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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Poland

Revision

Pursuant to Article 16:6(b) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the following is the text of Poland's anti-dumping legislation as contained in Chapter 7 of the Customs Law of 29 December 1989 and promulgated in Dziennik Ustaw 1989, No. 75, item 445.

Article 91.1: Anti-dumping duties may be additionally levied on a product imported into Polish customs territory at dumping prices, with such duties not to exceed the difference between the normal value and the export price of the product (the dumping margin), if importation at dumping prices results in material injury or threat of material injury to a domestic industry, or in a material retardation of the establishment of such an industry.

91.2: A product is considered as imported at a dumping price if its price within the Polish customs territory is less than the normal value of a like product.

Article 92: The term "like product" means a product that is identical in every respect with the product subject to an anti-dumping investigation, or, in the event of absence of such a product, another product whose characteristics closely correspond to the characteristics of the product subject to the anti-dumping investigation.

Article 93: The normal value of a like product is the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country or in the country of origin.

93.2: If the like product is not offered in the ordinary course of trade in the internal markets of the exporting country or the country of origin, or when because of the particular market situation the sales of that product do not permit proper comparison, the normal value of the like product is considered to be:

1. the comparable price of the like product in exports to any third country, which may be the highest export price but should be a representative price, or
2. the constructed value, determined by adding to the production cost in the country of origin - with allowance for the cost of materials, manufacturing, marketing and overhead - a reasonable profit margin on sales of the product of the same kind on the internal market of the country of origin.

93.3: If there exists a justified reason to believe that the price at which the product is offered for sale in its country of origin is lower than its production cost, such sale may be considered as not being in the ordinary course of trade.

Article 94.1: The export price is the price paid for the product sold with the object of exporting it to Poland.

94.2: If the export price has not been determined or when the circumstances accompanying the transaction indicate that association or compensatory agreements exist between the exporter and the importer or a third party, or when for various reasons the actually paid price cannot be viewed as reliable, the export price may be constructed on the basis of the price at which the imported product is for the first time resold to an independent purchaser.

94.3: If the product is not resold to an independent purchaser, or if it is not resold in the same condition in which it had been imported, the export price may be constructed on some other justified basis. In such cases allowance should be made for the expenses involved in importation and resale, inclusive of customs duties and taxes, as well as for a reasonable profit margin.

Article 95.1: To determine the dumping margin, the normal value of the product is compared with its export price at the same level of trade, normally at the ex-factory level in relation to sales within, if possible, the same period of time. In every individual case allowance is made for the physical properties of the product and the differences in the circumstances and terms of sale, inclusive of differences in taxes and fees which affect the market value of the product.

95.2: In the event of variable prices the dumping margin may be determined separately for every individual transaction or on the basis of the most representative price or in relation to the average weighted price.

95.3: In the event the dumping margin is variable, it can be determined in the form of its weighted average.

Article 96.1: With the object of assessing the injury referred to in Article 91, paragraph 1, the term "domestic industry" means the domestic producers as a whole of the like product or only those of them whose collective output accounts for at least one-half of the total domestic production of the like product, except that:

1. the producers are related to exporters or importers or are themselves importers of the allegedly dumped product; in this case the term "domestic industry" may be interpreted as referring to the rest of the producers;
2. if there exist two or more competitive markets within which producers sell all or almost all of their production of the product in question and the demand is not to any substantial degree satisfied by the producers located elsewhere in the territory; the producers within each market may be regarded as a separate industry.

96.2: When the term "industry" has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1, point 2, anti-dumping duties shall be levied only on the product in question consigned for final consumption in that area.

Article 97.1: A determination of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry shall be based on positive evidence and involve an objective examination of the impact of the dumped imports on domestic producers of such products. The examination of such an impact includes the assessment of all major factors and economic indicators affecting the domestic industry, and in particular:

1. volume of imports at dumping prices, and in particular whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption;
2. actual or potential decline in output or sales;
3. actual or potential negative effects on employment;
4. actual or potential decline in utilization of productive capacity;
5. evolution of the level of domestic prices;
6. status of inventories;
7. profit margins and profitability of domestic producers.

97.2: A determination of threat of injury shall be made if there is convincing reason, based on facts, to believe that material injury is likely to be caused to a domestic industry.

97.3: The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the sales by producers or profits. When the domestic production of the like product has no separate identity in these terms the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 98.1: The initiation of anti-dumping investigation takes place upon the written request of an individual, a legal entity, or an organizational unit lacking legal entity, acting on behalf of the affected domestic industry, with the request to be submitted to the President of the Main Customs Office.

98.2: The request referred to in paragraph 1 shall include sufficient evidence of the existence of importation at a dumping price, of the injury to domestic industry, and of the causal link between the dumped imports and the alleged injury.

98.3: The party making the request may withdraw it at any stage of the investigation. In this event the President of the Main Customs Office shall terminate investigation unless that would violate the interests of the national economy.

98.4: If the request does not include the evidence referred to in paragraph 2, the President of the Main Customs Office rules against initiating the investigation.

98.5: The President of the Main Customs Office may initiate proceedings ex officio if he has sufficient material evidence.

Article 99.1: Upon determining that the evidence contained in the request warrants initiating an investigation, the President of the Main Customs Office publishes in the Official Gazette of the Polish Republic MONITOR POLSKI his decision to initiate the investigation. The decision should specify the product and the countries which are covered by the investigation, as well as present a summary of the data contained in the request, along with the information that all concerned parties may send comments in writing and make verbal requests for presentation of the documentary evidence.

