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

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QUESTIONS POSED BY
THE UNITED STATES TO SLOVENIA¹
CONCERNING THE LATTER'S NOTIFICATION OF LAWS AND
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 16 April 1996, has been received from the Permanent Mission of the United States.

1. Article 16 of the Slovenia Law on the Protection of Competition indicates that anti-dumping and countervailing duties may be imposed when dumped or subsidized imports cause "substantial injury" to the domestic industry. Article 13 of the Decree on Dumped and Subsidized Imports (the Decree) defines injury "as substantial injury or the threat of such injury to the domestic industry or the considerable retardation of this industry." To what extent do these provisions differ from the definition of material injury contained in Article 3, n.9 of the Anti-Dumping Agreement (A-D Agreement) and Article 15, n.45 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)?
2. Article 19 of the Decree, which contains the domestic industry definition, does not provide for findings of regional industries, as permitted by Article 4.2 of the A-D Agreement and Article 16.3 of the SCM Agreement. Does Slovenian law contemplate such findings?
3. Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement require an evaluation of "whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product" or whether the effect of the unfairly traded imports "is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree." How is the language in Article 14(1) of the Decree, stating that injury is determined in part on the basis of the impact of the unfairly traded imports on prices "especially if these are at a level that significantly influence the level of prices," consistent with Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement?
4. Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement require an evaluation of certain relevant economic factors in the examination of the impact of the dumped imports on the domestic industry. There is no requirement in Article 14.1 of the Decree to evaluate all of the factors enumerated in Article 3.4 of the A-D Agreement and 15.4 of the SCM Agreement. How will Slovenian law implement these requirements?

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5. Does Article 15 of the Decree, which provides for the cumulative assessment of injury from imports from several countries in certain circumstances, conform to the requirement (contained in Article 3.3 of the A-D Agreement and Article 15.3 of the SCM Agreement) that the cumulated imports be simultaneously subject to investigation?

6. Article 17(1) of the Decree defines threat of injury as "a situation in which substantial injury is likely to occur". Is this language consistent with Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement which require that threat of material injury "must be clearly foreseen and imminent"?

7. Article 17(2) of the Decree provides a list of factors to be examined in the context of a threat analysis. Does the language requiring an examination of "the growth in the level of dumping or of subsidized imports into the Republic of Slovenia" comply with Article 3.7(i) of the A-D Agreement and Article 15.7(i) of the SCM Agreement, which require the authority to consider a "significant rate of increase" of imports?

8. Article 17(2) of the Decree requires an examination of the "export capacities of the country of origin or export already in existence and which is likely to continue in the foreseeable future, and the possibility of products from these capacities to be subject of imports into the Republic of Slovenia." Is this provision consistent with the requirement to analyze "sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter", contained in Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement?

9. Article 17(2) of the Decree requires an examination of "the prices of imported products which are likely to significantly cause a depression of prices (or the maintenance of depressed prices) in the domestic market." Is this provision construed consistent with the requirement of Article 3.7(iii) of the A-D Agreement and Article 15.7(iii) of the SCM Agreement, that the authority "consider whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports"?

10. Does the requirement to examine "the supply of the product subject to the procedure" contained in Article 17(2) of the Decree comply with the requirement of Article 3.7(iv) of the A-D Agreement and Article 15.7(iv) of the SCM Agreement, which require the authority to consider "inventories of the product being investigated" in the context of its threat analysis?

11. How is the definition of "similar products", contained in Article 18 of the Decree, consistent with the definition of "like product", contained in Article 2.6 of the A-D Agreement and Article 15, n.45 of the SCM Agreement?

12. Is Article 27 (concerning publications of decisions) of the Decree construed or applied consistently with the detailed requirements of Article 12 of the A-D Agreement and Article 22 of the SCM Agreement concerning public notice and explanation of determinations?

13. Article 24(5) of the Decree requires the Bureau to "facilitate to the parties" information which is "important for the protection of individual party's interests and which is used in the investigation by the Bureau". To this end, Article 24(5) allows interested parties to "submit a written request to the Bureau and specify the data which this party wishes to examine". How is this provision consistent with Articles 6.1.2 of the A-D Agreement and 12.1.2 of the SCM Agreement to make information presented in writing by one interested party available to other interested parties, subject to the requirement to protect confidential information? How is this provision consistent with Articles 6.9 of the A-D Agreement and Articles 12.8 of the SCM Agreement which require the authority to "inform all interested

parties of the essential facts under consideration which form the basis of the decision," without regard to whether a specific request for particular information has been tendered? How can a party identify information with particularity when it may not know what information the Bureau may use in its investigation, much less have in its possession?

14. How does Slovenian law implement the requirement of Article 6.13 of the A-D Agreement and Article 12.11 of the SCM Agreement, which require the authorities to take into account parties' difficulties in supplying the information requested?

15. The term "party" is used in, inter alia, Article 24 of the Decree, but is not defined. Does Slovenia's application or construction of this term conform with the interested party definition in Article 6.11 of the A-D Agreement and Article 12.9 of the SCM Agreement?

16. Article 22 of the Decree provides for the rejection of an application upon a finding that the dumped or subsidized imports are "insignificant". Is the language "except in cases where the total import from more than one country amount to more than seven percent of the total import of like products into the Republic of Slovenia" consistent with the language "unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member", contained in Article 5.8 of the A-D Agreement?

17. Where does Slovenian law address the requirements of Article 27.10 of the SCM Agreement, which provides for termination of an investigation of products originating in a developing country in specific circumstances?

18. How does Article 29 of the Decree, governing provisional measures, fulfil the preconditions for the imposition of provisional measures set forth in Article 7.1(i)-(ii) of the A-D Agreement and Article 17.1(a)-(b) of the SCM Agreement?

19. How is the condition contained in the second paragraph of Article 31(1)(a) of the Decree (governing the retroactive imposition of anti-dumping duties) stating that the dumping "is carried out to such an extent that the import duties for such imports must be enforced retroactively to prevent the repetition of such occurrences" consistent with the condition set forth in Article 10.6 of the A-D Agreement, stating that the dumping "is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied"?

20. How does Article 31 fulfil the requirement of Article 10.6(ii) of the A-D Agreement that retroactive duties be imposed only after "the importers concerned have been given an opportunity to comment"?