

**NOTIFICATIONS OF LAWS, REGULATIONS AND  
ADMINISTRATIVE PROCEDURES RELATING  
TO SAFEGUARD MEASURES**

**CZECH REPUBLIC**

The following communication, dated 5 March 1999, has been received from the Permanent Mission of the Czech Republic.

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With reference to Article 12.6 of the Agreement on Safeguards and in accordance with the related decision adopted by the Committee on Safeguards established under this Agreement, I have the honour to attach herewith the unofficial translation copy of the relevant Czech Republic legislation relating to safeguard measures on imports of agricultural products.

This notification includes:

- (i) Relevant provisions of Act No. 252/1997 Coll. on Agriculture which was promulgated on 24 September 1997 and entered into force on the thirtieth day following its promulgation; and
- (ii) Regulation of the Government of the Czech Republic No. 39, implementing the Provisions of § 3 of Act No. 252/1997 Coll. on Agriculture which was promulgated on 1 February 1999 and entered into force on the same date. This Regulation is being notified in full. However, only Parts One and Three

and Annex 3 to the Regulation are related to safeguard actions provided for in Article XIX of GATT 1994 and the Agreement on Safeguards.

**Act No. 252/1997  
Coll. on Agriculture  
of 24 September 1997**

The Parliament has enacted the following act of the Czech Republic:

§ 3

**Protection of the Agrarian Market**

(1) Special safeguard measures in the form of an additional duty may be imposed according to the international agreement<sup>1</sup> in connection with the importation of agricultural products and foodstuffs specified in the Annex to this Act.

(2) Safeguard measures may be imposed according to the international agreement<sup>2</sup> in connection with the importation of agricultural products and foodstuffs not specified in the Annex to this Act.

(3) The measures according to subparagraphs 1 and 2 will be promulgated by measures of a Regulation of the Government.

(4) The Government may determine the entry value<sup>3</sup> of some imported agricultural products that have not been affected by the measures according to subparagraphs 1 and 2.<sup>1,2</sup>

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<sup>1</sup> Communication of the Ministry of Foreign Affairs No. 191/1995 Coll., publishing the text of the Agreement Establishing the World Trade Organization (WTO) - Agreement on Agriculture.

<sup>2</sup> Communication of the Ministry of Foreign Affairs No. 191/1995 Coll., publishing the text of the Agreement Establishing the World Trade Organisation (WTO) - Agreement on Safeguards.

<sup>3</sup> For the purpose of this Act, the entry value means such a customs value of the goods where no additional duty is being applied

## § 4

### **Provision of Information**

(1) A person claiming the support according to § 2 or the market protection according to § 3 is obliged to provide the necessary information for an objective consideration of the necessity to support or protect the market with the Ministry of Agriculture, which will determine the scope of this information. The Ministry of Agriculture shall provide the protection of individual data according to the special act.<sup>4</sup>

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<sup>4</sup> Act No. 89/1995 Coll., of the State Statistical Service.

## §7

### **Effective Date**

This Act comes into effect as of the thirtieth day after its publication.

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Annex<sup>\*</sup>

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<sup>\*</sup> Annex to Act No. 252/1997 Coll., on Agriculture lists agriculture products to which special safeguard measures may be applied in accordance with the Agreement on Agriculture.

# **REGULATION OF THE GOVERNMENT**

**No. 39  
of 1 February 1999**

## **Implementing the Provisions of § 3 of the Act No. 252/1997 Coll. on Agriculture**

Pursuant to § 3 (3),(4) of the Act No. 252/1997 Coll. on Agriculture, the Government orders as follows:

### **PART ONE GENERAL PROVISIONS**

#### **§ 1**

This Regulation establishes the terms for the measures applied in connection with the importation of agricultural products and foodstuffs (hereinafter referred to as the "agricultural product") into the territory of the Czech Republic.

#### **§ 2**

Pursuant to this Regulation, protective measures shall be understood:

- (a) special safeguard measures;

- (b) safeguard measures;
- (c) entry value.

### § 3

(1) A protective measure shall be applied only to the necessary extent and for such necessary period of time for which the circumstances giving rise to its application exist.

