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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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REPLIES BY POLAND TO QUESTIONS SUBMITTED
BY THE EUROPEAN COMMUNITIES¹ CONCERNING THE
ANTI-DUMPING LEGISLATION OF POLAND²

1. Article 91.1 in conjunction with Article 103.1:

Question (i):

It is provided that anti-dumping duties may be imposed, the amount of which must not exceed the dumping margin. Is it the intention of the Polish investigating authorities to determine the injury threshold when calculating the amount of an anti-dumping duty, and eventually to impose a duty, the amount of which will be lower than the dumping margin, but sufficient to eliminate injury? (lesser duty rule)

Answer:

Under Article 91.1 in conjunction with Article 103.1 the investigating authority may apply the lesser duty rule. Under these provisions the anti-dumping duty may be lower than the dumping margin provided that it is sufficient to remedy the injury to the domestic industry.

Question (ii):

Will the investigating authority, after having established dumping and injury resulting therefrom, determine whether or not it is in the interest of the importing country that anti-dumping measures be taken? (public interest test)

Answer:

Polish legislation does not contain "public interest" clause, although such provisions are being considered at present for possible inclusion in the legislation.

¹ADP/W/307

²ADP/1/Add.20/Rev.1

Question (iii):

Will a residual anti-dumping duty be imposed for unknown, non-co-operating and/or future exporting companies?

Answer:

According to Article 103.3 the decisions imposing anti-dumping duty refer only to: the exporting country or the country of origin, the exporting company and the amount of the anti-dumping duty. These provisions do not allow the imposition of duties for unknown and/or future exporting companies. This article may be amended so as to allow the imposition of anti-dumping duties in respect of products coming from a specific country or group of countries, subject to provisions and conditions of Article 8 of the Anti-Dumping Code.

2. Article 92

Question (i):

Which are the characteristics that the investigating authority will take into consideration when, in the absence of an identical product, an examination of the "like product" needs to be made?

Answer:

Such characteristics will be determined individually in each case by experts to ensure the best possible comparability in terms of utilization standards, technical parameters, technology, design and quality of workmanship and other relevant features.

Question (ii):

Will, in such an examination, account be taken of the utilization of the product?

Answer:

As already stated, the utilization standards will be among the most essential criteria.

3. Article 93.2

Question (i):

Which is the benchmark, if any, that the investigating authority will apply when determining whether or not sufficient sales on the domestic market of the exporting country were made?

Answer:

The Polish law provides for no such benchmark.

Question (ii):

What is the meaning of the words "with allowance for the cost of materials, manufacture, marketing and overhead" (see sub-paragraph 2 of Article 93.2) in the definition of the constructed value?

Answer:

This formulation means that all costs, including those of materials used, manufacturing process, sales and administration will be considered for the purpose of calculating constructed value.

Question (iii):

What is meant by "the product of the same kind in sub-paragraph 2 of Article 93.2?

Answer:

The meaning, in the Polish language, is the same as that of the term "like product" ("produit similaire") as defined in Article 2:2 of the Anti-Dumping Code.

4. Article 93.3

Question (i):

Which method will be used for determining whether sales were made at a loss on the domestic market of the exporting country?

Question (ii):

Will such examination take place on a transaction-by-transaction basis? Will a weighted average be calculated of all transactions within the investigation period? etc.

Answer:

Both questions require further consideration by the Polish authorities.

5. Article 94.5

Question:

What will be the export price if the price for a product sold with the object of exporting it to Poland has not been paid? Will the price payable be used?

Answer:

The question is probably addressed to Article 94.1. The moment of payment is irrelevant to the anti-dumping procedure. Under the Polish law the customs value of a product is determined during the customs clearance on the basis of invoices and other documents then presented. Consequently, it is unrelated to the actual act of payment, the time of which is subject to private agreement between the parties directly concerned.

6. Article 95.1

Question:

How does the investigating authority take account of the level of trade when comparing normal value and export price?

