

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

Questions Posed by the UNITED STATES Concerning the Notification of the CZECH REPUBLIC¹

The following communication, dated 30 April 2001, has been received from the Permanent Mission of the United States.

1. *Measures that may be applied.* Section 3 of the Czech safeguard law lists the types of safeguard measures that may be applied. The list includes quantitative restrictions on exports, a “ban” on imports and exports, import deposits, and restrictions or a ban on transit.

- (a) Please identify the provision in the WTO Safeguards Agreement (SA) that authorizes a member to apply a measure in the form of a quantitative restriction on exports. Please explain how such a measure might prevent or remedy serious injury caused by increased imports.
- (b) Please identify the provision in the Safeguards Agreement that authorizes a member to apply a measure in the form of a “ban” on the export or import of a product, and please explain how such a measure would be consistent with the requirement in SA Article 5.1 that any quantitative restriction on imports not reduce the quantity of imports below the level of the average for the three most recent representative years for which import statistics are available.
- (c) Please identify the provision in the WTO Safeguards Agreement that authorizes a member to apply a measure in the form of “import deposits,” and explain how such a measure differs from an import duty.
- (d) Please explain what is meant by a restriction or ban on transit, and indicate the provision in the Safeguards Agreement that authorizes the application of a measure in this form.

2. *Basis for applying a measure.* Section 9 of the Czech law sets out three eligibility tests, expressed in the disjunctive, for applying a safeguard measure. The second and third of these tests, which are set out in subsection (b) of section 9, do not appear to have a basis in the Safeguards Agreement. These tests would allow the Czech Republic to apply a measure when increased imports are causing or threatening to cause (a) “serious disturbances in any sector of the economy, or [(b)] difficulties which could bring about serious deterioration in the economic situation of a region of the Czech Republic.” These tests appear to include a different injury standard (“serious disturbances” and “difficulties”, as opposed to “serious injury” or “threat of serious injury”) and would not require a finding of serious injury to a domestic industry producing a like or directly competitive product. Please identify the provision in the WTO Safeguards Agreement that supports these tests.

¹ G/SG/N/1/CZE/3

3. *Self-initiation of investigations.* Section 12(2) of the Czech law permits the Ministry to self-initiate an investigation “if, in performing its functions, it determines that increased imports of specific products cause or threaten to cause serious injury to a domestic industry”. This suggests that the Ministry will have pre-decided the case before the investigation is instituted. Please explain how this provision is

- (a) consistent with Article 3.1 of the Safeguards Agreement, which states that a member may apply a safeguard measure only following an investigation by the competent authorities, and providing reasonable public notice to all interested parties, and public hearings or other appropriate means to present evidence and their views; and
- (b) consistent with Article 4.2 of the Agreement, which requires that the competent authorities evaluate all relevant factors of an objective and quantifiable nature, including the listed factors, and provides that an affirmative determination not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports and serious injury or threat of serious injury.

4. *Time for providing information.* Section 15(1) appears to provide that the Ministry will ordinarily give interested parties only 10 working days to furnish evidence. From what day does the 10 days run? Please explain how this requirement provides interested parties with the “reasonable public notice” required by Article 3.1 of the Safeguards Agreement.

5. *Provisional relief.* Article 6 of the Safeguards Agreement requires that the competent authorities, before applying a provisional safeguard measure, find, *inter alia*, “clear evidence” that increased imports are causing or threatening to cause serious injury. Please explain where this requirement is found in section 19 of the Czech law, which sets out the basis for taking a provisional action.