(2) Pursuant to this Regulation, it is not allowed to apply more protective measures concurrently on the same agricultural product.

### § 4

For the purposes of this Regulation:

- (a) special safeguard measure means the imposition of an additional duty;
- (b) additional duty means the amount added to the import duty<sup>5</sup> under the conditions specified in this Regulation;
- (c) trigger level means such a volume of imports of the agriculture product (hereinafter referred to as the "trigger level") the exceeding of which justifies the application of a special safeguard measure;
- (d) safeguard measure means a quantitative restriction or a tariff change under the conditions specified in this Regulation;

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<sup>5</sup> § 54 (1), § 56, §57 of the law No. 13/1993 Coll.,

Regulation of the Government of the Czech Republic No. 303/1998 Coll., issuing the Customs Tariff and establishing rates of import duties on goods originating in developing and least developed countries and the terms for their application (the Customs Tariff).

- (e) entry value means the minimal base for the calculation of the import duty under the conditions specified in this Regulation;
- (f) quantitative restriction of import means the determination of the quantity of agricultural products that may be imported in the specified period<sup>6</sup>;
- (g) domestic industry means domestic producers as a whole of the like or directly competitive agricultural products, or those of them whose collective production of like or directly competitive agricultural products constitutes more than 50 per cent of the total domestic production of those agricultural products;
- (h) serious injury means a significant overall impairment in the position of the domestic industry;
- (i) threat of serious injury means serious injury that is clearly imminent while a determination of the existence of a threat of serious domestic injury has to be based on established facts and not merely on allegation, conjecture, or remote possibility.

## **PART TWO**

### **SPECIAL SAFEGUARD MEASURES**

#### **§ 5**

(1) A special safeguard measure in the form of an additional duty that is added to the import duty<sup>1</sup> on the agricultural product specified in the Annex to Act No. 252/1997 Coll. on Agriculture (hereinafter referred to as the "Act") will be imposed, if, in connection with the importation of such a product:

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<sup>6</sup> Decree No. 560/1991 Coll., on Conditions Of Issuance of an Official Import Licence for the Export and Import of Goods and Services, as amended by Decree No. 130/1993 Coll., Decree No. 300/1993 Coll., Decree No. 88/1994 Coll., Decree No. 175/1994 Coll., Decree No. 192/1995 Coll., Decree No. 156/1996 Coll., Decree No. 115/1997 Coll., Decree No. 233/1997 Coll., Decree No. 56/1998 Coll., Decree No. 141/1998 Coll., Decree No. 261/1998 Coll., Decree No. 331/1998 Coll., and by Decree No. 335/1998 Coll.



- (a) The volume of imports in the units of measure set out in the Customs Tariff exceeds a trigger level determined by the Ministry of Agriculture (hereinafter referred to as the "Ministry") in cooperation with the Ministry of Industry and Trade and the Ministry of Finance according to the schedule set out in § 7; or
- (b) the price at which imports of the agricultural product are taking place, including freight and insurance costs of the imported goods to the place of their entry into the customs territory if they are not included in the price actually paid or payable, expressed in domestic currency<sup>7</sup> (hereinafter referred to as the "import price"), determined by the Ministry in cooperation with the Ministry of Industry and Trade and the Ministry of Finance, falls more than 10 per cent below the trigger price established according to the schedule set out in § 11.

## § 6

Imposition of the additional duty is conditional upon fulfilment of current and minimum access commitments which consist of allowing a certain minimum quantity of the agricultural product to be imported at the preferential customs duty as committed by the Czech Republic in the international agreement.<sup>8</sup> Imports under current and minimum access commitments shall not be affected by any additional duty.

### **Additional duty for the case of exceeding the trigger level of the volume of imports**

## § 7

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<sup>7</sup> Communication of the Ministry of Foreign Affairs No. 191/1995 Coll., publishing the text of the Agreement Establishing the World Trade Organization (WTO) – Agreement on Agriculture, Article 5(1)(b).

<sup>8</sup> Communication of the Ministry of Foreign Affairs No. 191/1995 Coll., publishing the text of the Agreement Establishing the World Trade Organization.

(1) Determination of the trigger level shall be based on the share of the average annual volume of import of the agricultural product concerned in the average annual volume of domestic consumption of this agricultural product during the three preceding calendar years for which data are available.