Answer:

The comparison of normal value and export price shall be made at the same level of trade, normally at the ex-factory level, in conformity with the provisions of Article 2:6 of the Anti-Dumping Code.

7. Article 95.2

Question:

How will the "most representative price" be determined, when it is considered that such price is the appropriate basis for establishing a dumping margin?

Answer:

The term "most representative price" is used in the context of Article 95.2 to mean the price at which (or close to which) a predominant part of dumped products are being imported. Such price may then be used to establish the dumping margin.

8. Article 96.2

Question:

How will an anti-dumping duty be levied, in cases of regional injury, on the product in question consigned for final consumption in a particular area?

Answer:

In view of the relatively modest size of Poland's territory, low transportation costs and the absence of clearly distinct regional markets, the possibility of regional injury claims within the meaning of the Code appears to be quite remote and consequently has not been considered in practical terms.

9. Article 97.1

Question:

When examining whether or not dumping has caused material injury, material retardation of industry or threat of injury, how will account be taken of the transition of the country from a non-market to a market economy?

Answer:

All essential economic parameters which are necessary for the proper assessment of consequences of dumping (costs, prices, interest rates, wages, exchange rates, customs duties, etc.) and for taking appropriate remedial action operate in the Polish economy according to market principles. Under these circumstances, sufficiently objective and reliable comparability of domestic and external costs and prices may be assured. Consequently, there is no need, at this juncture, to allow for specific features of the transition process.

10. Article 98.1

Question:

Who will be entitled to lodge a complaint on behalf of the affected domestic industry? Is it provided that labour unions will be entitled to do so?

Answer:

The complaint may be submitted by any person, legal or private, acting in the name and on behalf of the allegedly affected industry. There are no legal impediments to such status being enjoyed also by labour unions, chambers of commerce or employers' associations, as long as such entities may be recognized as representing a majority of the industry (vide Law on Chambers of Commerce and Industry of 30 May 1989 and Law on Labour Unions of 23 May 1991).

11. Article 98.2

Question:

Does a request for the initiation of an anti-dumping investigation need to contain evidence of the existence of importation at a dumping price at all cases? Would a request also be admissible if only offers by exporters had been made?

Answer:

Under Article 98.2 a request for the initiation of an investigation should include sufficient evidence of the existence of actual imports at dumping price. Since import prices are normally regarded as confidential, offers containing selling price may be admitted as evidence, provided that imports had occurred. Offers without such evidence of actual imports taking place shall not be regarded as a sufficient basis on which to initiate the investigation.

12. Article 99.1

Question:

Which time period is granted to interested parties to make comments in writing and make verbal requests for presentation of the documentary evidence after an investigation has been initiated?

Answer:

The existing legislation only specifies the moment from which interested parties may present their written and verbal submissions and requests. No specific deadlines are established for this purpose throughout the entire period of investigation. This provision is likely to be modified by setting specific time periods during which all interested parties may make their submissions.

13. Article 99.3

Question (i):

What is the precise rôle of the Anti-Monopoly Office?

Answer:

The Anti-Monopoly Office, in accordance with Article 99.3, Article 100.1.2 and Article 101, conducts a preliminary as well as final investigation of the alleged injury or threat of injury. The finding by this Office that there is insufficient evidence of injury, threat of injury to a domestic industry or threat of material retardation to the establishment of such industry allows the Minister for Foreign Economic Relations to terminate the investigation.

Question (ii):

How will the Anti-Monopoly Office conduct its investigation for making a preliminary injury determination?

Answer:

The Anti-Monopoly Office shall conduct the injury determination on the basis of information provided by the Minister for Foreign Economic Relations and on the basis of its own findings. The information supplied by the Minister for Foreign Economic Relations shall follow the list of criteria enumerated in Article 97 and shall also include statistical data necessary to investigate the amount of the alleged injury. In conformity with the rules established in Article 102 the confidentiality clause should be respected, if requested by at least one of the parties directly concerned. Representatives of the Anti-Monopoly Office shall also participate in direct consultations with Polish and foreign bodies involved in the anti-dumping investigation.

