leading to the injury determination as provided for in Article 12.2.1 of the Agreement are not specified in Article 32(2) of the Decree.

Would Slovenia explain whether the requirements under Article 12.2.1 of the Agreement will be observed?

11. Article 33(1) of the Decree provides that, in case an anti-dumping duty is not defined at the time of imposition, rules of origin of the goods used in the customs procedures are applicable to these products as well.

Would Slovenia provide clarification on the meaning of "an anti-dumping duty is not defined at the time of imposition"? Under what circumstances would an anti-dumping duty not be defined at the time of imposition?

Other

12. Numerous provisions of the Agreement are not reflected in Slovenia's legislation or the codification may not be adequate. Notable examples are as follows:

- sampling (Article 6.10)
 - industrial users and representative consumer organizations (Article 6.12)
 - duty for exporters and producers not selected in sampling (Article 9.4)
 - newcomer review (Article 9.5)
 - on-site verification (Annex I)
 - application of best information available (Annex II)
- (a) *In the absence of explicit domestic provisions reflecting the above Agreement provisions, how will Slovenia ensure compliance with the Agreement?*
- (b) *Will Slovenia contemplate further legislative steps to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the Agreement, in accordance with Article 18.4?*

13. *What judicial review procedures has Slovenia put in place in observance of its obligations under Article 13 (Judicial Review) of the Agreement?*

14. *What is Slovenia's policy and law for the implementation of WTO Panel Reports?*