(2) The base trigger level shall equal to:

- (a) 125 per cent of the average volume of imports of the agricultural product concerned if the share of the average volume of imports in the average volume of domestic consumption of this product during the three preceding calendar years is less than or equal to 10 per cent;
- (b) 110 per cent of the average volume of imports of the agricultural product concerned if the share of the average volume of imports in the average volume of domestic consumption of this product during the three preceding calendar years is greater than 10 per cent but less than or equal to 30 per cent,
- (c) 105 per cent of the average volume of imports of the agricultural product concerned if the share of the average volume of import in the average volume of domestic consumption of this product during the three preceding calendar years is greater than 30 per cent.

(3) In all cases the additional duty may be imposed in any year where the absolute volume of imports of the agricultural product concerned entering the customs territory of the Czech Republic exceeds the total of the base trigger level set out according to subparagraph 2 multiplied by the average annual quantity of imports during the three preceding calendar years for which data are available and the absolute volume change in domestic consumption of the agricultural product in the most recent year for which data are available compared to the preceding

year, provided that the trigger level shall be greater than 105 per cent of the average quantity of imports.

(4) Where domestic consumption of the agricultural product cannot be determined, the base trigger level shall be set at the level of 125 per cent of the average volume of imports of the agricultural product concerned.

(5) Data and schedule to determine the trigger level of the volume of imports according to subparagraphs 2, 3, and 4 are contained in Annex 1 to this Regulation.

(6) A shorter period of time than three years may be used for determining the trigger level for a perishable and seasonal product to take account of the specific characteristics of such products.

## § 8

(1) Determination of the trigger level of the volume of imports is based on statistical data of the customs statistics and information of the Czech Statistic Office.<sup>9</sup>

(2) Imports under current and minimum access commitments shall be counted in the volume of imports measured to determine whether the trigger level of the volume of imports has been attained.

## § 9

The additional duty cannot exceed one third of the import duty set out in a special legal regulation<sup>10</sup> in effect in the year in which the additional duty is imposed. The additional duty may only be maintained until the end of the calendar year in which it has been imposed.

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<sup>9</sup> Act No. 13/1993 Coll., as amended by Act No. 35/1993 Coll. and Act No. 113/1997 Coll. Act No. 89/1995 Coll., on the State Statistical Service

<sup>10</sup> Regulation of the Government of the Czech Republic No. 303/1998 Coll.

## § 10

Import of the agricultural product under a contract settled before the additional duty is imposed shall not be subject of such a duty, if the shipment of the product concerned started before the imposition of the additional duty, provided, however, that this import may be counted in the volume of imports of the agricultural product during the following year for the purposes of applying the additional duty.

### **Additional duty for the case of fall of the import price bellow a trigger price**

## § 11

(1) The trigger price shall be determined as an average of the import price of the agricultural product for the period 1991 to 1992.

(2) Determination of the trigger price<sup>3</sup> is based on statistical data of the customs statistics and information of the Czech Statistic Office.<sup>5</sup>

## § 12

(1) The additional duty shall be set at the level of:

- (a) 30 per cent of the amount by which the difference between the import price and the trigger price (hereinafter referred to as the "difference") exceeded 10 per cent of the trigger price if this difference is greater than 10 per cent of the trigger price but less than or equal to 40 per cent of the trigger price;
- (b) 50 per cent of the amount by which the difference exceeded 40 per cent of the trigger price if this difference is greater than 40 per cent of the trigger price but lower than or equal to 60 per

cent of the trigger price; plus the additional duty set according to subparagraph (a);

- (c) 70 per cent of the amount by which the difference exceeded 60 per cent of the trigger price if this difference is greater than 60 per cent of the trigger price and lower than or equal to 75 per cent of the trigger price; plus the additional duty set according to subparagraphs a) a b);
- (d) 90 per cent of the amount by which the difference exceeded 60 per cent of the trigger price if this difference is greater than 75 per cent of the trigger price; plus the additional duty set according to subparagraphs (a), (b) and (c).

(2) Data and schedule to determine the trigger price according to subparagraph 1 are contained in Annex 1 to this Regulation.