Question (iii):

Is it intended to make on-the-spot investigations at their premises of the domestic producers after parties have been granted the opportunity of replying to questionnaires and of being heard, and before making a preliminary determination?

Answer:

The present legislation does not require the investigating authorities to make on-the-spot investigations of the domestic producers. However, they may be authorized to visit domestic producers on their premises if necessary in order to collect additional information.

14. Article 100.1, sub-paragraph 1

Question:

What is "negligible" dumping margin?

Answer:

The Polish legislation does not define this notion. The authorities conducting an investigation are allowed to interpret a "negligible margin of dumping" taking into account the specificity of each case.

15. Article 100.2

Question (i):

How will the investigating authority conduct its investigation into the allegations of dumping before reaching preliminary rulings?

Answer:

The investigating authorities shall examine whether the request to initiate the anti-dumping investigation conforms to all basic requirements and criteria as described above. If it is the case, the Minister for Foreign Economic Relations shall make the public notice of the initiation of the anti-dumping investigation in the Official Gazette of the Republic of Poland ("Monitor Polski"). He shall deliver this information to all interested parties with questionnaires which the parties are encouraged (but not obliged) to use for their responses to be used by investigating authorities. Subsequently, the investigating authorities, in order to verify the information provided in the request, should collect supplementary evidence from other Polish agencies. When the investigating authorities are satisfied that there is sufficient evidence to support the complaint they issue the preliminary determination of dumping and injury.

Question (ii):

What procedural guarantees are offered to interested parties in order to assure them that due account will be taken of any information they may wish to put forward?

Answer:

In accordance with Article 73 of the Administrative Code all interested parties are given the right to consult the dossier at each stage of the investigations, provided that the information is not covered by the confidentiality clause. If the information is classified as confidential, parties are allowed to consult non-confidential summaries thereof, which are to be furnished under Article 102.2 of the Customs Law. Moreover, in accordance with Article 77 of the Administrative Code the investigating

authorities shall examine carefully all evidence provided by each party. All directly interested parties have the right to be acquainted with the findings made throughout the investigation.

16. Article 100.6

Question (i):

Are exporters and importers affected by provisional rulings given the opportunity to make their views known?

Answer:

In accordance with Article 99.1 exporters and importers may present their views orally and in writing at any stage of the investigations.

Question (ii):

Which procedural guarantees are provided for to ensure that rights of defence will be fully respected?

Answer:

The rights of defence are ensured by:

- the rights to present all evidence and the right to make verbal requests for presentation of the documentary evidence (in accordance with Article 99.1);
- the rights attributed to the Minister for Foreign Economic Relations to waive or alter rulings that impose anti-dumping duties, if the party presents evidence that, in the light of changed circumstances, such waivers or alterations are warranted (Article 105);
- the party's right to appeal the ruling to the Supreme Administrative Court within 14 days starting on the day when the final rulings are issued.

Question (iii):

Will interested parties be informed of definitive findings before a final decision is made?

Answer:

The Minister for Foreign Economic Relations publishes the rulings in the "Monitor Polski" and communicates them to all interested parties (in accordance with Article 103.6).

17. Article 104.1

Question (i):

Will an exporter be given the opportunity to offer a price undertaking after a preliminary ruling has been issued?

Answer:

In accordance with Article 104.1 an exporter may undertake to observe minimum export prices, provided that such an undertaking is made before the final ruling has been issued.

Question (ii):

Does the acceptance of an undertaking require a prior determination of dumping and injury?

Answer:

Article 104.1 provides that the Minister for Foreign Economic Relations can accept price undertakings by the exporter only after the initiation of the investigation but before the final decision to impose the anti-dumping duties.

18. Sunset clause

Question:

What is the duration of the validity of anti-dumping measures (duties and undertakings)?

Answer:

The Polish legislation does not contain the "sunset clause". In accordance with Article 9:1 of the Anti-Dumping Code an anti-dumping duty shall remain in force only as long as necessary to counteract dumping causing injury.