99.2: The President of the Main Customs Office also sends a written notice about initiating the investigation to all exporters and importers who are known to be directly interested in the investigation, as well as to the respective authorities of the exporting countries.

99.3: Immediately after the investigation is initiated the President of the Main Customs Office transmits the evidence referred to in Article 98, paragraph 2, to the Anti-Monopoly Office so that the latter may make within

80 days a preliminary determination whether the evidence indicates that the imports covered by the investigation cause or threaten to cause material injury to a domestic industry or material retardation to the establishment of such industry.

Article 100.1: The President of the Main Customs Office shall decide to terminate the investigation if:

1. he concludes that there is no sale at a dumping price or that the dumping margin is negligible;
2. the preliminary conclusion of the Anti-Monopoly Office is that the imports which are subject to the investigation do not cause or threaten to cause material injury to a domestic industry or material retardation of the establishment of such industry.

100.2: In the event that the decision referred to in paragraph 1 is not taken, the President of the Main Customs Office shall issue, not later than within 90 days from the date the request for initiating the investigation was submitted, a preliminary ruling specifying the product which he found to be sold at a dumping price as well as specifying the estimated dumping margin.

100.3: In particularly complex cases, especially when there exist difficulties with the proper collecting and assessment of material evidence, the President of the Main Customs Office may, upon request or ex officio, prolong to 150 days from the date of submission of the request the time-limit for issuing the ruling referred to in paragraph 2.

100.4: If preliminary findings of the investigation justify protecting a domestic industry against injury being caused by the sales of a dumped product during the period of investigation, the President of the Main Customs Office may, by issuing the ruling referred to in paragraph 2, impose a temporary anti-dumping duty in an amount not exceeding the estimated dumping margin, for a period not longer than four months.

100.5: In the case referred to in paragraph 4 the entry of the product under the investigation into Polish customs territory is contingent upon the submission of an adequate security equal to the amount of the anti-dumping duty provisionally estimated.

100.6: The rulings of the President of the Main Customs Office referred to in paragraphs 1-3 shall be published in the Official Gazette of the Polish Republic MONITOR POLSKI and shall be delivered to the parties and entities referred to in Article 99, paragraph 2.

Article 101: Following the issuance of the ruling referred to in Article 100, paragraph 2 the Anti-Monopoly Office presents to the President of the Main Customs Office within 80 days or, in particularly complex cases, within 140 days, its final conclusion on the question of injury.

Article 102.1: Information transmitted by parties in the course of the investigation may be utilized solely for the needs of this investigation.

102.2: The party providing the information that is of major importance to its competitive position on the market may demand the addition of a confidentiality clause. In this case, the information to which the confidentiality clause applies should be furnished together with non-confidential summaries thereof for distribution to other parties to the investigation.

102.3: Information to which the confidentiality clause applies shall not be disclosed without specific permission of the party submitting it.

102.4: In the event that a request for confidentiality is not warranted, and the party is unwilling to disclose the information to other participants in the investigation, or if the summary referred to in paragraph 2 is not furnished, the President of the Main Customs Office may issue a ruling on the basis of other available evidence.

103.1: Taking into consideration the final conclusion of the Anti-Monopoly Office on the question of injury, the President of the Main Customs Office shall take decision not later than within 90 days, and in particularly complex cases within 150 days, from the day the ruling referred to in Article 100, paragraph 2 had been issued.

103.2: In the event it is determined that the product under investigation was or is being sold at a dumping price, and that the dumping margin and the volume of the actual or potential imports of the dumped product in question are substantial, and that the imports at a dumping price will cause material injury to a domestic industry or threat of material injury to a domestic industry or material retardation to the establishment of such industry, an anti-dumping duty will be imposed in an amount which must not exceed the dumping margin.

103.3: The decision to impose the anti-dumping duty specifies in particular the product subject to the anti-dumping duty, the country of origin or the country from which the product was exported, the name of the exporter and the amount of the anti-dumping duty.

103.4: No anti-dumping duty shall be levied retroactively, except in cases stipulated in paragraph 5.

103.5: The President of the Main Customs Office may levy an anti-dumping duty on a product imported into Polish customs territory not more than 90 days prior to the date of application of provisional anti-dumping duty, where for the dumped product in question:

- (a) there is a history of dumping which caused injury, or the importer was, or should have been aware that the exporter practices dumping and that such dumping would cause injury, and

(b) the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period of time) to such an extent that, in order to preclude it from recurring, it appears necessary to levy anti-dumping duty retroactively on those imports.

103.6: The President of the Main Customs Office publishes the ruling referred to in Article 103, paragraph 1, in the Official Gazette of the Polish Republic MONITOR POLSKI, and communicates that ruling to the parties and entities referred to in Article 99, paragraph 2.

Article 104.1: Once an investigation is initiated, but not later than the moment when a ruling is issued, an exporter may undertake to observe minimum export prices. The Chairman of the Main Customs Office may accept such price undertakings if they will eliminate the injurious effect of the dumping.

104.2: If and when the President of the Main Customs Office accepts the price undertakings, he issues a ruling terminating the investigation and confirming the price undertakings; the provisions of Article 103, paragraph 6, apply correspondingly.

Article 105: The President of the Main Customs Office may, ex officio or on request from an interested party, waive or alter rulings that impose anti-dumping duties or confirm price undertakings, if the party presents evidence that, in the light of changed circumstances, such waivers or alterations are warranted; the provisions of Articles 91-104 apply correspondingly.