(3) Different import prices for different periods will be used for determining the trigger price of a perishable and seasonal agricultural product to take account of the specific characteristics of such products.

### § 13

The additional duty shall not be imposed on the import of the agricultural product the volume of imports of which are declining until the decline of the volume of imports of this agricultural product has been stopped, as far as this will not cause injury or threat of injury to the domestic industry.

## **PART THREE SAFEGUARD MEASURES**

A safeguard measure (hereinafter referred to as the "measure") in the form of a quantitative restriction or a tariff change may be introduced on

the import of the agricultural product not mentioned in the Annex to the Act and originating in a Member State of the World Trade Organization (hereinafter referred to as the "WTO") if the Ministry establishes in the cooperation with the Ministry of Industry and Trade and the Ministry of Finance, according to criteria contained in Annex No. 3 to this Regulation, that the conditions for the introduction of the measure set by the international agreement have been met.<sup>4</sup> An initiation of an investigation and its results shall be made public.

## § 15

(1) The measure will be imposed only when the agricultural product is being imported into the territory of the Czech Republic in such increased quantity and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive agricultural products, and provided that there is a causal link between imports in question and serious injury or threat thereof.

(2) The measure shall be applied irrespective of the country of origin of the agricultural product unless otherwise provided by the international agreement binding the Czech Republic.

## § 16

(1) In examining whether serious injury or threat thereof to the domestic industry has been caused by an exceptional increase of imports, the Ministry shall take into consideration in particular the following factors:

- (a) the development of the increase in the volume of imports of the agricultural product, absolute or in relation to the volume of the production of the like or directly competitive agricultural product that is produced by the domestic industry, in volume and value terms for the last three years preceding the date when the investigation had been initiated;

- (b) the conditions under which the importation of the increased quantity of the agricultural product is taking place (the price, quality, sales conditions, market share of the imported agricultural product on the domestic market and changes in the sale of the like or directly competitive agricultural product produced by domestic industry on the domestic market - the price, quantity, quality, saleability, the increase of unsaleable inventories, etc.);
- (c) the influence of the increased imports on economic factors of the domestic industry, in particular on the profit (or the loss), labour productivity, utilization of production capacities, return on investments, employment;
- (d) the export capacity of the country of origin of the agricultural product in the period of the initiation of the investigation and the likelihood of further increase in import of the agricultural product;
- (e) the extent of the impairment of the domestic industry or of estimated impairment;
- (f) the causal link between the increased imports and serious injury or threat thereof.

(2) When factors other than increased imports are causing injury or threat thereof to the domestic industry, such injury or threat thereof shall not be attributed to increased imports.

### **Conditions and Duration of Application of the Measure**

(1) The measure is adopted to the extent and for a period of time that is necessary to prevent or remedy serious injury to the domestic industry and that is sufficient for the domestic industry to create

conditions allowing to it to adjust to newly occurred circumstances having a bearing on the situation in the given domestic industry.

(2) If the measure is in the form of a quantitative restriction, this measure shall not reduce the volume of imports of the agricultural product below the average level of imports of this agricultural product in the last three years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy a significant overall impairment of the domestic industry.

## § 18

(1) The measure may be applied for the period up to four years. The duration of application of a provisional safeguard measure (§21) is counted in this period.

(2) The four-year period may be extended provided it has been proved that a longer period of application of the measure continues to be necessary to prevent or remedy a significant overall impairment of the domestic industry and that there is evidence that the domestic industry is adjusting to newly occurring circumstances having a bearing on the situation in the given domestic industry. The total period of application of the measure cannot exceed eight years.

(3) If the measure is extended, it cannot be more restrictive than it was at the end of the initial period and shall continue to be liberalized.

(4) Where the period of application is over one year, the measure shall be progressively liberalized at regular intervals to enable the domestic industry to create conditions allowing to it to adjust to newly occurred circumstances having a bearing on the situation in the given domestic industry.

(5) If the Ministry finds out, after the mid-term of the application period of the measure adopted for the period exceeding three years, that



the reasons giving rise to its adoption have ceased to exist, the Government shall cancel the Regulation introducing the applied measure, or reduce the scope of the applied measure.

## § 19

### **Reimposition of the Measure**

(1) The measure may be applied again provided the conditions for its application have been met.

(2) The measure cannot be applied again on the same agricultural product for a period of time equal to that during which such measure had been previously applied.

(3) Notwithstanding the duration of the period of time for which the previous measure had been applied on the same agricultural product, the period of a non-application cannot be shorter than two years unless the duration of the measure is 180 days or less and if

- (a) at least one year has elapsed since the date of introduction of the measure on the import of this agricultural product; and
- (b) such a measure has not been applied on the same agricultural product more than twice in the five-year period immediately preceding the date of introduction of the measure.

## § 20

The measure shall not be applied to limit the import of the agricultural product originating in a developing country Member of the WTO as long as the import share of this agricultural product originating in this country does not exceed 3 per cent of the total volume of the agricultural product imported into the Czech Republic, provided that the import from developing countries with less than 3 per cent share does not

collectively account for more than 9 per cent of the total volume of the agricultural product imported into the Czech Republic.

## § 21

(1) In critical circumstances where delay would cause damage which it would be difficult to repair and if the investigation process indicates that there is evidence that increased import of the products in question has caused or is threatening to cause serious injury to the domestic industry, the Government may adopt, by measures of a Regulation, a provisional measure in the form of a tariff change.

(2) The period of application of the provisional measure shall not exceed 200 days.

(3) Should the Ministry determine in the course of the subsequent investigation that the increased import of the agricultural product has not caused or is not threatening to cause serious injury to the domestic industry, the provisional measure shall be repealed and the custom duty collected shall be refunded.

## § 22

### **Import of Agricultural Products from countries which are not Members of the WTO**

(1) Unless otherwise provided, provisions of §14 to §21 shall also be applied when imposing measures in connection with the importation of agricultural products originating in the countries which are not Members of the WTO.

(2) If the agricultural product originating in the country which is not a Member of the WTO is being imported in such increased quantities or under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products and

provided that there is a causal link between imports in question and serious injury or threat thereof, the measure may be applied against this country or these countries in which the agricultural product is originating, unless otherwise provided by the international agreement binding the Czech Republic.

(3) In determining serious injury or threat thereof, it shall be examined, in addition to the factors contained in §16, to what extent the economic and trade policy of such a country corresponds with the principles of the Agreement Establishing the World Trade Organisation.<sup>4</sup>

## **PART FOUR**

### **§ 23**

(1) The entry value shall be applied in accordance with international obligations, including those resulting from bilateral international agreements, binding the Czech Republic.

(2) The entry value shall be determined as the total of the average annual price of selected domestically produced agricultural products calculated for the previous calendar year and the import duty.<sup>1</sup>

### **Effective Date**

This Regulation comes into effect on the day of its publication.

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## **Annex No. 1 to Regulation of the Government No. 39/1999 Coll.**

### **Data and Schedule to Determine the Trigger Level of the Volume of Imports according to § 7 (2), (3) and (4)**

#### **1. Data required for imposition of special safeguard measures:**

- (a) the average volume of imports for the last three years in the units of measure (P);
- (b) the average consumption for the last three years in the units of measure (S);
- (c) the change in consumption in the most recent year compared to the preceding year in the units of measure (RS);
- (d) the actual volume of import for the selected period of time in the units of measure (A);

#### **2. Schedule**

If the domestic consumption for the last three years is known, it is proceeded as follows:

§7 (2) a)

If:  **$10\% \geq P / S$**                       -     The base trigger level (SU) in the given year is  **$125\% P$**

§7 (2) b)

If:  **$30\% \geq P / S > 10\%$**                       -     The base trigger level (SU) in the

given year is **110%P**

§7 (2) c)

If: **P / S > 30%**

- The base trigger level (SU) in the given year is **105% P**

§7 (3)

Calculation of the trigger level of the volume of import (SO)

$$\mathbf{SO = SU / 100 \times P + RS}$$

§7 (4)

Where domestic consumption of the product concerned for the last three years is not known, the trigger level of the volume of import is based on the average annual volumes of imports for the last three years:

$$\mathbf{SO = P \times 125}$$

## **Annex No. 2 to Regulation of the Government No. 39 / 1999 Coll.**

### **Data and Schedule to Determine the Trigger Price according to §12**

#### **1. Data required for imposition of special safeguard measures:**

- (a) The trigger price (R) - the average import price for the period 1991-1992 in CZK/unit; if it is not possible to determine the import price according to the official customs statistics data, the import price determined in the most following year will be used.
- (b) The actual import price (C) - the import value in CZK/unit of the single customs item according to the Customs Tariff (8 if appropriate 10 digits)

#### **2. Schedule to determine the conditions for imposition of additional duty:**

The basic formula:

$$[(R - C) / R] \times 100 = X \text{ where:} \quad \begin{array}{l} R = \text{the trigger price} \\ C = \text{the import price} \end{array}$$

§12 (1) a)

If:  $10 < X \leq 40\%$  - the additional duty ( $D_1$ ) is equal to:  
 $D_1 = [(R - C) - 0.1 \times R] \times 0.3$

§12 (1) b)

If:  $40 < X \leq 60\%$  - the additional duty ( $D_2$ ) is equal to:  
 $D_2 = [(R - C) - 0.4 \times R] \times 0.5 + D_{1 \text{ max}}$

$$\text{Calculation} = [(R - C) - 0.4 \times R] \times 0.5 + R \times 0.09$$

§12 (1) c)

(d) If:  $60 < X \leq 75\%$  - the additional duty ( $D_3$ ) is equal to:  

$$D_3 = [(R - C) - 0.6 \times R] \times 0.7 + D_{1 \max} + D_{2 \max}$$

$$\text{Calculation} = [(R - C) - 0.6 \times R] \times 0.7 + R \times 0.19$$

§12 (1) d)

(e) If:  $X > 75\%$  - the additional duty ( $D_4$ ) is equal to:

$$D_4 = [(R - C) - 0.75 \times R] \times 0.9 + D_{1 \max} + D_{2 \max} + D_{3 \max}$$

$$\text{Calculation} = [(R - C) - 0.75 \times R] \times 0.9 + R \times 0.295$$

Unlike the volume based criterion the trigger price has to be assessed in respect to the single sub-items according to the Custom Tariff Nomenclature, i. e. for 8 digits.

## **Annex No. 3 to Regulation of the Government No. 39 / 1999 Coll.**

### **Criteria for Imposition of a Safeguard Measure according to § 14**

The following information has to be submitted to initiate safeguard procedures regarding the agricultural product concerned:

1. (a) Production of the agricultural product in the Czech Republic for the most recent three preceding years;  
  
(b) Estimation of the domestic production in the current year.
2. (a) Consumption of the agricultural product in the Czech Republic for the most recent three years;  
  
(b) Estimation of the consumption in the current year.
3. (a) Import of the agricultural product concerned into the Czech Republic for the most recent three preceding years;  
  
(b) Import of the product concerned into the Czech Republic in the current year:
  - of which imports originating in the country with the biggest volume of import - the most recent three years and the current year.
4. Share of imports in domestic consumption for the most recent three years and the current year:
  - of which the share of imports in domestic consumption from the country with the biggest volume of import for the most recent three years and the current year.



5. Share of imports in domestic production for the most recent three years and the current year:
  - of which the share of imports in domestic production from the country with the biggest volume of import for the most recent three years and the actual year.
6. Total imports of the agricultural product for the most recent three years and the current year.
7. Evidence of clear impairment of the domestic industry caused by the import:
  - to demonstrate a causal link between this impairment and imports (in particular financial losses, impact on employment and other social aspects).
8. Description of the production and market organization (the issue of the monopoly position, existence of cartel agreements etc.).
9. Other aspects and facts that could support the justification to impose the safeguard measure (the price - internal, external, production price, etc.).
10. The calculation of the domestic price, the development of the domestic price for the most recent three years, export prices from the countries contributing most substantially to the impairment.
11. Investigation of the implications for the domestic industry concerned must include the evaluation of all economic factors and ratios having a bearing on the situation of that domestic industry (the production decrease, utilization of production capacities, impact on employment, sales, market share, profit, productivity, factors having bearing on the domestic price, etc.).

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